

EXECUTION COPY

<b>DOCKET</b> <b>06-AFC-5</b>	
DATE	_____
RECD.	MAY 16 2007

POWER PURCHASE AND SALE AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY

(as "Buyer," as defined herein)

and

PANOCHÉ ENERGY CENTER, LLC

(as "Seller")

## TABLE OF CONTENTS

<b>ARTICLE I. GOVERNING TERMS</b> .....	<b>1</b>
1.1 Entire Agreement. ....	1
1.2 Interpretation. ....	1
1.3 Recordings. ....	2
1.4 Authorized Representatives. ....	2
<b>ARTICLE II. TERM</b> .....	<b>2</b>
2.1 Term. ....	2
2.2 Binding Nature. ....	3
<b>ARTICLE III. OBLIGATIONS AND DELIVERIES</b> .....	<b>3</b>
3.1 Transaction.....	3
3.2 Interconnection Facilities.....	7
3.3 Gas Supply and Transportation.....	7
3.4 Electric Transmission and Delivery.....	9
3.5 Scheduling and Balancing.....	10
3.6 Standards of Care.....	13
3.7 Meter Maintenance. ....	13
3.8 Metering.....	13
3.9 No Replacement Power.....	15
3.10 Scheduled Maintenance Outages and CAISO Maintenance Outages.....	15
3.11 Force Majeure. ....	18
3.12 Operations Logs and Access Rights. ....	18
3.13 Capacity Testing and Adjustment of Monthly Contract Capacity.....	19
3.14 Operating Procedures. ....	22
<b>ARTICLE IV. AVAILABILITY; HEAT RATE; AND COMPENSATION</b> .....	<b>23</b>
4.1 Availability. ....	23
4.2 Heat Rate.....	25
4.3 Product Compensation.....	27
4.4 Start-Up Charges.....	28
4.5 Start-Up Factor Adjustment.....	28
<b>ARTICLE V. EVENTS OF DEFAULT; REMEDIES</b> .....	<b>30</b>
5.1 Events of Default. ....	30
5.2 Declaration of Early Termination Date and Calculation of Termination Payment. ....	33
5.3 Rights And Remedies Are Cumulative.....	34
5.4 Waiver.....	34
<b>ARTICLE VI. PAYMENT AND NETTING</b> .....	<b>34</b>
6.1 Billing and Payment.....	34

6.2 Netting.....	34
6.3 Disputes and Adjustments of Invoices.....	35
6.4 Termination Payment. ....	35
<b>ARTICLE VII. LIMITATIONS .....</b>	<b>35</b>
7.1 Limitation of Remedies, Liability and Damages. ....	35
<b>ARTICLE VIII. CREDIT AND COLLATERAL REQUIREMENTS .....</b>	<b>36</b>
8.1 Timing and Use of Collateral.....	36
8.2 Determination of Collateral Requirements. ....	37
8.3 Letter of Credit and Other Collateral. ....	40
<b>ARTICLE IX. GOVERNMENTAL CHARGES.....</b>	<b>41</b>
9.1 Cooperation. ....	41
9.2 Governmental Charges.....	41
9.3 Seller as Facility Owner.....	42
<b>ARTICLE X. MISCELLANEOUS .....</b>	<b>42</b>
10.1 Representations, Warranties and Covenants.....	42
10.2 Indemnities.....	43
10.3 No Dedication .....	46
10.4 Assignment. ....	46
10.5 Choice of Law.....	47
10.6 General.....	47
10.7 Confidentiality. ....	47
10.8 Insurance.....	48
10.9 Access to Records .....	51
10.10 Severability. ....	51
10.11 Counterparts.....	51
<b>ARTICLE XI. CONDITIONS PRECEDENT; EFFECTIVE DATE; CONSTRUCTION; AND INITIAL DELIVERY DATE.....</b>	<b>51</b>
11.1 Conditions Precedent to Effective Date.....	51
11.2 Construction.....	53
11.3 Initial Delivery Date. ....	55
11.4 Delay Damages; Termination Upon Delay.....	56
11.5 Return of Delivery Date Security. ....	57
11.6 Effect of Force Majeure.....	57
11.7 Partial Commercial Operations.....	57
<b>ARTICLE XII. DISPUTE RESOLUTION.....</b>	<b>57</b>
12.1 Intent of the Parties. ....	57
12.2 Management Negotiations. ....	57
12.3 Mediation. ....	58
12.4 Arbitration. ....	58

<b>ARTICLE XIII. NOTICES .....</b>	<b>59</b>
13.1 Notices. . . . .	59

**APPENDICES**

<b>Appendix I -</b>	<b>General Definitions</b>
<b>Appendix II -</b>	<b>Description of Facility, Unit and Operational Limitations</b>
<b>Appendix III -</b>	<b>Counterparty Notification Requirements for Outages, Availability and Generation Schedules</b>
<b>Appendix IV -</b>	<b>Fixed Payment Allocations by Month</b>
<b>Appendix V -</b>	<b>Form of Letter of Credit</b>
<b>Appendix VI -</b>	<b>Determination of Mark to Market Value</b>
<b>Appendix VII -</b>	<b>Form of Monthly Construction Progress Report</b>
<b>Appendix VIII -</b>	<b>Deposit Account Agreement</b>
<b>Appendix IX -</b>	<b>Form of Consent and Agreement</b>
<b>Appendix X -</b>	<b>Example of Section 3.3(f)</b>
<b>Appendix XI -</b>	<b>Example of Section 3.5(d)</b>
<b>Appendix XII -</b>	<b>Example of Section 3.13(d)(ii)</b>
<b>Appendix XIII -</b>	<b>Example of Sections 4.1(b), 4.1(c), and 4.3(b)</b>
<b>Appendix XIV -</b>	<b>Example of Section 4.2</b>
<b>Appendix XV -</b>	<b>Example of Section 4.5(b)</b>

## FORM OF POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("Agreement") is made between Pacific Gas and Electric Company, a California corporation ("PG&E", and as further defined herein, "Buyer") and Panoche Energy Center, LLC, a Delaware limited liability company ("Seller") as of March 28, 2006 ("Execution Date"). Seller and Buyer are referred to individually as "Party" or collectively as "Parties".

### RECITALS

Buyer requested offers for the sale of Capacity, Energy and Other Products (as defined herein) from new generation and/or Qualifying Facilities, in order to, among other things, support its long-term procurement plan and assist it in meeting its Resource Adequacy Requirement.

Seller submitted a proposal to Buyer for the sale of Capacity and the associated Energy and Other Products together with a deposit equal to \$5/kW multiplied by 400,000 kW for a total of \$2,000,000 ("Initial Offer Deposit").

Buyer and Seller have negotiated the terms and conditions pursuant to which, subject to regulatory approvals and the satisfaction of other conditions precedent, Seller will sell to Buyer and Buyer will buy from Seller Capacity, Energy and Other Products.

Therefore, the Parties agree as follows:

### ARTICLE I. GOVERNING TERMS

1.1 Entire Agreement. This Agreement, together with each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties shall be referred to as the "Agreement."

1.2 Interpretation. The following rules of interpretation shall apply:

(a) The term "including" shall mean "including without limitation"; the term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 a.m. and ending at 12:00:00 midnight; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, where the consent of a Party is required, such consent shall not be unreasonably withheld or unreasonably delayed.

(c) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then exist at the applicable time to which such construction applies.

(d) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Appendix I, unless otherwise specified.

(e) References in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate

legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(f) Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

(g) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(h) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(i) All references to dollars or "\$" are to U.S. dollars.

(j) When an action is required to be completed on a Business Day, such action must be completed prior to 5:00 p.m. Pacific prevailing time on such day, and actions occurring after 5 p.m. (such as the delivery of a Notice) will be deemed to have occurred on the following Business Day.

1.3 Recordings. Unless a Party expressly objects to a Recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties with respect to generation and dispatch issues, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement subject to the confidentiality provision of Section 10.7 hereof. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement.

1.4 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of Gas or any Product or make or receive other Notices on behalf of such Party ("Authorized Representative") and in connection with such Notices shall specify the scope of their individual authority and responsibilities. Either Party may change its designation of such persons and the scope of their individual authorities and responsibilities from time to time in its sole discretion by providing Notice to the other Party.

## ARTICLE II. TERM

2.1 Term. The "Contract Term" will commence upon the Execution Date and, unless earlier terminated pursuant to Article V (Events of Default; Remedies) or Article XI (Conditions Precedent; Effective Date; Construction; and Initial Delivery Date), will continue throughout the Services Term and until the date as of which all payment obligations arising under this Agreement, including any compensation for the Products, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such

as through set-off or netting) and the Collateral is released and/or returned as applicable. The Initial Delivery Date will occur upon satisfaction of the conditions precedent as set forth in Article XI. The "Services Term" is the period commencing on the Initial Delivery Date and continuing for a period of 20 years from the later to occur of the Initial Delivery Date and the Expected Initial Delivery Date unless earlier terminated pursuant to Article V.

2.2 Binding Nature. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under Section 10.1(a) (Representations and Warranties of Both Parties) and Section 11.1 (Conditions Precedent to Effective Date). Upon occurrence of the Effective Date, this Agreement shall be in full force and effect, enforceable and binding in all respects.

### ARTICLE III. OBLIGATIONS AND DELIVERIES

#### 3.1 Transaction.

(a) Purchase and Sale Obligation. During the Services Term, Seller shall sell and make available to Buyer and Buyer shall accept and pay in accordance with Section 4.3 and Article VI for all the Monthly Contract Capacity of each Unit which shall convey to Buyer the right to receive all the Products provided by the Unit, including those Products associated with Capacity in excess of the Monthly Contract Capacity, pursuant to the terms and conditions contained herein. Further, during the Services Term, Seller shall sell and provide to Buyer and Buyer shall purchase and pay in accordance with Section 4.3 and Article VI for Tolling Services from the Units pursuant to the terms and conditions contained herein.

(b) Resource Adequacy Requirement. During the Services Term, Seller shall commit the Units to Buyer for, among other things, the purpose of contributing to Buyer's ability to meet Buyer's Resource Adequacy Requirement ("RAR"). For avoidance of doubt, included within Buyer's exclusive rights to all Products available from the Units, Buyer is entitled to all Products, rights and entitlements that are related to the RAR, including capacity tags, capacity credits, and all Capacity-related Products. Throughout the Services Term, Seller shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure the availability and qualification of each Unit and its Monthly Contract Capacity to contribute toward meeting Buyer's RAR and Buyer's or CAISO's right to the use of the Unit and all of its Products for the benefit of Buyer's RAR. Notwithstanding any other provision of this Section 3.1(b), Seller shall not be required to implement any change or improvement to the Facility, including to its operations, a Unit, the Electrical Interconnection Facilities, the Gas Interconnection Facilities or the transmission network, on or after the Initial Delivery Date in order to comply with RAR pursuant to this Section 3.1(b) that would result in an unreimbursed (i) initial capital cost that over the expected life of such improvement exceeds the greater of \$100,000 per year or \$0.50 per kW year or (ii) operating expense that exceeds an annual average of the greater of \$100,000 per year or \$0.50 per kW year; provided, however, that Buyer shall only be required to make such reimbursement if, in its sole discretion, it agrees that such change or improvement is appropriate. Subject to the preceding sentence, the commercially reasonable actions required of Seller pursuant to this Section 3.1(b) may include the following:

(i) Cooperating with Buyer, and cooperating with and encouraging the regional entity responsible for resource adequacy administration, to certify or qualify the Unit and no less than all of Monthly Contract Capacity of the Units for RAR purposes; meeting requirements established by the CPUC in its resource adequacy counting protocols, including demonstration of the ability to

deliver no less than all of the Monthly Contract Capacity over all hours required for full RAR eligibility, and demonstrating that no less than all of the Monthly Contract Capacity can be delivered to the CAISO Grid pursuant to any deliverability standards established by the CPUC or other regional entity or entities responsible for RAR administration;

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

(iii) Taking commercially reasonable measures necessary to comply with any CPUC or CAISO requirements for meeting Resource Adequacy Requirements, including by way of example, making the physical Unit available to the CAISO for dispatch; complying with all requirements associated with the Resource Adequacy Requirement that are imposed through either CAISO market design and tariffs, CPUC or FERC, including, for example, requirements related to bidding and/or dispatch including those imposed for the day-ahead, hour-ahead and real-time markets; installing communication equipment, complying with communication protocols (provided that nothing herein shall require or permit Seller to undertake communications that are the responsibility of the Scheduling Coordinator); making capital improvements and incurring operating expenses; and changing operations.

(c) Control. Seller shall at all times retain operational control of the Units, be responsible for all operation and maintenance of the Units and except as set forth in Section 3.1(b) will bear all costs related to ownership, operation and maintenance of the Units. As between the Parties, Seller shall have the sole right and discretion to determine the availability of the Units for operation.

(d) Exclusivity; Rights to Output and Payments.

(i) During the Services Term, Seller will not commit less than an entire Unit to Buyer nor dispatch or operate a Unit, or any portion thereof, nor sell any Product associated with a Unit to any Person other than Buyer (other than pursuant to an Instructed Operation as set forth in Section 3.5(c)). For the avoidance of doubt, Seller shall not cause the Unit to become subject to an RMR agreement or any other obligation to deliver a Product to any other Person other than pursuant to an Instructed Operation, and Buyer shall have the exclusive right to enter into an RMR agreement with respect to any Unit and/or resell any Product from any Unit, provided in each case that the RMR agreement or resale would not result in a violation of the Operational Limitations of the affected Unit.

(ii) Subject to the reporting requirements of Section 3.5, nothing herein shall bar Seller from complying with Instructed Operations; provided that if Seller receives an Instructed Operation other than through Buyer, it should advise the entity issuing the instruction that such communications are to be made to its Scheduling Coordinator, and in any event, Seller shall promptly report such event in accordance with Section 3.5(b). Seller acknowledges and

agrees that Buyer may take whatever measures it elects to protest, challenge, eliminate, institute or modify any Instructed Operation, which may include communicating directly with the Governmental Authority or CAISO, as applicable, responsible for such Instructed Operation.

(iii) If during the Services Term Seller requires the ability to operate a Unit that is Commercially Operable other than pursuant to Buyer's Schedule or as otherwise expressly contemplated herein (for example, for the purpose of conducting environmental testing or testing newly installed equipment), it shall notify Buyer. In such event, Buyer and Seller shall work in good faith to accommodate Seller's need consistent with other provisions of this Agreement, provided, that Seller shall be liable for Buyer's costs in accommodating Seller's requests to the extent such operations are not performed when the applicable Unit is otherwise operating pursuant to Buyer's Schedule.

(iv) In the event that the Final Delivery Date occurs after the Initial Delivery Date and Seller desires to operate a Unit that is not yet Commercially Operable ("New Unit") in conjunction with testing and commissioning of the New Unit, Seller shall notify Buyer and Buyer and Seller shall work in good faith to accommodate Seller's need consistent with other provisions of this Agreement, provided that if Seller is prevented from testing the New Unit at Buyer's request due to Buyer's scheduling of the other Units and if Seller is unable to complete the testing of the New Unit required for it to be deemed Commercially Operable within forty-five (45) days of its Mechanical Completion, then the New Unit will be deemed Commercially Operable solely for the purposes of calculating the Pro Rata Capacity Adjustment for each day on which Buyer's Schedule prevents testing.

(v) Operations undertaken by Seller pursuant to Section 3.1(d)(iii) or (iv) shall not be deemed to be part of Buyer's Schedule but Buyer shall nonetheless schedule the Units with the CAISO according to Seller's instructions. Subject to Section 3.13(d)(iv), Buyer shall purchase the Energy produced by Seller's operations under Section 3.1(d)(iii) or (iv) at the then-applicable CAISO NP15 price (e.g., day-ahead, hour-ahead or real-time, contingent on the notice provided as needed for scheduling) and Seller shall bear the costs or receive the benefits of such operations, Start-Ups and Shut-Downs in accordance with the provisions of Section 3.3(d), 3.3(e), 3.3(f) and 3.5(d) as applicable. At all other times during the Services Term, Seller shall sell and make available exclusively to Buyer all the Products of the Units.

(vi) After the Initial Delivery Date, to the extent that Seller receives any payment associated with the Capacity or the Products, including non-Energy or fixed payments received for or in connection with Resource Adequacy Requirements, Instructed Operations or any RMR agreement, from any Person (including CAISO) other than Buyer, Seller shall remit such payment to Buyer ("Third Party Payments"); provided that, for the avoidance of doubt, nothing herein precludes Seller from retaining credits related to Transmission Upgrades as contemplated pursuant to Section 3.1(f) or from retaining revenue received for Products produced during any tests for which Seller bears the costs. Invoicing and payment for all amounts due from one

Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(e) Unit Modifications. Absent consent of the Buyer, which may be withheld or delayed until such time as the conditions specified in this Section 3.1(e) are satisfied, Seller shall not, nor permit any other Person to undertake any construction at, or modification of, a Unit or the Facility which materially increases, modifies or decreases the Capacity of any Unit that is committed to Buyer (as compared to its Design Capacity); nor take any other action that would, or may reasonably be expected to, impair or limit the ability of the Unit to supply Products to the Buyer, the ability of the Buyer to purchase or receive Products from such Unit, the rights of the Buyer to full and exclusive rights to all of the Capacity of each Unit, the ability of the Buyer to deliver all Gas required for Scheduled Operations or the ability of Seller to deliver any and all Products that the Unit is capable of producing, as set forth in Appendix II, as measured at the Electrical Delivery Point, including the full amount of the Monthly Contract Capacity. Buyer's consent pursuant to this paragraph must be in writing and Buyer may delay its consent until it determines whether, or withhold its consent if it determines that, the proposed change would impair or limit the ability of the Seller to supply and deliver Products from the Unit to the Buyer, the ability of the Buyer to purchase or receive Products from such Unit, or the Buyer's full and exclusive rights to all of the capacity of each Unit or otherwise affect Buyer's interests in the Unit. Nothing in this Section 3.1(e) shall be deemed to limit or impair the ability of the Seller, or require Buyer's consent, to perform or cause to be performed routine maintenance or major maintenance overhauls in the ordinary course of business, including those that may result in restoring Design Capacity lost through degradation.

(f) Separation of Functions. This Agreement is between (1) Seller and (2) Buyer (as defined herein). PG&E is required to maintain the separation of its transmission and merchant functions pursuant to FERC's Standards of Conduct. Accordingly, Buyer expressly disclaims all rights, obligations and liabilities of PG&E to Seller that have been assumed by PG&E in PG&E's capacity as an owner or provider of electrical interconnection or transmission service or as a natural gas local distribution company. Thus, whether or not the Units are interconnected to electrical and/or gas transmission systems that are owned or operated by PG&E, Seller's arrangements for interconnection and transmission must be made with its interconnecting transmission provider (which may be PG&E in its capacity as a transmission provider) and, except for setting forth the rights and obligations of the Seller to construct, and/or cause to be constructed, and maintain metering facilities, Electrical Interconnection Facilities, Transmission Upgrades and Gas Interconnection Facilities (in each case in accordance with the requirements of its interconnecting electric or gas transmission provider(s) or transmission owner(s), as applicable) and arrange for supply and transportation of Gas from the Gas Delivery Point to the Units and transmission of Energy and Other Products (to the extent applicable) to and at the Electrical Delivery Point, this Agreement conveys no rights or obligations with respect to electrical interconnection and transmission or Gas interconnection and transportation. If, in accordance with the applicable tariffs, rules, or agreements governing Seller's arrangements for Transmission Upgrades or upgrades to the gas delivery system, Seller is entitled to receive a credit, repayment or other rights or privileges as a result of funding the Transmission Upgrades or upgrades to the gas delivery system, nothing in this Agreement shall impair or prohibit Seller from retaining those credits, repayments, rights or privileges for its use and benefit. Regardless of whether PG&E owns or operates the interconnecting transmission system, under no circumstances will PG&E in its capacity as a Buyer under this Agreement be responsible for Seller's interconnection arrangements or costs nor any credit, repayment or other rights or privileges due to Seller as a result of its funding of the Transmission Upgrades or upgrades to the gas delivery system. Moreover, Seller's non-performance of any provision of this Agreement

shall not be excused to any greater extent due to any action or inaction of PG&E in its capacity as an owner or provider of electrical interconnection or transmission service or as a Gas LDC than it would be if the non-performance were due to any action or inaction of a Person other than PG&E, even if the Agreement provides that Seller would be excused for its non-performance if the non-performance were due to an action or inaction of Buyer. For avoidance of doubt, nothing in this Agreement is intended to change in any way Seller's or PG&E's rights or obligations as against Seller or PG&E in any other agreement, including those related to PG&E's role as a transmission provider or transmission owner.

### 3.2 Interconnection Facilities.

(a) Construction. In accordance with Article XI, the Seller shall have the obligation to cause the construction of the Electrical Interconnection Facilities and Gas Interconnection Facilities including metering and submetering facilities, and Transmission Upgrades, and cause them to become operational, provided however that nothing in this Agreement is intended to impose upon Seller any obligation in excess of those imposed on generators under applicable state and Federal law. Seller shall make reasonable commercial efforts to cause the Gas Interconnection Facilities to be interconnected with PG&E's "backbone" and to qualify for a "backbone" rate as outlined in Gas Rule 1 of PG&E's current natural gas transportation tariff; provided, that if Seller does not qualify for such "backbone" rate, then the CPR payable by Buyer shall be reduced by 2% during the period that the Seller is not so qualified.

(b) Maintenance of Electrical Interconnection Facilities. To the extent required to achieve the Initial Delivery Date and at all times during the Services Term, Seller shall maintain and/or cause to be maintained, at its expense, the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Products that can be generated or produced using the Maximum Contract Capacity in accordance with the terms of this Agreement to and at the Electrical Delivery Point during each month as applicable (in addition to such other output of the Facility as the Electrical Interconnection Facilities are required to transmit) in accordance with the terms of this Agreement.

(c) Maintenance of Gas Interconnection Facilities. To the extent required to achieve the Initial Delivery Date and at all times during the Services Term, Seller shall maintain and/or cause to be maintained, at its expense, the Gas Interconnection Facilities such that the Gas Interconnection Facilities are capable of delivering Gas to and at the Gas Delivery Point, and from the Gas Delivery Point to and at the Units, in volumes and at pressures that enable the Units to generate or produce the Products using the Maximum Contract Capacity in accordance with the terms of this Agreement during each month as applicable (in addition to such other volumes of Gas as the Gas Interconnection Facilities are required to deliver to the Facility) in accordance with the terms of this Agreement.

### 3.3 Gas Supply and Transportation.

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

(b) Buyer's Gas Supply. During the Services Term and subject to Section 3.3(f), Buyer will procure, supply, nominate, balance, transport and deliver or otherwise make available Gas at the Gas Delivery Point, at Buyer's expense, for all Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, Seasonal Capacity Tests, Buyer's Capacity Tests, in each case, in

quantities equal to those necessary to perform such operations as determined by reference to the most recent Adjusted Guaranteed Heat Rates (or, if no Adjusted Guaranteed Heat Rates have yet been required pursuant to Section 4.2(b)(v), the Initial Guaranteed Heat Rates) or the Gas requirements set forth in Appendix II, as applicable; provided that the Products produced as a result of such operations are provided to Buyer for its account (cumulatively, "Buyer's Gas"). Any Gas used for Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, Seasonal Capacity Tests, or Buyer's Capacity Tests in amounts other than as specified by the most recent Adjusted Guaranteed Heat Rates (or, if no Adjusted Guaranteed Heat Rates have yet been required pursuant to Section 4.2(b)(v), the Initial Guaranteed Heat Rates) or Appendix II, as applicable, shall be subject to the provisions of Section 3.3(e) and 3.3(f). During the Services Term, Seller shall have the obligation to receive Buyer's Gas and to use it exclusively for Scheduled Operations, Scheduled Start-Ups, Scheduled Shut-Downs, Seasonal Capacity Tests, and Buyer's Capacity Tests, as directed by Buyer, subject to Seller's right to refuse delivery if Unit operations are precluded by an Outage. Buyer shall provide Gas, including Buyer's Gas, only at the pressure and of the quality available from the interconnecting pipeline or LDC.

(c) Gas Transportation and Distribution Agreements. Seller shall enter into such agreements as necessary and appropriate for interconnection and service by an LDC to the Unit. Seller shall assign to Buyer (or, as applicable, appoint Buyer as Seller's balancing agent or take such other measures as needed to transfer to Buyer the authority to exercise) all of Seller's rights under agreements with its LDC or other gas transportation provider with respect to nominating, scheduling, balancing, park and loan services or such other arrangements for the management of gas supply and delivery; and Buyer shall assume such rights or accept such appointment, as applicable. Buyer shall be responsible for procuring, contracting for and otherwise arranging for gas transportation services for all gas to be delivered to the Units' LDC during the Services Term. During the Services Term, Seller shall provide Buyer access to data as provided in Section 3.8(e) plus timely access to Gas data, records and bills associated with Gas LDC services for the Facility.

(d) Gas Transportation and Distribution Costs. During the Services Term and subject to Sections 3.3(e) and 3.3(f), Buyer shall be responsible for arranging for the transportation and distribution of all Gas, and all charges related to transportation and distribution of Buyer's Gas, to the Gas Delivery Point, including inter-state, intra-state and LDC charges. Buyer shall not be responsible for any charges, surcharges or fees assessed pursuant to, or associated with, (i) an Exceptional Case Agreement; or (ii) any other agreement if such charges, surcharges or fees are related to interconnection or construction costs; or (iii) failure to meet a minimum volume requirement; or (iii) transportation, balancing or other costs not associated with the transportation and distribution of Buyer's Gas. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(e) Additional Gas. To the extent that during the Services Term Seller desires to have delivered Gas other than Buyer's Gas ("Additional Gas"), Seller shall provide Notice to Buyer of the quantities of Additional Gas required and time at which the Additional Gas is required, and subject to timely receipt of such Notice, Buyer shall procure and schedule the supply and transportation of such Additional Gas to (or otherwise make such Additional Gas available at) the Gas Delivery Point, as requested by Seller. Buyer shall be entitled to receive a fee for this service equal to \$0.05 per MMBtu ("Fuel Manager Fee"). Buyer shall invoice Seller, and Seller shall pay, for the cost of Additional Gas that Seller requests Buyer to schedule in an amount equal to the MMBtu of Additional Gas delivered (exclusive of Buyer's Gas) multiplied by the Gas Index Price, Midpoint plus all transportation and distribution charges that have been

(or are to be) paid by Buyer related to the Additional Gas and the Fuel Manager Fee (“Additional Gas Payment”). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(f) Balancing True-up. During the Service Term, in addition to the Additional Gas Payment, Seller shall compensate Buyer, or Buyer shall compensate Seller, for deviations between the expected Gas consumption of each Unit and the amount of Gas metered at the Gas Delivery Point as follows. Buyer shall compare, on a daily basis, (A) the sum of the expected usage of Buyer’s Gas (for Scheduled Operations, Scheduled Start Ups, Scheduled Shut Downs, Seasonal Capacity Tests and Buyer’s Capacity Tests) based upon the most recent Adjusted Guaranteed Heat Rates corrected for ambient conditions (or if no Adjusted Guaranteed Heat Rates have yet been required pursuant to Section 4.2(b)(v), the Initial Guaranteed Heat Rates) and amounts specified in Appendix II (e.g., for Scheduled Start Ups and Scheduled Shut Downs), as applicable, plus the amount of Additional Gas scheduled, to (B) the actual metered usage of Gas (“Imbalance Amount”). For each day on which the Imbalance Amount is positive (e.g., (B) is less than A)) by a margin of 1% or more, Buyer shall owe Seller an amount equal to (i) the absolute value of the Imbalance Amount, multiplied by the sum of the Gas Index Price, Low multiplied by 15%, less (ii) any penalties assessed by the LDC or pipeline against Buyer that were incurred as a result of the deviation. For each day on which the Imbalance Amount is negative (e.g., (A) is less than (B)) by a margin of 1% or more, Seller shall owe Buyer an amount equal to (i) the absolute value of the Imbalance Amount, multiplied by the sum of the Gas Index Price, High and plus all transportation and distribution charges related to the Imbalance Amount that have been (or are to be) paid by Buyer, plus (ii) any penalties assessed by the LDC or interconnecting pipeline against Buyer that were incurred as a result of the deviation. Amounts owed pursuant to this Section (“Balancing Payments”) shall be invoiced and paid monthly in accordance with Article VI. An example of the Balancing Payments calculation is provided in Appendix X.

(g) Failure to Deliver Gas. In the event Buyer fails to cause Gas to be available to Seller at the Gas Delivery Point as set forth in this Section 3.3, such event shall be an Excused Event.

### 3.4 Electric Transmission and Delivery.

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

(b) Seller’s Responsibility. During the Services Term, Seller shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Product(s) or its delivery of the Product(s), including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment up to and at the Electrical Delivery Point; provided that Buyer shall be responsible for (or receive the benefit of) the difference between metered Energy at the Electrical Delivery Point and the Energy deemed delivered to the CAISO at the Electrical Delivery Point after application of the Generation Meter Multiplier, as set forth in Section 4.3.

(c) Buyer’s Responsibility. During the Services Term, Buyer shall arrange, schedule and be responsible for electric transmission service and any and all costs or charges imposed on or associated with the Product(s) or its receipt of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with

any transmission outages or curtailment, from and after the Electrical Delivery Point. For the avoidance of doubt, Buyer shall also be responsible for (or receive the benefit of) the difference between metered Energy and the Energy deemed delivered to the CAISO at the Electrical Delivery Point after application of the Generation Meter Multiplier, as set forth in Section 4.3.

### 3.5 Scheduling and Balancing.

(a) Scheduling Coordinator. During the Services Term, Buyer will be the Scheduling Coordinator (“SC”) for the Units. Accordingly, Buyer shall be entitled to exercise all rights and obligations on behalf of the Seller that are customarily included in the responsibilities of the Scheduling Coordinator, including reviewing CAISO accounts related to the Units and Products delivered from the Units and discussing and/or resolving disputes related thereto with the CAISO. In its capacity as Seller’s representative to CAISO, the Scheduling Coordinator shall be responsible for exercising due diligence in processing and validating all settlements for the Units and ensuring all settlements are valid.

(b) Buyer’s Dispatch Rights. During the Services Term, Buyer shall have the exclusive right to schedule any or all of the Units for the delivery of any of the Products at any time, including on a day-ahead, hour-ahead and real-time basis within the defined Operational Limitations of the Units. Buyer shall have the exclusive right to designate the specific Unit(s) to be operated and the Products to be provided by each Unit; provided, however, that no single Unit’s Start-Ups may exceed by more than twenty (20) any other Unit’s Start-Ups in a calendar year.

(i) Seller’s Scheduled Notices of Availability. Each day, between the hours of 12:01 a.m. and 5 a.m., commencing one week prior to the Expected Initial Delivery Date and continuing thereafter throughout the Services Term, Seller shall provide Buyer a complete Notice of the expected availability and Capacity of each Unit (as reasonably determined at that time) for that day and each of the next 13 days, or such shorter period as the Buyer may specify from time to time, setting forth therein the percentage or the amount of, per Buyer’s specification, the Monthly Contract Capacity of that Unit that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any known Outage or any known Instructed Operation, the amount of Capacity affected by such Outage and the expected nature and effect of the Instructed Operation on the Unit’s availability, regardless of whether or the extent to which such Unit is then or may be scheduled for dispatch; provided that such information shall be provided only for days that are part of the Services Term. Additionally, each month, commencing one month prior to the Expected Initial Delivery Date and continuing thereafter throughout the Services Term (at such time of month as agreed to by the Parties from time to time), Seller shall provide Buyer a complete Notice of the expected availability and Capacity of each Unit for the next calendar month (as reasonably determined at the time), setting forth therein the percentage of the Monthly Contract Capacity that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outages, and the amount of Capacity affected by such Outage. The Notices required pursuant to this Section shall be set forth in Appendix III. Notices required pursuant to this Section 3.5(b)(i) shall be referred to as “Scheduled Availability Notices.”

(ii) Seller's Continuing Obligations To Provide Notice of Availability. During the Services Term, to the extent not reported in a Scheduled Availability Notice or pursuant to Section 3.10, Seller shall (A) notify Buyer's on-duty Scheduling Coordinator, orally or through an automated notification system, of every Outage of a Unit or imposition of an Instructed Operation as soon as possible (and in any event, using commercially reasonable efforts to do so within 10 minutes after the occurrence of such Outage or imposition of such Instructed Operation), whether or not the Unit is scheduled for operation, (B) provide a written estimate of the expected duration of such Outage and/or nature of the Instructed Operation within one hour after submittal of the initial notification pursuant to clause (A) of this sentence, if known, and (C) submit an Outage/Availability Notification Form, in the form attached to Appendix III, to Buyer in accordance with the instructions shown on the form. The Seller shall update Buyer periodically through the day as information becomes available as well as through Scheduled Availability Notices, with any revised estimates regarding the Unit's return to full output capability and shall promptly provide Buyer Notice of any further change in the availability of a Unit or Products for dispatch from that set forth in the last Notice provided, whether or not the Unit is scheduled for operation, including any developments that will affect the severity or duration of each Outage, availability and capability of the Unit to return to service after an Outage or scope and duration of the Instructed Operation.

(iii) Other Reporting Obligations. Each Notice provided pursuant to Section 3.5(b)(i) and (b)(ii) that includes notice of an Outage or Instructed Operations shall include all such information concerning such Outage, change or limitation as the CAISO may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Unit's SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the Outage/Availability Notification Procedures set forth in Appendix III to the Hour-Ahead Trading Desk. During the Services Term, Buyer is responsible for providing to the CAISO notice of each Outage to the extent required by Law, CAISO Tariff or contract. During the Services Term, each of Seller and Buyer shall promptly communicate to the other all information received by it from, or given by it to, the CAISO or other Governmental Authority regarding planned or in-progress Outages or Instructed Operations. Seller is responsible for providing regulatory bodies such as FERC and the CPUC with Outage information (for example but not limited to, NERC outage reporting requirements) as required by Law, tariff or regulation.

(iv) Buyer's Schedule. Commencing in the week prior to the Expected Initial Delivery Date as necessary for operations that commence no earlier than the Initial Delivery Date and thereafter throughout the Services Term, Buyer shall provide Seller once per week, a non-binding Notice of expected Unit commitment over the course of the next week. Buyer shall schedule the delivery of Products in accordance with the Operational Limitations and in accordance with Section 3.6 of this Agreement (Standards of Care) and CAISO operational protocols and provide Notice of such schedule to Seller ("Buyer's Schedule").

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

(c) Other Scheduled Operations. Notwithstanding Buyer's exclusive rights to schedule and require delivery of the Products from the Units during the Services Term as set forth in Section 3.1(d), Buyer shall adjust Buyer's Schedule to the extent necessary to allow Seller to Start-Up, operate, curtail or Shut-Down the Units when required to comply with an Instructed Operation.

(d) Deviation Charges. Buyer shall have no obligation or liability of any kind with respect to any uninstructed deviations from Buyer's Schedule, except to the extent any such obligations or liabilities arise as a result of any act or omission of Buyer in its role as Scheduling Coordinator. Should Seller fail to operate the Units in a manner to comply with Buyer's Schedule (unless due to an Instructed Operation or Excused Event), such failure is not attributable to an Excused Event, and a deviation occurs between the quantity, time or location of Scheduled Energy and the Energy delivered or between the quantity, time or location of Ancillary Services scheduled and the Ancillary Services delivered ("Seller's Deviation"), one Party shall reimburse the other Party for any and all charges (or credits) which it incurs as a result of Seller's Deviation, including charges imposed on (or credited to) Buyer as the SC, by the CAISO for Seller's uninstructed deviations as follows: Each month, Seller shall owe Buyer the sum (if positive) or Buyer shall owe Seller the sum (if negative) of (i) any and all charges assessed on Buyer by the CAISO for real-time or replacement Products that are incurred due to Seller's Deviation (*i.e.*, under-generation), to the extent such charges exceed (or are less than in the case of a Buyer payment to Seller) the amount that would have been payable by Buyer to Seller for such Products under this Agreement, plus (ii) any and all charges, penalties or surcharges assessed on Buyer for Seller's Deviations, including any charges assessed on Buyer for over or under generation (other than payments or charges covered by the preceding clause and charges assessed due to Buyer's Scheduling Error) and amounts assessed by the CAISO in the event that a Unit fails to meet the standards established by the CAISO for the provision of Ancillary Services (*e.g.*, Section 2.5.25 of the CAISO Tariff, or such additional or substitute standards as may be applicable from time to time), plus (iii) any and all amounts paid by Buyer to Seller for Products not delivered to Buyer (by Seller or by the CAISO) less (iv) any and all payments made to Buyer by the CAISO for supplying Products in excess of the those delivered pursuant to Scheduled Operations (cumulatively "Deviation Charges", it being understood that Deviation Charges shall include only the increment over amounts that would have otherwise been payable absent an uninstructed deviation). Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI. Buyer shall observe Prudent Industry Practices in minimizing the amount of all Deviation Charges. An example of the Deviation Charge Calculation is provided in Appendix XI.

### 3.6 Standards of Care.

(a) General Operations. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Facility and the Site and the transactions contemplated by this Agreement (including those related to construction, ownership and/or operation of the Facility or the Site and the transactions contemplated by this Agreement and the sale of Product therefrom). For the avoidance of doubt, Seller will be responsible for procuring and maintaining, at its expense, all Governmental Approvals and all emissions credits required for operation of the Units throughout the Services Term in compliance with Law and to permit operation as specified in Section 11.3(a)(v). Buyer shall cooperate with Seller's efforts to acquire all such Governmental Approvals.

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

(c) Reliability Standard. Seller agrees to abide by all (i) NERC, WECC and CAISO reliability requirements and (ii) all of PG&E's applicable requirements regarding interconnection of the Units, including in the case in which the interconnected transmission owner or operator is PG&E, PG&E's Interconnection Handbook. Seller shall maintain its WECC Reliability Management System Agreement in full force and effect throughout the Services Term.

3.7 Meter Maintenance. All electric metering equipment, Gas Meters, submeters, and other Gas metering equipment, whether owned by Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Industry Practices, and additionally in accordance with American Gas Association and American National Standards Institute standards in the case of the Gas Meters, Gas submeters, and Gas metering equipment; provided that if the test is conducted by the interconnecting utility or the CAISO, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the CAISO (as applicable).

### 3.8 Metering.

(a) Metering Requirement and Data. All Products from the Units must be delivered through a single CAISO revenue meter and that meter must be dedicated exclusively to the Units. All Energy must be measured by the Units' CAISO revenue meter to be eligible for payment under this Agreement. To support invoice settlement purposes, Seller shall authorize Buyer to view the Unit's (and/or Facility's) CAISO on-line meter data. Within Schedule 3 of Seller's Meter Service Agreement with the CAISO, Seller shall identify Buyer as an authorized user with "read only" privileges. All Gas must be delivered through and measured by the Gas Meter. If such Gas Meter is not dedicated exclusively to a single Unit, then all Gas used by such Unit shall be measured by a Gas submeter, and unless shown to be inaccurate by comparison to the Gas Meter or by testing, such submeter shall be used for invoicing, billing and payment of any amount due hereunder that requires measurement of Gas flow to the Unit. If the CAISO revenue meter is not dedicated exclusively to a single Unit, then all Product output of such Unit shall be measured by an electricity submeter, and unless shown to be inaccurate by comparison to the CAISO meter or by testing, such submeter shall be used for invoicing, billing and payment of any amount due hereunder that requires measurement of a Product produced by the Unit. In addition, Seller hereby agrees to provide all meter and submeter data to Buyer. Seller consents to Buyer obtaining from the CAISO the CAISO meter data, and the interconnecting Gas pipeline all

Gas Meter data, applicable to the Unit(s) and all inspection, testing and calibration data and reports and agrees to provide to Buyer all meter data, inspection, testing and calibration data and reports for the submeter(s). If the CAISO makes any adjustment to any CAISO meter data for a given time period, or if the interconnecting pipeline makes any adjustment to any Gas Meter data for a given time period, Buyer shall incorporate such revisions in its next monthly invoices, if applicable, pursuant to Section 6.1 (Billing and Payment), covering the entire applicable time period in order to conform fully such adjustments to the meter data. (If Seller is the recipient of the meter information, Seller shall promptly provide the meter information to Buyer.) Buyer shall submit any such revised invoice on the next date on which Buyer is to render an invoice in accordance with Section 6.1 provided that Buyer shall not be required to render an invoice sooner than twenty (20) day(s) after the date on which Buyer receives such binding adjustment to the meter data. Payment or credit resulting from the adjustment shall be due on the first Monthly Payment Date following the invoice.

(b) Meter Installation and Testing. Seller shall cause the installation, maintenance, operation and replacement (as needed) of a meter to be used as the CAISO revenue meter and back-up meters, in accordance with the CAISO metering protocols, at the Electrical Delivery Point to determine the amount of the Energy produced by the Units and delivered to the Electrical Delivery Point, and the Gas Meter and back-up meters, in accordance with the requirements of the interconnecting pipeline, at the Gas Delivery Point, to determine the amount of Gas delivered to the Units, in each case at its sole cost and expense. To the extent necessary to isolate data related to each Unit, Seller shall cause the installation, maintenance, operation and replacement (as needed) of electrical and/or Gas submeters, at its sole cost and expense; provided that each such submeter shall be of revenue quality and sufficient for the purposes of providing the data contemplated by this Agreement. Each Gas Meter and CAISO revenue meter shall be locked or sealed only by, and the lock or seal shall be broken only by, the interconnecting utility or CAISO, as applicable. All of the submeters will be locked or sealed by both Parties, which locks or seals will only be broken by both Parties for inspection, testing or adjustment. The meters shall meet all specifications of the CAISO or interconnecting Gas pipeline, as applicable, and all meters and submeters shall be tested annually by Seller, who shall provide Buyer with not less than 14 days prior Notice of such tests. Testing procedures and standards for CAISO revenue meters and submeters and for gas revenue meters and submeters shall meet CAISO requirements in effect as of the Execution Date and as modified from time to time, and the interconnecting Gas pipeline requirements in effect as of the Execution Date and as modified from time to time.

(c) Meter Retesting. Either Party may from time to time request a retest of the meters and/or submeters if it reasonably believes that one or more of them are not accurate within the tolerance limits established by the CAISO or the interconnecting Gas pipeline, as applicable. The requesting Party shall pay for any such retest and shall provide the other Party with not less than 14 days prior Notice of such retest. Such other Party will have the right to have a representative present during such retest.

(d) Adjustments. If any tested or retested meter is found to be not accurate within the tolerance limits established by the CAISO or the interconnecting Gas pipeline (which limits shall equal the same tolerance limits as applicable to the comparable utility-owned meter), as applicable, Seller shall promptly arrange for the correction or replacement of the meter, at its expense, and the Parties shall use the measurements from the back-up meters or submeters to determine the amount of the inaccuracy. If any tested or retested back-up meter and/or submeter is found to be not accurate within the tolerance limits (applying the same tolerance limits as applicable to the comparable utility-owned meter) and the Parties cannot otherwise agree as to the

amount of the inaccuracy, the inaccuracy will be deemed to have occurred during the period from the date of discovery of the inaccuracy to the most recent of (a) one-half of the period from such discovery to the date of the last testing or retesting of the meter or submeter, as applicable, or (b) 180 days. Any amounts due by Buyer or to be refunded by Seller as a result of any meter that is not accurate within the tolerance limits will be invoiced by the Party owed such amount on the next date on which such Party is to render an invoice in accordance with Section 6.1 (Billing and Payment) following discovery of such inaccuracy.

(e) Real Time Data Information Systems. Buyer shall have access through a secure communication link to the following data on a real-time and historical basis:

- Gas flow at the Facility revenue meter;
- Gas flow to each Unit (*e.g.*, CT or engine);
- Electrical output of each Unit;
- Auxiliary power consumption;
- Net plant electrical output at CAISO meter; and
- Ambient dry bulb temperature, relative humidity and barometric pressure.

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

3.9 No Replacement Power. In no event shall Seller have the right to procure and substitute any Product from a source other than the Unit(s) designated by Buyer for sale or delivery to Buyer under this Agreement, including during an Outage.

3.10 Scheduled Maintenance Outages and CAISO Maintenance Outages.

(a) CAISO Approval of Maintenance Outages. Seller is responsible for providing to Buyer, in its capacity as SC, all information that Buyer requires to secure CAISO approvals and to comply with WECC and CAISO requirements, as applicable, for all Scheduled Maintenance Outages and CAISO Maintenance Outages, including securing changes in the proposed Scheduled Maintenance Outage and CAISO Maintenance Outage schedules when CAISO disapproves such schedules or cancels previously approved Scheduled Maintenance Outages or CAISO Maintenance Outages.

(b) Seller's Scheduled Maintenance Outage and CAISO Maintenance Outage Proposed Schedule. Seller shall notify Buyer of its proposed Scheduled Maintenance Outages for the Units by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix III) that fully accords with the requirements of Section 3.10(e) as follows:

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

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

consecutive days but shorter than five days may be taken only after a minimum of 30 Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur; and Scheduled Maintenance lasting less than two days may be taken only after a minimum of 15 Business Days advance Notice prior to the month in which the Scheduled Maintenance will occur, (B) Scheduled Maintenance scheduled by Seller and re-scheduled by CAISO, shall not be subject to any prior Notice requirements except to the extent of CAISO's actual notice, and (C) at Buyer's reasonable discretion, Scheduled Maintenance for each Unit during the 45 days following the date such Unit becomes Commercially Operable shall not be subject to the prior Notice requirements set forth above, provided that Seller shall use reasonable efforts to provide as much advance Notice as practicable, and provided further that no Scheduled Maintenance shall be performed by Seller during a CAISO-designated "System Emergency."

(c) CAISO Approval of Scheduled Maintenance Outages. Buyer, as the Units' SC, shall submit the proposed Scheduled Maintenance Outages for the Units to the CAISO in the form proposed by Seller, as modified in accordance with Section 3.10(d). Seller shall adhere to the Scheduled Maintenance Outage schedule approved by the CAISO.

(d) Buyer-Requested Changes to Maintenance Outage Schedule. At any time, Buyer may request that Seller change its Scheduled Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change is feasible and imposes no incremental costs (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Buyer, as SC, shall communicate the change to the CAISO and seek CAISO approval for the revised schedule. However, unless it is transmitting to Seller a CAISO order, Buyer may not change Seller's Scheduled Maintenance Outage schedule unilaterally.

(e) Scheduled Maintenance Outage Restrictions. The following restrictions shall apply:

(i) There shall be no Scheduled Maintenance during hours ending 700 through 2200, Monday through Sunday, of the Summer Months and Winter Months other than pursuant to a CAISO order;

(ii) Scheduled Maintenance Outages for any Unit, whether full or partial Scheduled Maintenance Outages, may not exceed 350 hours total in any consecutive 12 month period; provided that Scheduled Maintenance Outages of up to 1,000 hours total may be permitted within a consecutive 12 month period when major maintenance overhauls are required; and provided that, with respect to each individual Unit, during the first 12 months following the date such Unit becomes Commercially Operable, if Seller demonstrates that the manufacturer of the Unit's turbines has performed maintenance on such Unit under its warranty obligations and the cumulative maintenance hours related to that maintenance work exceeded 350 hours, then half of the next 1300 maintenance hours in excess of 350 shall be taken by Seller as Scheduled Maintenance Outages during that 12 month period and half of such 1300 maintenance hours in excess of 350 shall be counted as Forced Outage hours, and provided further,

that the annual allowance for Scheduled Maintenance Outages provided in this Section 3.10(e)(ii) shall be reduced in accordance with clause (ii) of the definition of Excused Hours, if applicable.

(iii) Seller may schedule only one major maintenance overhaul during a consecutive 60 month period for any Unit.

(f) Schedule Changes. In the event that Seller reasonably concludes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next Scheduled Maintenance Outage established in accordance with Sections 3.10 (a) and (b), Seller shall provide Buyer's Authorized Representative with a written request to change the Scheduled Maintenance Outage schedule, provided that a request shall not be made unless each of the following conditions are met: (a) Seller's Authorized Representative warrants that the maintenance cannot be delayed until the next Scheduled Maintenance Outage, (b) the Outage will not violate any Law, or any rule, regulation or requirement of the CAISO (including the CAISO Tariff), NERC or the WECC, (c) the Seller uses reasonable commercial efforts to delay the commencement of the Outage until the next Saturday and/or Sunday, (d) Seller completes the maintenance and provides Buyer with Notice that the Unit is again available for scheduling within the earlier of 48 hours after the maintenance begins or hour ending 500 on the immediately following Monday, and (e) the requested maintenance is consistent with Prudent Industry Practices. Only with Buyer's written consent, and at Buyer's sole discretion, not to be unreasonably withheld, shall such change to the schedule be deemed to be a Scheduled Maintenance Outage; provided however, that in no event shall any extensions of or additions to Scheduled Maintenance pursuant to this Section 3.10(f) increase the allowed hours for Scheduled Maintenance Outages as set forth in Section 3.10(e)(ii); and provided further, that nothing in this paragraph or Agreement is intended to limit Seller's right to undertake a Forced Outage, without Notice, at any time that Seller in its sole discretion deems necessary in accordance with Prudent Industry Practices.

(g) CAISO Maintenance Outages. In the event Seller desires to take a Unit out of service in a manner that would be recognized by the CAISO as a CAISO Maintenance Outage but does not otherwise comport with the requirements to be Scheduled Maintenance Outage as set forth in Sections 3.10(b) through 3.10(f), Seller shall notify Buyer of its proposed CAISO Maintenance Outages for the Units by submitting to Buyer a completed Outage/Availability Notification Form (see Appendix III) as promptly as possible upon determining the need for such maintenance. Buyer, as the Units' SC, shall submit the proposed CAISO Maintenance Outages for the Units to the CAISO in the form proposed by Seller. Seller shall adhere to the CAISO Maintenance Outage schedule approved by the CAISO. At any time, Buyer may request that Seller change its CAISO Maintenance Outage schedule. Seller shall notify Buyer of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer's proposed change to Seller's CAISO Maintenance Schedule is feasible and imposes no incremental costs (as compared to Seller's proposed schedule) or if Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request and Buyer, as SC, shall communicate the change to the CAISO and seek CAISO approval for the revised CAISO Maintenance Outage schedule. However, unless it is transmitting to Seller a CAISO order, Buyer may not change Seller's CAISO Maintenance Outage schedule unilaterally.

(h) Exclusions. Any Outage taken pursuant to Section 3.10(g) that does not also meet the requirements set forth in Section 3.10(b) through (f) above for a Scheduled Maintenance Outage and any Outage taken outside of or in excess of the times permitted for Scheduled Maintenance Outages or not otherwise in accordance with Sections 3.10(b) through (f), shall be

treated as Forced Outages and the Units will be deemed to be unavailable during such periods for purposes of determining Availability. Reductions in the Monthly Fixed Payment due to reduced Availability may apply.

### 3.11 Force Majeure.

(a) Effect of Force Majeure. Except as provided in Section 5.1(a)(v) or (viii), a Party shall not be considered to be in default in the performance of its obligations to the extent that the failure or delay of its performance is due to a Force Majeure Event, and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (i) a failure to make payments accrued prior to the Force Majeure Event when due shall not be excused; and (ii) the unavailability of the Capacity of the Units due to Force Majeure may be deemed to be unavailability for purposes of determining Availability and the Availability Adjustment if the cumulative number of Outage hours due to Force Majeure exceeds the number of Excused Hours available to Seller. The burden of proof for establishing the existence and consequences of a Force Majeure Event lies with the Party initiating the claim.

(b) Notice of Force Majeure. In addition to satisfying the notification provisions set forth in Section 3.5(b), as applicable, within seven (7) Business Days of the commencement of a Force Majeure Event the Party desiring to invoke a Force Majeure Event as a cause for delay in its performance of, or failure to perform, any obligation (other than the payment of money) hereunder, shall provide the other Party Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event including the expected duration and effect of such Force Majeure Event. Failure to provide timely Notice constitutes a waiver of a claim of a Force Majeure Event. Promptly, but in any event within ten (10) days, after a Notice is given pursuant to the preceding sentence, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure Event.

(c) Mitigation of Force Majeure. The suspension of performance due to a claim of a Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all reasonable and material respects, the effects of such Force Majeure Event. The Parties shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure Event.

### 3.12 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations on a daily basis. Such log shall include, but not be limited to, information on power production, fuel consumption, efficiency, availability, maintenance performed, Outages, electrical characteristics of the generators and similar information relating to the availability, testing and operation of the Units and availability and production of the Products. Seller shall provide this information electronically to Buyer within 30 days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Units at any time upon reasonable Notice to Seller and for any purposes reasonably connected with this Agreement, including verification of the Units' availability or unavailability. Buyer, its authorized agents, employees and inspectors shall

be subject to the same rules of conduct as Seller's employees at all times during which they are on Seller's premises.

3.13 Capacity Testing and Adjustment of Monthly Contract Capacity.

(a) Testing Requirement. Within 30 days prior to the Initial Delivery Date, Seller shall conduct an Initial Capacity Test. If the Initial Delivery Date and the Final Delivery Date do not occur on the same date, then during each month between the Initial Delivery Date and the Final Delivery Date but not to exceed the first fifteen consecutive months following the Expected Initial Delivery Date, Seller may conduct one Seller's Capacity Test in each month in which Mechanical Completion has occurred with respect to a Unit. During each Contract Year of the Services Term, Buyer may request Seller to perform up to two Seasonal Capacity Tests upon Notice of no less than one Business Day. Waiver of this right in any Contract Year does not preclude Buyer's exercise of such right in future Contract Years.

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

(i) The Capacity Test shall consist of three (3) one-hour test periods. For each one-hour test period, the data will be averaged and corrected back to ISO Conditions as well as Peak July Conditions if the test was conducted during a Summer Month. The Capacity of the Facility will be the arithmetic average of the three corrected test results.

(ii) The Units shall be operated with each combustion turbine at Base Load. The Units shall be operating in steady state with all equipment in normal operating service.

(iii) The Energy output of the Units during the Capacity Test shall be the electrical energy at the Electrical Delivery Point as measured by the CAISO revenue meter and the submeter for the Unit being tested as adjusted for auxiliary and parasitic load; provided, that to the extent that there is any discrepancy between the CAISO revenue meter and the total of the Units' submeters as adjusted for auxiliary and parasitic load, then the difference between the two shall be allocated to each Unit on a pro rata basis, provided further, that the CAISO revenue meter reading shall be the governing value.

(iv) The Capacity of a Unit as demonstrated by a Capacity Test ("Tested Capacity") shall be the metered Energy output of such Unit per hour (measured in megawatts), adjusted to (A) ISO Conditions if the Capacity Test occurs in a Non-Summer Month and (B) Peak July Conditions if the Capacity Test occurs in a Summer Month, in the case of each of clauses (A) and (B), by using standard and accepted engineering methods. The determination of the Tested Capacity shall be done by Seller. The Capacity Test results shall be delivered to Buyer no later than two Business Days after the completion of the Capacity Test.

(v) Buyer may have a representative present at the Site at any time during the Capacity Test. Buyer shall provide reasonable Notice to Seller if Buyer intends to have a representative present for the Capacity Test.

(vi) Capacity Testing shall be conducted contiguously with the testing required pursuant to Section 4.2.

(vii) The Parties shall provide for additional procedures and protocols related to Capacity Testing, consistent with the principles set forth above, in the Operating Procedures, which shall be additional "Test Procedures."

(c) Cost Responsibility.

(i) Subject to Section 3.13(d)(v), Seller shall bear all non-fuel costs of each Capacity Test other than Buyer's Capacity Tests.

(ii) With respect to Seasonal Capacity Tests and Buyer's Capacity Tests only, Buyer shall accept and pay for all Energy produced during such testing.

(iii) With respect to Seasonal Capacity Tests and Buyer's Capacity Tests only, Buyer shall supply and deliver the Gas required for such testing at its expense.

(iv) Additional cost responsibilities for Seller's Capacity Tests and Buyer's Capacity Tests are set forth in Sections 3.13(d)(iv) and 3.13(d)(v), respectively.

(d) Capacity Adjustments.

(i) The Initial Capacity Test shall be used to determine whether Seller has met the conditions necessary for the occurrence of the Commercial Operation Date. The subsequent Capacity Tests shall be used to determine whether the Unit(s) performs at the Design Capacity or Peak July Conditions, as applicable and to confirm and/or adjust (as appropriate) the Monthly Contract Capacities of the Unit(s) as follows; and shall also be used to determine if Seller has met the conditions necessary for the occurrence of the Final Delivery Date.

(ii) If the Tested Capacity of the Unit(s) during a Non-Summer Month adjusted to ISO Conditions is less than 98% of the Design Capacity or if the Tested Capacity of the Unit(s) during a Summer Month adjusted to Peak July Conditions is less than 98% of July Design Capacity, then the Monthly Contract Capacities for the Summer Months or the Non-Summer Months, respectively, shall equal the Contract Capacities set forth in Appendix II as of the Execution Date after adjustment downward by a percentage equal to the positive percentage difference between the Tested Capacity, as adjusted to ISO Conditions or Peak July Conditions, as applicable, and the Design Capacity or July Design Capacity (respectively). If the Tested Capacity of the Unit(s) during a Non-Summer Month adjusted to ISO Conditions is 98% or more of the Design Capacity or the Tested Capacity of the Unit(s) during a Summer Month adjusted to Peak July Conditions is 98% or more of July Design Capacity (as applicable), then each of the Monthly Contract Capacities for the Summer Months or the Non-Summer Months, respectively, shall be equal to the Contract Capacities set forth in Appendix II as of the Execution Date. Notwithstanding the foregoing sentence, if the Tested Capacity of the Unit exceeds the Design

Capacity or the July Design Capacity, as applicable, then the Monthly Contract Capacities for the Summer Months or the Non-Summer Months, respectively, shall be equal to the Contract Capacities as set forth in Appendix II as of the Execution Date adjusted upward by a percentage equal to the lesser of (i) the positive percentage difference between the Tested Capacity, as adjusted to ISO Conditions or Peak July Conditions, as applicable, and the Design Capacity or July Design Capacity (respectively) and (ii) 4%; provided that if all Commercially Operable Units are tested simultaneously, the sum of the Monthly Contract Capacity for each Unit for each month shall not exceed the amount of Energy that Seller may deliver to the Electrical Delivery Point pursuant to Sections 11.2(a) and 11.3(a)(ii). An example of the adjustment to the Monthly Contract Capacities is provided in Appendix XII.

(iii) Such adjustment to the Monthly Contract Capacities for the Summer Months or the Non-Summer Months, respectively, for each Unit shall be effective as of the first day of the month following the month in which the Initial Capacity Test or Seasonal Capacity Test (as applicable) occurred, unless Seller requests a Seller's Capacity Test in which case the adjustment shall be effective as set forth in Section 3.13(d)(iv).

(iv) In the event that as a result of a Seasonal Capacity Test one or more of the Monthly Contract Capacities are adjusted downward pursuant to Section 3.13(d)(ii), the Actual Tested Heat Rate exceeds the Initial Guaranteed Heat Rate (for comparable conditions to those of the tested rate) by more than 4% or upon the completion of Scheduled Maintenance, or in months in which a Unit first reaches Mechanical Completion as set forth in Section 3.13(a), Seller may request an additional Capacity Test ("Seller's Capacity Test") to be performed. Except for a Capacity Test of a Unit which reached Mechanical Completion after the Initial Delivery Date, a Seller's Capacity Test must commence no later than five Business Days after completion of the Seasonal Capacity Test showing the low test results or the completion of the Scheduled Maintenance, as applicable. All Seller's Capacity Tests shall be performed in accordance with the Test Procedures except that (A) Seller shall provide Buyer with Notice of its request to test and the proposed starting and end times of the Seller's Capacity Test no later than three Business Days before it commences; (B) Buyer shall evaluate Seller's proposal and, in its sole discretion, either grant such request or identify two alternative start and stop times from which Seller may elect, and to which Buyer will consent; and (C) if performance of the Seller's Capacity Test would require operation of the Unit during hours other than when Scheduled Operations are occurring or require Start-Ups or Shut-Downs not required by Scheduled Operations, Buyer shall schedule the Unit with the CAISO accordingly. Notwithstanding the foregoing, operations, Start-Ups and Shut-Downs required for Seller's Capacity Test that are not required for Scheduled Operations shall not be deemed to be part of Scheduled Operations and Seller shall bear the costs or receive the benefits of such operations, Start-Ups and Shut-Downs in accordance with the provisions of Section 3.3(d), 3.3(e), 3.3(f) and 3.5(d) as applicable. The Tested Capacity as determined through the Seller's Capacity Test shall be used to determine the Monthly Contract Capacities in the same manner as the Tested Capacity determined through a Seasonal Capacity Test as provided in Section 3.13(d)(ii)

and the adjustment shall be effective as of the first day of the month following the month in which the Seller's Capacity Test occurs.

(v) In addition to the Seasonal Capacity Test required above, Buyer may request up to two additional Capacity Tests in any Contract Year which shall be performed in accordance with the Test Procedures and upon no less than one Business Day written Notice to Seller ("Buyer's Capacity Test"). Buyer shall bear all costs of each Buyer's Capacity Tests in excess of the costs the Seller would bear due to dispatch of the Unit(s) during a non-test period ("Additional Test Costs"), accept and pay for all Energy produced during a Buyer's Capacity Test and supply and deliver the Gas required for such testing at its expense. The Tested Capacity as determined through the Buyer's Capacity Test shall be used to determine the Monthly Contract Capacities in the same manner as the Tested Capacity determine through a Seasonal Capacity Test as provided in Section 3.13(d)(ii) and the adjustment shall be effective as of the first day of the month following the month in which the Buyer's Capacity Test occurs. To the extent Seller incurs Additional Test Costs, it shall invoice Buyer and Buyer shall pay such costs, provided that invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI.

(e) Disputes. If Buyer disputes the establishment of the Tested Capacity, as determined by Seller pursuant to this Section 3.13, in any respect, including the adjustment of the metered results to establish the Tested Capacity, the dispute shall be resolved in accordance with Article XII (Dispute Resolution). Pending such resolution, the Monthly Contract Capacities shall be confirmed or adjusted as set forth in Section 3.13(d) based on the Tested Capacity as determined by Seller, provided that in the event that the dispute is resolved with a determination that the Tested Capacity as established by Seller is too high such that the Monthly Contract Capacities should have been adjusted downward, the invoices shall be adjusted retroactively in accordance with the revised Tested Capacity and revised Monthly Contract Capacities (notwithstanding any provision of this Agreement that requires prospective adjustment of the Monthly Contract Capacity), and Seller shall refund to Buyer the excess payments made by Buyer, with interest calculated at the Interest Rate, retroactive to the date on which the Monthly Contract Capacities should have been adjusted.

3.14 Operating Procedures. Prior to the Initial Delivery Date, the Parties shall mutually develop written procedures governing operations, not in contravention or amendment of any right or obligation set forth herein including, but not be limited to, (1) procedures for scheduling and dispatch, (2) methods of day-to-day communications, (3) key personnel lists, (4) coordinating Gas nomination, scheduling and delivery, (5) record keeping and (6) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"); provided that failure to agree on such procedures (i) shall be resolved in accordance with the procedures set forth in Article XII (Dispute Resolution) and (ii) shall not relieve either of the Parties of its obligations under this Agreement.

## ARTICLE IV. AVAILABILITY; HEAT RATE; AND COMPENSATION

### 4.1 Availability.

(a) Guaranteed Availability. The “Guaranteed Availability” of each Unit is:

Summer Months: 98.0% Availability

Non-Summer Months: 94.0% Availability

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

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

Where:

$\text{totpotenrgy}_m$  is the total amount of Energy (measured in MWh) that the Unit could have produced for the month to which the calculation applies if it had been scheduled at its full Monthly Contract Capacity (“MCC”) for such month (measured in MW) for every hour in which a Unit was available to operate for Buyer, less the Energy which is not produced due to  $\text{mainthrs}_m$  and  $\text{unavailhrs}_m$  (as defined below):

$\text{totpotenrgy}_m$  can be expressed algebraically as follows:

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

To the extent the Unit was unavailable to Buyer due to Instructed Operations or Excused Events, a Unit shall be deemed to have been available for purposes of determining  $\text{totpotenrgy}_m$  and therefore no deduction is made for such hours.

MCC is the Monthly Contract Capacity of a Unit, measured in MW.

$\text{mnthhrs}_m$  is the total amount of hours for the month.

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

unavailhrs<sub>m</sub> consists of each hour or partial hour in which a Unit was unavailable to Buyer due to (i) Forced Outage; (ii) Scheduled Maintenance Outages, but only to the extent the number of hours of Scheduled Maintenance Outages exceed the number of hours per year of Scheduled Maintenance Outages permitted pursuant to Section 3.10(e)(ii); (iii) Force Majeure, but only to the extent the number of hours of Force Majeure exceed the cumulative number of Excused Hours available to the Seller as of the end of the applicable month; (iv) failure of Seller to provide Notice to Buyer of a Unit's availability and capability to operate (as required pursuant to Section 3.5); or (v) failure of a Unit to deliver Energy in accordance with Scheduled Operations, provided that for determining unavailhrs<sub>m</sub> pursuant to clause (v) above, the output available in a given hour at actual ambient conditions shall be adjusted to the ambient used for the Monthly Contract Capacity for the Summer Month and Non-Summer Month periods. Hours in which a Unit is deemed unavailable (as set forth in the prior sentence) shall be included in the determination of unavailhrs<sub>m</sub>, to the extent of such Unit unavailability (which may be less than 100%), such that totpotenrgy<sub>m</sub> reflects a proportional downward adjustment from the MCC for deratings, partial Outages of the Unit and partial hours of unavailability, as well as for full hours in which the Unit was entirely unavailable.

If Seller identifies a Unit as unavailable (e.g., including in a Scheduled Availability Notice or pursuant to an Outage/Availability Notification Form) for any hour, the Unit shall be deemed unavailable for that hour for purposes of the Availability calculation, provided that if Seller provides a revised Notice indicating the Unit is available for an hour in which it was previously deemed unavailable by 5:00 a.m. of the morning the Buyer is required to schedule or bid the Unit in the Day-Ahead Market, all of the available Capacity of the Unit will be deemed to be available for such hour for purposes of determining totpotenrgy<sub>m</sub>; and if Seller provides a revised Notice indicating the Unit is available for an hour in which it was previously deemed unavailable at least 30 minutes prior to the earlier of the time the Buyer is required to schedule or bid the Unit in the Hour-Ahead Market, then if the Unit is dispatched in the Hour-Ahead Market, all of the available Capacity of the Unit will be deemed to be available for such hour for purposes of determining totpotenrgy<sub>m</sub>.

(c) Non-Availability Discount.

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

For Summer Months:

If Availability is greater than 97% but less than 99%, then AA=100%;

if Availability is 97% or less, but no less than 70%, then

AA = 100% - [(98% - Availability) \* 2]; and

if Availability is less than 70% then AA=0

For Non-Summer Months:

If Availability is greater than 93%, then AA=100%;

if Availability is 93% or less, but no less than 60%, then

AA = 100% - [(94% - Availability) \* 2]; and  
If Availability is less than 60%, then AA=0

During the first 12 months following the date upon which a Unit becomes Commercially Operable, the number of hours included as Scheduled Maintenance Outages shall be modified as is provided in Section 3.10(e)(ii) hereof.

An example calculation of Availability and Non-Availability Discount is contained in Appendix XIII.

(ii) Unavailability shall not result in a breach or Event of Default hereunder except as provided in Section 5.1(a)(iv) or (v).

(iii) Except as is otherwise provided in Article V hereof, the Non-Availability Discount shall be Buyer's sole and exclusive remedy for Seller's failure to deliver the Products hereunder or to meet the Guaranteed Availability.

(d) Availability Bonus. During each Summer Month of the Services Term in which the Availability of a Unit is 99% or greater, AA for that Unit, measured as a percentage, shall be 102%. During each Non-Summer Month of the Services Term in which Availability of the Unit is greater than 94%, the AA for that Unit shall be 100%.

(e) Force Majeure Hours. Unless this Agreement is terminated pursuant to Article V, if the cumulative number of hours during the Services Term during which a Unit is deemed unavailable due to Force Majeure equals 4380 or more, Seller shall have the option upon 5 year written Notice prior to the end of the Services Term to extend the Services Term by a period equal to such cumulative hours, provided however, that such extension shall be in monthly increments rounded to the nearest number of months represented by such cumulative hours, and provided further that such extension may not exceed 12 months.

#### 4.2 Heat Rate.

(a) Guaranteed Heat Rate. Seller shall guarantee the efficiency of each Unit's ability to convert fuel into power over the full range of dispatchable operational levels at standard ISO conditions and site elevation as well as Peak July Conditions ("Guaranteed Heat Rate"). Seller shall provide the (i) Guaranteed Heat Rate curve from minimum load to Base Load at the ISO Conditions for each Unit, (ii) the correction curves to correct for changes in ambient dry bulb temperature from the ISO Condition, (iii) the correction curves to correct for ambient relative humidity from the ISO Condition, and (iv) the correction curves to correct for ambient barometric pressure from the Site ISO Condition, and (v) the correction curves to correct for the auxiliary load applicable for the range of operation of all the Units. The Guaranteed Heat Rate curve as of the Execution Date and the associated correction curves ("Guaranteed Heat Rate Curves") shall be the best-fit of the Guaranteed Net Electric Output and Guaranteed Heat Rate Points listed in Appendix II, provided in mathematical curve fit equations for each curve or curve segment, as well as in graphical format and will be deemed incorporated into Appendix II. The mathematical curve fit equations will calculate Guaranteed Heat Rates for each level of Unit output as a function of the ratio of Unit output to Unit capacity; the equations will be applicable for ratios based on both Initial Base Capacity as defined in 4.2(b)(i) and Tested Base Capacity as defined in

4.2(b)(ii). The curve fit equations will be used for determination of all Guaranteed Heat Rates, with graphical format provided for information purposes only. The correction curves shall be developed by Seller using standard and accepted engineering methods, and subject to Buyer's consent, not to be unreasonably withheld, shall be deemed incorporated into Appendix II.

(b) Heat Rate Degradation Adjustment.

(i) Prior to the Initial Delivery Date for each Unit and directly before or after the Initial Capacity Test, a test to establish the Capacity of the Unit at Base Load will be conducted ("Initial Base Capacity Test"). The Initial Base Capacity Test shall be conducted using the same Test Procedures and adjustment methodology as for the Initial Capacity Test, except that each Unit will be at Base Load. The output (measured in MWs) for each Unit determined from this test shall be the "Initial Base Capacity" (Ci).

(ii) On a seasonal basis (Summer/Non-Summer), and directly before or after the Seasonal Capacity Test, a test to reestablish the Capacity of each Unit at Base Load will be conducted ("Seasonal Base Capacity Test"). The test shall be conducted using the same Test Procedures and adjustment methodology as for the Seasonal Capacity Test, except that each Unit will be at Base Load, as applicable. The output (measured in MWs) for each Unit determined from this test shall be the "Tested Base Capacity" (Cb). The actual heat rate for each Unit as measured under such test conditions will be deemed the "Actual Tested Heat Rate." Retests of the Actual Tested Heat Rate shall be conducted directly before or after a Seller's Capacity Test or a Buyer's Capacity Test.

(iii) The Guaranteed Heat Rate Curves defined in 4.2(a) will be used to calculate "Initial Guaranteed Heat Rates" (HRi) for each Unit at varying output levels. Before the Initial Base Capacity Test, the ratio to be used in the Guaranteed Heat Rate Curves for each unit will be the ratio of Unit output to Design Capacity. Before the first Seasonal Capacity Test (and after the Initial Base Capacity Test), the ratio to be used in the Guaranteed Heat Rate Curves for each Unit will be the ratio of Unit output to Ci. After the first Seasonal Capacity Test, the ratio to be used in the Guaranteed Heat Rate Curves for each Unit will be the ratio of Unit output to Cb.

(iv) As of the Execution Date, an appropriate heat rate degradation for each Unit, defining the functional relationship between heat rate degradation and measured Capacity degradation ("Heat Rate Degradation Factor" or "HDF") as a function of Engine Hours, is set forth in Appendix II.

(v) For each Seasonal Capacity Test and Seasonal Base Capacity Test, a "Capacity Degradation Factor" (or "CDF") for each Unit will be computed as:

$$CDF = 1 - (Cb/Ci)$$

The "Heat Rate Adjustment" (or "HRA") for each Unit will be computed as:

$$HRA = CDF \times HDF$$

“Adjusted Guaranteed Heat Rates” (HRc) for each Unit for varying Unit output will be determined as the lesser of:

$$(A) \text{ HRc} = \text{HRi} \times (1 + \text{HRA})$$

or

$$(B) \text{ HRc} = \text{HRi} \times \{1 + (\text{HRA}_{\text{previous}} \times 1.0025)\},$$

where  $\text{HRA}_{\text{previous}}$  is the Heat Rate Adjustment from the previous Base Capacity Test (Initial or Seasonal). An example of the calculation of the Adjusted Guaranteed Heat Rates is contained in Appendix XIV.

#### 4.3 Product Compensation.

##### (a) Compensation Rates.

(i) Capacity Payment Rate (“CPR”) shall equal \$ 110.50 per kW-year.

(ii) The Fixed O&M Rate (“FOMR”) shall equal \$ 20.98 per KW-year, adjusted for each year after 2006 by applying the Inflation Index, such adjustment to be made on the Initial Delivery Date and annually thereafter, on the anniversary of the Initial Delivery Date.

(iii) The Variable O&M Rate (“VOMR”) shall equal \$ 1.01 per MWh (“ $\text{VOMR}_{\text{energy}}$ ”) plus \$278.36 per Fired Hour (“ $\text{VOMR}_{\text{hourly}}$ ”) per Unit; provided that the VOMR shall be adjusted for each year after 2006 by applying the Inflation Index, such adjustment to be made on the Initial Delivery Date and annually thereafter, on the anniversary of the Initial Delivery Date.

##### (b) Product Payment Obligations.

(i) During each month of the Services Term, Buyer shall pay Seller, in arrears, a Monthly Fixed Payment (“MFP”) for each Unit, as full payment for the right to receive the Products and the delivery of the Capacity and all Other Products associated with the Unit, determined as follows.

$$\text{MFP}_m = [[(\text{CPR} + \text{FOMR}) * \text{MAF}_m] * \text{MCC}_m] * \text{AA}]$$

where,

$\text{MFP}_m$  is the Monthly Fixed Payment for the subject month;

CPR is the Capacity Payment Rate;

FOMR is the Fixed O&M Rate;

$\text{MAF}_m$  is the monthly allocation factor set forth in Appendix IV for such month, provided that one-hundred (120) days prior to the start of a full calendar year, Buyer may Notify Seller of modifications to Appendix IV. Buyer may not modify Appendix IV such that any individual month has a percentage allocation

of less than 4% or greater than 15%; or such that the sum of the twelve products of the MFP for each month multiplied by the applicable MCC for that month is less than it would have been prior to the modification; provided that if the modified sum is less than it would have been prior to the modification, then the absolute difference of the sum before and after the modification shall be paid by Buyer to Seller in each of the months of the following full calendar year and shall be allocated to each month based on the modified  $MAF_m$ . No single month may increase or decrease by more than 5% relative to its value as set forth in Appendix IV for such month. For the avoidance of doubt, a month at 4% may increase to no higher than 9%, and a month at 15% may decrease no lower than 10%. The total in any calendar year must equal 100%.

$MCC_m$  is the Monthly Contract Capacity for such month;

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

An example calculation of Monthly Fixed Payment is contained in Appendix XIII.

(ii) During each month of the Services Term, Buyer shall pay Seller, in arrears, a Monthly Variable Payment (“MVP”) for each Unit, as full payment for the Tolling Services and all of the Energy provided from the Unit by Seller during the subject month, equal to the sum of (A) the product of the  $VOMR_{energy}$  multiplied by the amount of Scheduled Energy plus (B) the product of the  $VOMR_{hourly}$  multiplied by the number of Fired Hours scheduled from each Unit to satisfy Scheduled Operations in the applicable month, exclusive of the Generation Meter Multiplier.

4.4 Start-Up Charges. During each month of the Services Term, Buyer shall pay Seller, in arrears, a “Start-Up Charge” for each Scheduled Start-Up for each Unit as follows:

\$275.00/Hot Scheduled Start-Up, adjusted for each year after 2006 by applying the Inflation Index, such adjustment to be made on the Initial Delivery Date and annually thereafter, on the anniversary of the Initial Delivery Date.

\$275.00/Warm Scheduled Start-Up, adjusted for each year after 2006 by applying the Inflation Index, such adjustment to be made on the Initial Delivery Date and annually thereafter, on the anniversary of the Initial Delivery Date.

\$275.00/Cold Scheduled Start-Up, adjusted for each year after 2006 by applying the Inflation Index, such adjustment to be made on the Initial Delivery Date and annually thereafter, on the anniversary of the Initial Delivery Date.

4.5 Start-Up Factor Adjustment. The Buyer requires reliable operation. When a Unit that is only dispatched infrequently fails to start when dispatched, Buyer may incur damages that are not adequately compensated for by the Availability Adjustment. Therefore, within 10 days of the close of each calendar quarter, a Start-Up Factor will be calculated for each Unit that was not scheduled to start at least 50 times during that calendar quarter as follows; provided that, a Unit that has operated for 50% of the hours in a quarter shall not be subject to the Start-Up Adjustment for that quarter, regardless of the number of starts scheduled in that quarter and the

Start-Up Adjustment shall not be applied to a Unit that is requested to start only once during the period.

(a) Determining the Start-Up Factor Discount.

(i) The “Start-Up Factor,” expressed as a percentage, is defined as:

CNS/NSR

where “CNS” is the completed number of Successful Start-Ups as scheduled by the Buyer over a quarter and “NSR” is the total number of Start-Ups requested by the Buyer over the same quarter exclusive of Start-Ups requested by Buyer after such time as Buyer has received Seller’s Notice of unavailability (for Start-Ups within the Noticed period of unavailability), if any; provided, however, that in determining the Start-Up Factor for each of the first four (4) calendar quarters in which such calculation is required to be made, the first five (5) failed Start-Ups for each Unit will not count as CNS or as NSR. Declaration of unavailability by the Seller after a Unit has been scheduled by the Buyer in either the day-ahead or intra-day market based on the Seller’s declaration of availability pursuant to the Scheduled Notice of Availability described in Section 3.5(b)(i), shall be deemed to be a failed start.

(ii) The “Start-Up Adjustment” is determined from the table set forth below by locating the appropriate percentage based on the NSR and the Start-Up Factor:

		NSR					
		2 to 4	5 to 9	10 to 14	15 to 19	20 to 29	30 to 49
Start-up Factor	95% or more	0%	0%	0%	0%	0%	0%
	94.9% to 85%	0%	0%	0%	0%	0%	5%
	84.9% to 75%	0%	0%	5%	10%	15%	20%
	74.9% to 65%	0%	5%	15%	20%	25%	30%
	64.9% to 55%	0%	15%	35%	40%	45%	50%
	54.9% to 40%	15%	45%	60%	70%	75%	80%
	less than 40%	45%	70%	100%	100%	100%	100%

(b) Determining the Start-Up Factor Discount. For each month of the calendar quarter for which the Start-Up Adjustment is calculated, if the Start-Up Adjustment is greater than 0% for a Unit, then the MFP for that Unit for such months shall be recalculated using an Availability Adjustment or “AA” factor in which Availability is reduced by the Start-Up

Adjustment. The sum of the difference between the MFP calculated in accordance with Section 4.3(b) without the Start-Up Adjustment and the MFP calculated after adjusting AA by subtracting the applicable Start-Up Adjustment from Availability for each month of the applicable calendar quarter in accordance with this Section 4.5(b) shall be the "Start-Up Factor Discount." Buyer shall invoice Seller for the Start-Up Factor Discount, and Seller shall pay the Start-Up Factor Discount to Buyer, in equal monthly installments over a period of 12 months (or such shorter number of months as are then remaining in the Services Term) beginning with the month in which the calculation is made. In the event that a Start-Up Factor Discount is determined to apply in one or more calendar quarters within a rolling 12 month period, more than one Start-Up Factor Discount may apply during three or more months. If Seller owes all or a portion of a Start-Up Factor Discount payment to Buyer as of the Early Termination Date or the end of the Services Term, as applicable, Seller shall pay Buyer the remaining balance on the first Monthly Payment Date following such termination or expiration. Invoicing and payment for all amounts due from one Party to the other Party as necessary to implement this provision shall be done pursuant to Article VI. An example of the calculation of the Start-Up Factor Discount is contained in Appendix XV.

## ARTICLE V. EVENTS OF DEFAULT; REMEDIES

### 5.1 Events of Default.

(a) The Seller will be deemed a Defaulting Party upon the occurrence of, including but not limited to, any of the following (each a "Seller's Event of Default"):

(i) Any material asset of Seller is taken upon execution or by other process of Law directed against Seller or if taken upon or subject to any attachment by any creditor of or claimant against Seller and the attachment is not disposed of within twenty-one (21) days after its levy.

(ii) Upon the occurrence of any material misrepresentation or omission in any metering (or submetering) or any report or Notice of a Unit's availability and capability or Outage required to be made or delivered by Seller to Buyer, or undue delay or withholding of such data, report or Notice of a Unit's availability and capability or Outage, which misrepresentation, omission or undue delay or withholding is caused by Seller's willful misconduct, gross negligence or bad faith.

(iii) Seller fails to post, maintain, substitute, supplement, replenish or renew when due the Delivery Date Security.

(iv) At any time after the first year of the Services Term, a Unit's Availability, measured exclusive of unavailability due to Force Majeure, averages less than 70% over a rolling 12 month period.

(v) At any time after the first year of the Services Term, a Unit's Availability, taking into account all hours of unavailability, including those due to Force Majeure (in excess of Excused Hours), averages less than 60% over a rolling 18 month period.

(vi) A failure to complete the conditions precedent to the Initial Delivery Date as set forth in Section 11.3 within 365 days after the Expected Initial Delivery Date, a failure to complete the Final Delivery Date within 455 days after the Expected Initial Delivery Date or a delay in completing any Critical Milestone of more than 455 days (in each case, if applicable, as extended due to Force Majeure in accordance with Section 11.6, or due to Buyer's failure to obtain a final and non-appealable decision of the CPUC on the merits in response to the Approval Application in accordance with Section 11.1(a)(vii)).

(vii) The Tested Capacity of a Unit adjusted to ISO Conditions is less than 60% of the applicable Design Capacity for such Unit (for a reason other than Force Majeure) and the Tested Capacity of all of the Units at the Facility, cumulatively, is less than 80% of its Design Capacity, unless Seller is able to demonstrate a Tested Capacity for all of the Units at the Facility (cumulatively) in excess of 85% of the Design Capacity within 6 months of the date on which the Tested Capacity of less than 80% was established.

(viii) The Tested Capacity of a Unit adjusted to ISO Conditions is less than 60% of the applicable Design Capacity for such Unit for reasons including Force Majeure and the Tested Capacity of all of the Units at the Facility, cumulatively, is less than 80% of its Design Capacity, unless Seller is able to demonstrate a Tested Capacity for all of the Units at such Facility (cumulatively) in excess of 85% of the Design Capacity within 12 months of the date on which the Tested Capacity of less than 80% was established.

(ix) At any time following 12 months after each Unit becomes Commercially Operable, the Tested Capacity of such Unit adjusted to ISO Conditions decreases more than 5% in any consecutive five year period or by a cumulative amount of 8% from the Design Capacity over the Service Term, unless Seller is able to cure the deviation and demonstrate within the following 120 consecutive days that the Unit's Tested Capacity adjusted to ISO Conditions has decreased no more than 5% in any consecutive five year period or by a cumulative amount of no more than 8% from the Design Capacity over the Service Term.

(x) At any time following 12 months after each Unit becomes Commercially Operable, the Actual Tested Heat Rate of such Unit is 7% greater than the Initial Guaranteed Heat Rate under comparable operating conditions, unless Seller is able to cure the deviation and demonstrate within the following 120 consecutive days such that the Actual Tested Heat Rate is less than 7% greater than the Initial Guaranteed Heat Rate under comparable operating conditions.

(xi) Seller's Guarantor applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller for a substantial part of the Units), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(xii) Absent the consent or acquiescence of Seller's Guarantor, appointment of a trustee, receiver or custodian with respect to the assets of Seller's Guarantor, or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within sixty (60) days.

(xiii) Acquisition, transfer or ownership of any membership interest in Seller in violation of Section 10.4(b).

(b) A Party will be deemed a Defaulting Party upon the occurrence of, including but not limited to, any of the following (each a "Party's Event of Default"):

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

(ii) A Party fails to perform any of its material obligations under this Agreement and such default (which is not otherwise specified to be an Event of Default hereunder) continues for thirty (30) days after Notice thereof is received, specifying the Event of Default; provided, however, that such period shall be extended for an additional reasonable period if cure cannot be effected in thirty (30) days and if corrective action, reasonably calculated to cure the default within a reasonable period of time, is instituted by the Defaulting Party within the thirty (30) day period and so long as such action is diligently pursued until such default is corrected; but not to exceed 90 days cumulatively.

(iii) A Party applies for, consents to, or acquiesces in the appointment of a trustee, receiver or custodian of its assets (including, in the case of Seller for a substantial part of the Units), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws.

(iv) Absent the consent or acquiescence of a Party, appointment of a trustee, receiver or custodian of its assets (including in the case of Seller, for a substantial part of the Units), or the initiation of a bankruptcy, reorganization, debt arrangement, moratorium or any other proceeding under bankruptcy laws, which in either case, is not dismissed within ninety (90) days.

(v) A Party fails to post, maintain, substitute, renew, replenish or supplement its Collateral on the terms and in the amount as required pursuant to Sections 8.1 and 8.2, and in the case of a Letter of Credit, Section 8.3, including failure to post the initial Collateral Requirement when due.

(vi) Any Governmental Approval, excluding those deemed to be Critical Milestones, necessary for a Party to be able to perform all of the transactions contemplated by the Agreement is not received, expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such failure to obtain, expiration, revocation or suspension creates a material adverse impact on the other Party.

(vii) Upon the occurrence of any material breach of any representation or warranty made by a Party in this Agreement, which failure has caused a material adverse effect on the other Party, thirty (30) days after the written Notice from the other Party that any such material representation or warranty made in this Agreement is false, misleading or erroneous in any material respect, and the failure of the breaching Party to correct the effects of such false, misleading or erroneous representation on the other Party.

5.2 Declaration of Early Termination Date and Calculation of Termination

Payment. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the right to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 13.1) and no later than 20 days after such Notice is deemed to be received (as provided in Section 13.1), as an early termination date of this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties, terminate the Services Term effective as of the Early Termination Date and collect liquidated damages ("Termination Payment"); (ii) withhold any payments due to the Defaulting Party under this Agreement; (iii) suspend performance; and/or (iv) exercise any other right or remedy available at law or in equity in accordance with Articles VII and XII. Prior to the Initial Delivery Date, if Seller is the Defaulting Party, Seller shall pay Buyer a Termination Payment equal to the undrawn portion of the Delivery Date Security less amounts that have been paid by Seller to Buyer as Delay Damages or pursuant to Section 11.2(b) (other than those paid by drawing against the Delivery Date Security); and if Buyer is the Defaulting Party, Seller shall be entitled to pursue in law or equity, in accordance with Article XII, the recovery from Buyer of any and all of its actual, direct damages which have not been, and cannot reasonably be, mitigated. On and after the Initial Delivery Date, the Termination Payment will be the aggregate of the Losses and Costs of the Non-Defaulting Party, offset by its Gains, if any, calculated as of the Early Termination Date (but shall not be less than zero). The Termination Payment, if any, shall be paid by the Defaulting Party to the Non-Defaulting Party. The Termination Payment shall be payable in accordance with Section 6.4. Disputes regarding the Termination Payment shall be determined in accordance with Article XII. Notwithstanding the foregoing, if the Event of Default with respect to the Seller shall have occurred for a specific Unit pursuant to Section 5.1(a)(iv), (v), (vii), (viii), (ix) or (x) and be continuing, in lieu of the right of termination set forth above, Buyer may elect with respect to such specific Unit only and not with respect to this Agreement as it relates to any other Unit to (i) send Notice, designating a day, no earlier than the day such Notice is deemed to be received (as provided in Section 13.1) and no later than 20 days after such Notice is deemed to be received (as provided in Section 13.1), as an early termination date of this Agreement with respect to the non-performing Unit only; and (ii) require payment of a Unit-specific termination payment determined in the same manner as the Termination Payment, but calculated with respect to that Unit only. The Termination Payment, if any, shall be paid by the Seller to the Buyer. In the event of such a Unit-specific termination, Buyer, as calculation agent, shall determine the amount of the Unit-specific termination damages, and if Seller owes a Termination Payment, provide Seller an invoice within ten Business Days of the applicable termination date, which shall be due as of the next Monthly Payment Date following Seller's receipt of the invoice. As of the effective date of the termination of such Unit, Buyer and Seller shall have no further rights or obligations with respect to such Unit under this Agreement, but the Agreement shall continue in full force and effect as to all other Units; provided, however, that following the termination of a single Unit or Units pursuant to the provisions of this Section 5.2, Seller shall not enter into any agreement to sell any Product(s) from such Unit(s) that has a duration of one year or longer unless Seller has, not less than 30 days nor more than 60 days prior to the commencement of such sale, offered

Buyer the option to reinstate this Agreement with respect to such Unit(s) for the remaining Contract Term.

5.3 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article V shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.4 Waiver. The Non-Defaulting Party shall be deemed to have waived its rights to declare an Early Termination Date and to demand a Termination Payment under Section 5.2, as applied to this Agreement or to a specific Unit, if (a) the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default becomes known, or reasonably knowable, to the Non-Defaulting Party and (b) the cause of the Event of Default is no longer continuing as of the date on which the Non-Defaulting Party issues its Notice declaring an Early Termination Date; provided, however, that the time period for providing Notice of an Early Termination Date and a demand for the Termination Payment will not be deemed waived if the Defaulting Party has consented to an extension of time or (ii) the Non-Defaulting Party has provided Notice of the breach and the Defaulting Party has represented that it is seeking to cure.

## ARTICLE VI. PAYMENT AND NETTING

6.1 Billing and Payment. On or before the 15th calendar day of each month of the Contract Term, following the Initial Delivery Date, Seller shall invoice Buyer, in arrears, for all amounts due from Buyer to Seller under this Agreement, including, as applicable, the MFP, MVP, Start-Up Charge, Gas Distribution Reimbursement, Additional Test Costs and Governmental Charges Payment, if any, less Third Party Payments. On or before the 15th calendar day of each month of the Contract Term, following the Expected Initial Delivery Date, Buyer shall invoice Seller, in arrears, for all amounts due from Seller to Buyer (or credited by Buyer to Seller) under this Agreement, including, as applicable, Delay Damages, Gas Distribution Reimbursement (if Buyer is the LDC payment agent for Seller, but only for amounts due by Seller to the LDC which are not reimbursable by Buyer), Additional Gas Payments, Balancing Payments, Deviation Charges, Start-Up Factor Discounts and Governmental Charges Payment. In each case, invoices shall include amounts accrued under this Agreement in the preceding month, provided that to the extent the determination of amounts due under this Agreement are based on invoices rendered by the CAISO, Gas suppliers, Gas pipelines, LDCs or Governmental Authorities in the preceding month, the Parties acknowledge and agree that such amounts may relate to prior calendar months, as adjusted from time to time.

6.2 Netting. If each Party is required to pay the other an amount in the same month pursuant to this Agreement, then the Party owing the greater aggregate amount will pay to the other Party the difference between the amounts owed. Payment of all undisputed amounts owed shall be due by the later of ten days after delivery of the owed Party's invoice or the twenty-fifth day of the month ("Monthly Payment Date"). If either the invoice due date or Monthly Payment Date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the Monthly Payment Date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the Monthly Payment Date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. In the event an invoice or portion thereof or any other claim or adjustments arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with Notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible in accordance with the provisions of Article XII (Dispute Resolution). Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date on which the payment is made. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent invoices, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is Notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance giving rise to the payment obligation occurred (or in the case of amounts based on CAISO or Gas supplier or Gas transporter invoices, within twelve (12) months after the close of the month during which such invoice or revised invoice giving rise to the payment obligation was rendered), the right to payment for such performance is waived.

6.4 Termination Payment. In the event that an Early Termination Date is declared pursuant to Article V, Buyer, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if Seller is the owing Party, provide Seller an invoice within ten Business Days of the Early Termination Date, payment of which shall be due no later than 10 Business Days after receipt; or (b) if Buyer is the owing Party, pay Seller the Termination Payment no later than 20 Business Days after the Early Termination Date. To the extent the parties are unable to agree on a Termination Payment within the total number of days after which such payment would be due, then the Defaulting Party shall pay to the non-Defaulting Party the undisputed portion of the Termination Payment, if any, as calculated by Buyer, provided that the Defaulting Party shall deposit the disputed portion of the Termination Payment, if any, into an escrow account, and the dispute and the subsequent payment or return of any disputed portion of the Termination Payment, if any, shall be resolved in accordance with Article XII.

## ARTICLE VII. LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED EXCEPT TO THE EXTENT EXPRESSLY SET FORTH HEREIN. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT

LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, PROVIDED THAT THE FOREGOING EXCLUSION SHALL NOT PRECLUDE RECOVERY BY A PARTY OF THE TERMINATION PAYMENT OR ANY DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT OF A THIRD PARTY CLAIM. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.2 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING FORFEITURES OF DEPOSITS, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **ARTICLE VIII. CREDIT AND COLLATERAL REQUIREMENTS**

### **8.1 Timing and Use of Collateral.**

(a) Collateral Posting Requirements. To secure its obligations under this Agreement, each of the Parties (each a "Posting Party") shall deliver to the other (each a "Secured Party") on or before the Initial Delivery Date, to be effective no later than the Initial Delivery Date, a Letter of Credit, a parent guaranty acceptable to Buyer in its sole discretion, or cash collateral (each, "Collateral"), and thereafter maintain its Collateral in full force and effect in such amounts as may be determined from time-to-time through such date as of which all payment obligations arising under this Agreement, including any compensation for the Products, Tolling Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set off or netting). A Secured Party shall arrange for return of the unused portion of the Posting Party's Collateral promptly after each of the following have occurred: (1) the Services Term has ended or an Early Termination Date has occurred, as applicable; and (2) all payment obligations of the Posting Party arising under this Agreement, including any compensation for the Products, Tolling Services, Termination Payment, indemnification payments or other damages, are paid in full (whether directly or indirectly such as through set off or netting). Each Party shall post Collateral in an amount equal to its Collateral Requirement as determined pursuant to Section 8.2 (when positive for the Posting Party) during the Services Term; and from the end of the Services Term through the end of the Contract Term, the Collateral Requirement for the Posting Party shall be equal to the lesser of the amount of Collateral required of such Posting Party as of the end of the Services Term or the amount such Posting Party owes under this Agreement. If either Seller or Buyer elects to post cash, the Posting Party shall have the option to either post cash directly with the Secured Party or post such cash in accordance with a Deposit Account Agreement ("DAA"), substantially in the form attached hereto as Appendix VIII. The bank holding the cash pursuant to the DAA shall at all times meet the requirements of a Qualified Institution. Buyer will provide Notice weekly to Seller of the Collateral Requirement amount to be posted by Buyer or Seller, as applicable. Within three Business Days of such Notice, the Posting Party shall post the Collateral

Requirement or the Secured Party shall return such Collateral previously posted that is in excess of the Posting Party's then current Collateral Requirement. Any such Collateral shall not be deemed a limitation of damages.

(b) Use of Collateral. A Secured Party shall be entitled to draw upon the Collateral posted by the Posting Party for any obligation of the Posting Party arising under this Agreement that is not paid when due, whether or not an Early Termination Date has been declared; provided, however, that if an Early Termination Date has been declared, the disputed portion of the Termination Payment, if any, shall be managed pursuant to Section 6.4.

## 8.2 Determination of Collateral Requirements.

(a) Collateral Threshold Amount for Seller. The unsecured credit available to Seller ("Seller's Collateral Threshold Amount") shall be determined in accordance with the following subsections (i), (ii), (iii), (iv), (v), (vi) or (vii), as applicable, provided that if both (i) and (ii) are applicable, then Seller's Collateral Threshold Amount shall be determined in accordance with the subsection (i) or (ii) that results in the greater Seller's Collateral Threshold Amount, and further provided that the matrix below applies to this Seller or its guarantor based on the assumption that PG&E is not doing any other business with this Seller, its guarantor, or affiliates; and if there is existing business with this Seller, its guarantor, or Affiliates, or if this Agreement is assigned then PG&E would have to reevaluate the amounts in the matrix.

(i) If on the relevant Date of Determination all of Seller's Credit Ratings are at or above BBB- or Baa3, then Seller's Collateral Threshold Amount shall be the amount set forth below under the heading "Seller's Collateral Threshold" opposite the lower of Seller's Credit Ratings on the relevant Date of Determination or, if Seller has only one Credit Rating on the relevant Date of Determination, the amount corresponding with that Credit Rating.

(ii) If as of the relevant Date of Determination Seller has caused an Affiliate of Seller or of any of Seller's members ("Seller's Guarantor") to post a guaranty for the benefit of Buyer ("Seller's Guaranty"), all of Seller's Guarantor's Credit Ratings are at or above BBB- or Baa3 and the Seller's Guaranty is in full force and effect and enforceable against Seller's Guarantor for the specified amount, then the Seller's Collateral Threshold Amount shall be the lesser of the amount of the Seller's Guaranty and the amount set forth below under the heading "Seller's Collateral Threshold" opposite the lower Credit Rating for Seller's Guarantor on the relevant Date of Determination, or, if Seller's Guarantor has only one Credit Rating, the lesser of the amount of the Seller's Guaranty and the amount set forth below under the heading "Seller's Collateral Threshold" opposite the Credit Rating for Seller's Guarantor on the relevant Date of Determination.

(iii) If on the relevant Date of Determination neither the Seller nor Seller's Guarantor has any Credit Rating or if the conditions of neither subsection 8.2(a)(i) nor 8.2(a)(ii) are satisfied, then the Seller's Collateral Threshold Amount shall be zero.

(iv) If the Seller's Collateral Threshold Amount is determined pursuant to subsection 8.2(a)(i) and after the Date of Determination an Adverse

Credit Event occurs with respect to Seller or an Event of Default has occurred pursuant to which Seller is a Defaulting Party, then within three Business Days of the Adverse Credit Event, Seller shall post such additional amounts of Collateral (if any) necessary to meet the Seller's Collateral Requirement as revised to reflect a Seller's Collateral Threshold Amount of zero.

(v) If the Seller's Collateral Threshold Amount is determined pursuant to subsection 8.2(a)(ii) and after the Date of Determination an Adverse Credit Event occurs with respect to Seller's Guarantor or an Event of Default has occurred with respect to which Seller is a Defaulting Party, then within three Business Days of the Adverse Credit Event, Seller shall post such additional amounts of Collateral (if any) necessary to meet the Seller's Collateral Requirement as revised to reflect a Seller's Collateral Threshold Amount of zero.

(vi) If following an Adverse Credit Event affecting Seller or Seller's Guarantor the conditions of either subsection 8.2(a)(i) or 8.2(a)(ii) are subsequently satisfied, (A) the Seller's Collateral Threshold Amount shall automatically increase from zero to the applicable Seller's Collateral Threshold Amount and (B) Seller shall post the additional Collateral required by subsection 8.2(a)(iv) or (v), as applicable only to the extent required to reflect the revised Seller's Collateral Threshold Amount as determined pursuant to subsection 8.2(a)(i) or (ii), as applicable.

(vii) If on or after any Date of Determination, an Event of Default with respect to the Seller has occurred and is continuing, then the Seller's Collateral Threshold Amount shall be zero, and within three Business Days of the occurrence of the Event of Default, Seller shall post such additional amounts of Collateral (if any) necessary to meet the Seller's Collateral Requirement as revised to reflect a Seller's Collateral Threshold Amount of zero; provided, however, in the event that such Event of Default is cured within the cure period, then, on the date on which the cure is completed the Seller's Collateral Threshold Amount shall automatically increase from zero to the Seller's Collateral Threshold Amount as determined pursuant to subsection 8.2(a)(i) or (ii), as applicable.

<u>Seller's Collateral Threshold (in Millions of \$)</u>	<u>S&amp;P Credit Rating</u>	<u>Moody's Credit Rating</u>
\$36	A – or above	A3 or above
\$15	BBB+	Baa1
\$8	BBB	Baa2
\$3	BBB-	Baa3
\$0	Below BBB-	Below Baa3

(b) Collateral Threshold Amount for Buyer. The unsecured credit available to Buyer ("Buyer's Collateral Threshold Amount") shall be determined in accordance with the following subsections (i), (ii), (iii), (iv) or (v), as applicable:

(i) If on the relevant Date of Determination all of Buyer's Credit Ratings are at or above BBB- or Baa3, then Buyer's Collateral Threshold Amount shall be the amount set forth below under the heading "Buyer's Collateral Threshold" opposite the lower of Buyer's Credit Ratings on the relevant Date of Determination or, if Buyer has only one Credit Rating on the relevant Date of Determination, the amount corresponding with that Credit Rating.

(ii) If on the relevant Date of Determination the Buyer does not have a Credit Rating or if the conditions of subsection 8.2(b)(i) are not satisfied, then the Buyer's Collateral Threshold Amount shall be zero.

(iii) If the Buyer's Collateral Threshold Amount is determined pursuant to subsection 8.2(b)(i) and after the Date of Determination an Adverse Credit Event occurs with respect to Buyer, then within three Business Days of the Adverse Credit Event, Buyer shall post such additional amounts of Collateral (if any) necessary to meet the Buyer's Collateral Requirement as revised to reflect a Buyer's Collateral Threshold Amount of zero.

(iv) If subsequent to an Adverse Credit Event affecting Buyer the conditions of subsection 8.2(b)(i) are subsequently satisfied, (A) the Buyer's Collateral Threshold Amount shall automatically increase from zero to the applicable Buyer's Collateral Threshold Amount as determined pursuant to subsection 8.2(b)(i) and (B) Buyer shall post the additional Collateral required by subsection 8.2(b)(iii) only to the extent required to reflect the revised Buyer's Collateral Threshold Amount as determined pursuant to subsection 8.2(b)(i).

(v) If on or after any Date of Determination, an Event of Default with respect to the Buyer has occurred and is continuing, then the Buyer's Collateral Threshold Amount shall be zero, and within three Business Days of the occurrence of the Event of Default, Buyer shall post such additional amounts of Collateral (if any) necessary to meet the Buyer's Collateral Requirement as revised to reflect a Buyer's Collateral Threshold Amount of zero; provided, however, in the event that such Event of Default is cured within the cure period, then, on the date on which the cure is completed the Buyer's Collateral Threshold Amount shall automatically increase from zero to the Buyer's Collateral Threshold Amount as determined pursuant to subsection 8.2(b)(i).

<b><u>Buyer's Collateral Threshold (in Millions of \$)</u></b>	<b><u>S&amp;P Credit Rating</u></b>	<b><u>Moody's Credit Rating</u></b>
\$36	A – or above	A3 or above
\$15	BBB+	Baa1
\$8	BBB	Baa2
\$3	BBB-	Baa3
\$0	Below BBB-	Below Baa3

(c) Calculation of MIV. The Parties agree that the Mark-to-Market Value shall equal the difference between the current monthly intrinsic value of the transaction contemplated in this Agreement ("Current MIV") and the initial monthly intrinsic value of such transaction

("Initial MIV") determined over a two year rolling period as set forth in Appendix VI. Beginning on the Initial Delivery Date and each Tuesday thereafter (provided that if a Tuesday is not a Business Day, then on the next following Business Day), throughout the Services Term, the calculation agent will calculate the Current MIV according to the formula set forth in Appendix VI for the next twenty-four (24) months. Buyer shall be the calculation agent. Each date on which such calculation is made shall be deemed a Date of Determination (but without exclusion of other dates which may also be Dates of Determination.).

(d) Collateral Requirement Calculation.

(i) For Seller, the "Collateral Requirement" is the amount calculated which is equal to (x) less (y), but no less than zero and no more than \$90/kW, where:

(x) is the positive amount of the Mark-to-Market Value as determined pursuant to Appendix VI; and

(y) is the amount of Collateral previously provided by Seller (and still available to Buyer) plus the Collateral Threshold Amount applicable to Seller.

(ii) For Buyer, the "Collateral Requirement" is the amount calculated which is equal to (x) less (y), but no less than zero and no more than \$90/kW, where:

(x) is the product of the negative amount of the Mark-to-Market Value as determined pursuant to Appendix VI multiplied by negative one (-1); and

(y) is the amount of Collateral previously provided by Buyer (and still available to Seller) plus the Collateral Threshold Amount applicable to Buyer.

8.3 Letter of Credit and Other Collateral.

(a) If a Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article VIII or Article XI, then not later than thirty days prior to the stated expiration date of the Letter of Credit, the Posting Party shall renew (or cause the renewal) of each outstanding Letter of Credit, or replace (or cause the replacement of) each such Letter of Credit with one or more replacement Letters of Credit in the amount required by this Agreement at the time of such renewal or replacement. In the event (A) the issuer of a Letter of Credit shall fail to maintain a Credit Rating of at least an A2 by Moody's or at least an A by S&P; or (B) the issuer of an outstanding Letter of Credit indicates its intent not to renew such Letter of Credit; or (C) an issuer of a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, then, within five (5) Business Days thereafter, the Posting Party shall (1) provide a substitute Letter of Credit from a bank other than the bank that has been downgraded, refused to renew or failed to honor the outstanding Letter of Credit, or (2) post cash, in each case in an amount equal to the outstanding Letter of Credit ("Cure"). If the Secured Party does not receive replacement Collateral within the time specified in either of the two preceding sentences, it may draw on the full available amount of the Letter of Credit. Amounts drawn in such circumstances will be held in accordance with a Deposit Account

Agreement if one has been established and is currently in effect and in the absence of a Deposit Account Agreement, amounts drawn shall be held directly by the Secured Party bearing interest each day at the rate per annum equal to the Monthly Federal Funds Rate as reported in Federal Reserve Bank Publication H. 15-519 or its successor publication (as set on a monthly basis based on the latest month for which such rate is available) on any unapplied balance held by the Secured Party as described herein. Amounts drawn shall be available to be applied by the Secured Party for the reasons set forth in Section 8.1(b) under the conditions set forth in the Letter of Credit. If the Posting Party fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by the Secured Party, or such Letter of Credit fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then the Posting Party shall have failed to meet its obligations pursuant to this Article VIII or Article XI, as applicable.

(b) In all cases, the costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing or otherwise administering a Letter of Credit or other form of Collateral shall be borne by the Posting Party. If a Party draws on a Letter of Credit due to a failure by the other Party to satisfy a payment obligation under the Agreement, the drawing Party shall not terminate the Agreement or declare a default hereunder if the proceeds from the draw satisfy in full the payment obligation; provided that the Posting Party replenishes such Collateral within three Business Days.

#### ARTICLE IX. GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable 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.

9.2 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 Product(s) or the Tolling Services arising before and at the Electrical Delivery Point and with respect to Gas, after the Gas Delivery Point, including ad valorem taxes, taxes related to the operation or maintenance of the Units, the Facility; or the Site, the provision of Tolling Services or the use or consumption of Gas or other fuels, and other taxes attributable to the Units, land, land rights or interests in land for the Units. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product(s) from the Electrical Delivery Point and before and at the Gas Delivery Point. In the event a Party is required by Law or regulation to remit or pay Governmental Charges which are the other Party's responsibility hereunder, the Party that is assessed shall provide Notice to the Party that is responsible for such amounts due (together with supporting documentation), the assessed Party shall promptly pay such Governmental Charges when due and invoice the responsible Party in accordance with Article VI and the responsible Party shall reimburse the assessed Party in full in accordance with Article VI no later than the next Monthly Payment Date, with interest at the Interest Rate from and including the date on which the assessed Party pays the Governmental Charges until (but excluding) the date on which the responsible Party reimburses the assessed Party (cumulatively, the "Governmental Charges Payment"). Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges from which it is exempt under the Law; provided that an exempt Party shall bear the responsibility of proving its exemption as necessary to avoid the unjust imposition of the tax on the other Party.

9.3 Seller as Facility Owner. Seller and Buyer agree that each party will file its own federal and state income tax returns (including amended returns, formal or informal claims for refund, and any information reports) in a manner consistent with the Seller's status as owner of the Facility.

## ARTICLE X. MISCELLANEOUS

### 10.1 Representations, Warranties and Covenants.

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

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

(ii) it has full power and authority to carry on its business as now conducted and to enter into, and carry out its obligations under this Agreement, and the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it;

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

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

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

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

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

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

Term: (b) Covenants of Seller. Seller covenants to Buyer that throughout the Services

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

(ii) it holds the rights to all Environmental Attributes from the Units and will transfer such rights to Buyer free and clear of all liens, security interests, claims, and encumbrances or any interest therein or thereto by any Person, to the extent permitted under applicable law;

(iii) it will not knowingly take any action that would impair in any way Buyer's ability to rely on the Units in order to satisfy Buyer's Resource Adequacy Requirements.

(iv) it will have all Governmental Approvals necessary for it to perform its obligations under this Agreement, including those obtained pursuant to the requirements of Section 11.3(a)(v), and

(v) it will register with the California Climate Action Registry ("CCAR"), or its successor, and/or report greenhouse gas emissions output from the Units if and when the CPUC requires that Buyer's power purchase agreements contain a provision requiring sellers to register and/or report greenhouse gas emissions with the CCAR.

(c) Covenants of Buyer. Buyer covenants to Seller that throughout the Services Term it will deliver the Gas to Seller free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

## 10.2 Indemnities.

(a) Indemnity by Seller. Seller shall release, defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, representatives and Affiliates ("Buyer Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with (i) the Tolling Services, after the Gas Delivery Point and prior to and at the Electrical Delivery Point; (ii) the Product(s) prior to and at the Electrical Delivery Point or Gas after the Gas Delivery Point; (iii) Seller's operation and/or maintenance of the Units, the Facility or the Site; (iv) Third Party Claims arising from Seller's breach of this Agreement; (v) any environmental matters associated with the Facility or the Site, including the disposal and transportation of Hazardous Substances by

or on behalf of the Seller or at the Seller's direction or agreement; or (vi) resulting from Seller's violation of any applicable Law, or CAISO, NERC or WECC or Reliability Organization requirements; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to others, excepting only such damages, claims, losses, liabilities, obligations, suits, proceedings, demands or assessments, to the extent caused by the negligence, fault, willful misconduct or gross negligence of a member of the Buyer Group.

(b) Indemnity by Buyer. Buyer shall release, defend, indemnify and hold harmless Seller, its directors, officers, agents, attorneys, representatives and Affiliates ("Seller Group") against and from any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands, assessments, judgments, settlements and compromises, which arise out of or relate to or are in any way connected with (i) the Products after the Electrical Delivery Point or the Gas before or at the Gas Delivery Point; (ii) Third Party Claims arising from Buyer's breach of this Agreement; (iii) resulting from Buyer's violation of any applicable Law, or CAISO, NERC, or WECC or Reliability Organization requirements; in each case including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to or destruction or economic loss of property belonging to others, excepting only such damages, claims, losses, liabilities, obligations, suits, proceedings, demands or assessments, to the extent caused by the negligence, fault, willful misconduct or gross negligence of a member of the Seller Group. Notwithstanding any other provision of this Agreement, Buyer shall not be responsible under this Agreement for indemnifying Seller for any actions or inactions of PG&E Transmission, for matters relating to the services provided by PG&E Transmission, including interconnection, or for matters relating to the physical equipment or facilities owned, operated, built, used or supplied by PG&E Transmission; provided that, subject to the understanding that nothing in this Agreement shall be construed as conferring on Seller any right or remedies with respect to PG&E Transmission, nothing herein shall impair or limit Seller from exercising at any time any and all rights and remedies as it may have with respect to matters relating to PG&E Transmission.

(c) Notice of Claim.

(i) Notice of Claim. Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to indemnity under this Section 10.2, the Party seeking indemnification hereunder (the "Indemnitee") will promptly notify the Party against whom indemnification is sought (the "Indemnitor") in writing of any damage, claim, loss, liability or expense which the Indemnitee has determined has given or could give rise to a claim under Section 10.2 (a) or (b). (The written notice is referred to as a "Notice of Claim"). A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnitee regarding the claim.

(ii) Notice of Third Party Claim. If an Indemnitee receives notice of the assertion or commencement of a Third Party Claim against it with respect to which an Indemnitor is obligated to provide indemnification under this Agreement, such Indemnitee will give such Indemnitor a Notice of Claim as promptly as practicable, but in any event not later than seven (7) calendar days after such Indemnitee's receipt of Notice of such Third Party Claim. Such Notice of Claim will describe the Third Party Claim in reasonable detail, will include copies of all material written evidence thereof and will indicate, if

reasonably practicable the estimated amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnitor will have the right to participate in, or, by giving written Notice to the Indemnitee, to assume the defense of any Third Party Claim at such Indemnitor's own expense and by such Indemnitor's own counsel (as is reasonably satisfactory to the Indemnitee), and the Indemnitee will cooperate in good faith in such defense.

(iii) Direct Claim. Any Direct Claim must be asserted by giving the Indemnitor written Notice thereof, stating the nature of such claim in reasonable detail and indicating the estimated amount, if practicable. The Indemnitor will have a period of sixty (60) calendar days from receipt of such Notice within which to respond to such Direct Claim. If the Indemnitor does not respond within such sixty-day period, the Indemnitor will be deemed to have accepted such Direct Claim. If the Indemnitor rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its rights to indemnification under this Agreement.

(iv) Failure to Provide Notice. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 10.2(c) will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, the Indemnitor is not obligated to indemnify the Indemnitee for the increased amount of any claim which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(d) Defense of Third Party Claims. If, within ten (10) calendar days after giving a Notice of Claim regarding a Third Party Claim to an Indemnitor pursuant to Section 10.2(c)(ii), an Indemnitee receives written Notice from such Indemnitor that the Indemnitor has elected to assume the defense of such Third Party Claim as provided in the last sentence of Section 10.2(c)(ii), the Indemnitor will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defense thereof; provided, however, that if the Indemnitor fails to take reasonable steps necessary to defend diligently such Third Party Claim within ten (10) calendar days after receiving written Notice from the Indemnitee that the Indemnitee believes the Indemnitor has failed to take such steps, or if the Indemnitor has not undertaken fully to indemnify the Indemnitee in respect of all Indemnifiable Losses relating to the matter, the Indemnitee may assume its own defense, and the Indemnitor will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnitee, the Indemnitor will not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder; provided, however, that the Indemnitor may accept any settlement without the consent of the Indemnitee if such settlement provides a full release to the Indemnitee and no requirement that the Indemnitee acknowledge fault or culpability. If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnitee for which the Indemnitee is not entitled to indemnification hereunder and the Indemnitor desires to accept and agrees to such offer, the Indemnitor will give written Notice to the Indemnitee to that effect. If the Indemnitee fails to consent to such firm offer within ten calendar days after its receipt of such Notice, the Indemnitee may continue to contest or defend

such Third Party Claim and, in such event, the maximum liability of the Indemnitor to such Third Party Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnitee up to the date of such Notice.

(e) Subrogation of Rights. Upon making any indemnity payment, the Indemnitor will, to the extent of such indemnity payment, be subrogated to all rights of the Indemnitee against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (i) the Indemnitor is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (ii) until the Indemnitee recovers full payment of its Indemnifiable Loss, any and all claims of the Indemnitor against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Indemnitee's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, each such Indemnitee and Indemnitor shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

(f) Rights and Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Section 10.2 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

#### 10.4 Assignment and Change of Control.

(a) Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements to an Affiliate or to its financing provider(s) or (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's or Affiliate's Guarantor's Credit Rating is at least equal to the higher of (x) the Credit Rating of the transferring Party and (y) the Credit Rating of the transferring Party's Guarantor, in each case, as of the time of assignment; provided, however, that such Affiliate or financing provider(s) shall agree in writing that upon exercising its rights to assume the Agreement, it shall be bound by the terms and conditions hereof. Buyer will execute such additional consents in substantially the form set forth herein as Appendix IX as reasonably requested by Seller in connection with such assignment.

(b) At all times prior to the Initial Delivery Date, at least 50% of the Seller's membership interests shall be owned by, and subject to the voting control of, one or more funds managed by Energy Investors Funds Group, LLC, directly or indirectly, unless Buyer has pre-approved a divestiture of a greater amount, such approval not to be unreasonably withheld or delayed. If at any time the ownership of the membership interest in Seller fails to meet the requirements of this Section 10.4(b), Seller shall be deemed to be in default of this Agreement pursuant to Section 5.1(a)(xiii).

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

10.6 General. This Agreement constitutes the entire agreement between the Parties relating to its subject matter. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless reduced to a writing signed by all Parties provided that Appendix II shall be supplemented from time to time by Seller as expressly contemplated herein. Appendix III may be revised unilaterally by Buyer in its sole discretion so long as such revision is also made to all similarly situated generators selling Tolling Services to Buyer. Appendix IV may be revised by Buyer unilaterally in accordance with Section 4.3. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement for twelve (12) months. All provisions relating to limitations of liability shall survive without limit. The survival of rights and obligations of the Parties with respect to Confidential Information are governed by Section 10.7. All provisions relating to invoicing, payment, settlement of other liabilities incurred pursuant to this Agreement and dispute resolution shall survive for the period necessary to effectuate the rights of the Party benefited by such provision except as otherwise specified herein. This Agreement shall be binding on each Party's successors and permitted assigns. Absent agreement of the Parties to a proposed modification or amendment of this Agreement, neither Party shall seek to modify or amend this Agreement pursuant to Sections 205 and 206 of the Federal Power Act. The standard of review for changes to any rate, term or condition of this Agreement proposed by a Party (acting unilaterally in violation of the prior sentence), a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

10.7 Confidentiality. Throughout the Contract Term, neither Party shall disclose the non-public terms or conditions of this Agreement or any transaction hereunder to a third party, other than (i) the Party's employees, lenders, counsel, accountants, advisors, rating agencies, equity investors, potential lenders or potential equity investors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to this Section 10.7 of this Agreement; (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or FERC; or (vii) as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies including the CPUC or any division thereof. In connection with requests made pursuant to clause (v) of this

Section 10.7 (“Disclosure Order”) and disclosures pursuant to clause (vi) or (vii) (“Regulatory Disclosures”) each Party shall, to the extent practicable, use reasonable efforts to: (i) Notify the other Party prior to disclosing the confidential information, (ii) prevent or limit such disclosure and (iii) disclose the information in a manner as to maintain its confidentiality, *e.g.*, by filing it under seal subject to a protective order or applicable rules or regulations designed to protect the confidential nature of the information. After using such reasonable efforts, the Disclosing Party shall not be: (i) prohibited from complying with a Disclosure Order or making the Regulatory Disclosures or (ii) liable to the other Party for monetary or other damages incurred in connection with such disclosures of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. Upon termination or expiration of this Agreement, each Party will promptly return or certify the destruction of, if so requested by the other Party, any Confidential Information provided to it and will use commercially reasonable efforts to return any copies thereof that may have been provided to others in accordance with this Section 10.7. The obligations of the Parties in this Section 10.7 will survive the termination of this Agreement for a period of two years, the discharge of all other obligations owed by the Parties to each other, and any direct or indirect transfer of ownership of the Facility.

10.8 Insurance. Throughout the term of this Agreement, Seller shall, at its sole cost and expense, procure and maintain the following insurance coverages and be responsible for its subcontractors maintaining sufficient limits of the appropriate insurance coverage.

(a) Workers’ Compensation and Employers’ Liability.

(i) Workers’ Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work including USL&H and Jones Act.

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

(b) Commercial General Liability.

(i) Coverage shall be in a policy form equivalent to the latest filed and approved Insurance Services Office (ISO) CG 00-01, with commercially available endorsements.

(ii) The policy shall include coverage for bodily injury, property damage, personal injury and products/completed operations in an amount not less than \$10,000,000 per occurrence (in combination with umbrella or excess limits).

(iii) Coverage shall:

a) by “Additional Insured” endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for Seller (Insurance Services Office (ISO) Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a “blanket endorsement by

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

b) be endorsed to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it; and

c) include a severability of interest clause.

(c) Business Auto.

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

(ii) The limit shall not be less than \$5,000,000 (in combination with umbrella or excess limits) each accident for bodily injury and property damage.

(d) Seller’s Pollution Liability.

(i) Coverage for bodily injury, property damage, including clean up costs and defense costs resulting from sudden and accidental pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water shall be maintained.

(ii) The limit shall not be less than \$1,000,000 each occurrence for bodily injury and property damage.

(iii) The policy shall endorse PG&E as additional insured.

(e) All Risk Property Insurance.

(i) Seller shall maintain, throughout the term of this Agreement, “All Risk” Property insurance covering not less than the full replacement cost of their real and personal property, including coverage for earthquake and flood. Policy shall include coverage for materials and equipment while under the care, custody and control of Seller during the course of Work, at the Site, offsite or while in transit to the Site.

(f) Professional Liability Insurance.

(i) Errors and Omissions Liability insurance appropriate to the Seller’s profession. Coverage shall be for a professional error, act or omission arising out of the scope of services shown in the Agreement, including coverage for bodily injury, property damage, and consequential financial loss.

(ii) The limit shall not be less than \$5,000,000 per claim.

(iii) Coverage shall:

a) be endorsed to specify that the Seller's insurance is primary and that any Insurance or self-insurance maintained by PG&E shall not contribute with it; and

b) provided that counsel shall be mutually selected by the Parties.

(g) Additional Insurance Provisions.

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

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer.

(iii) The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

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

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

(h) Form And Content.

(i) All policies or binders with respect to insurance maintained by Seller shall:

a) where permitted by law, waive any right of subrogation of the insurers hereunder against PG&E, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy; and

b) with respect to any additional insured, provide that such insurance will not be invalidated by any action or inaction of each such additional insured and will insure each such additional insured regardless of any breach or violation of any warranty, declaration or condition contained in such insurance by the primary named insured.

10.9 Access to Records.

(a) Records and Audit. The Parties shall, for five years after creation or such longer period as may be required by applicable Law, each keep and maintain accurate and detailed records relating to the Units' hourly deliveries of Energy and Other Products and Gas consumption and such other information as required to support the amounts due and payable as between the Parties pursuant to this Agreement. Such records shall be made available by the Party holding such records to the other Party for inspection during normal business hours upon reasonable Notice.

(b) Confidentiality. Any information provided to Buyer pursuant to this Section 10.9 shall be considered confidential in accordance with the terms of Section 10.7 of Agreement.

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

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

**ARTICLE XI. CONDITIONS PRECEDENT; EFFECTIVE DATE;  
CONSTRUCTION; AND INITIAL DELIVERY DATE**

11.1 Conditions Precedent to Effective Date.

(a) The Effective Date shall occur upon issuance of (1) the CPUC Approval and (2) Seller's posting of the Delivery Date Security as required pursuant to this Section 11.1(a).

(i) Buyer shall file an application ("Approval Application") with the CPUC seeking an order that with the passage of time after issuance would constitute a CPUC Approval. Seller agrees to cooperate with Buyer in preparing and filing the Approval Application and to actively support that application, as reasonably requested by Buyer.

(ii) No later than 3:00 p.m. PPT on the fifth Business Day after the date on which Buyer submits the Approval Application to the CPUC, Seller shall provide Buyer with an "Offer Deposit" of \$10 per kW multiplied by the Maximum Contract Capacity for all of the Units. The Offer Deposit shall be in the form of a Letter of Credit effective upon the date of delivery or a cash deposit to be delivered by wire transfer for receipt no later than 3:00 p.m. PPT on the due date. Within five (5) Business Days after the date on which the Offer Deposit is received from Seller by Buyer, Buyer shall return or cause to be returned to Seller its Initial Offer Deposit. A Letter of Credit is subject to each of the requirements set forth in Section 8.3. If Seller fails to post the Offer

Deposit in accordance with this Section 11.1(a)(ii) or the Seller fails at any time to comply with the requirements of Section 8.3 (made effective as of Execution Date pursuant to this Section 11.1(a) for this limited purpose) and such failure remains uncured for three Business Days after receipt of Notice of such failure from Buyer, Buyer may elect to retain Seller's Initial Offer Deposit as liquidated damages and terminate this Agreement by Notice without further liability or obligation of the Parties to one another.

(iii) If the CPUC has not issued any decision on the merits in response to the Approval Application within twelve months of the date on which Buyer files the Approval Application, either Party may elect to terminate this Agreement by providing Notice of termination to the other Party, to be effective upon receipt of such Notice, provided that the CPUC has not issued an affirmative decision on the merits in response to the Approval Application prior to the date on which the Notice is delivered. In the event the Agreement is terminated pursuant to this Section 11.1(a)(iii), Buyer shall return to Seller its Offer Deposit and the Agreement will terminate without further liability or obligation of the Parties to one another.

(iv) If the CPUC, or an applicable appellate body reviewing the CPUC order issued in response to the Approval Application, issues an order that with the passage of time necessary for such order to be deemed final and non-appealable constitutes a CPUC Approval, without condition or modification, then neither Party nor its Affiliates, directly or in cooperation with others, shall seek further review of the order.

(v) If the CPUC order issued in response to the Approval Application denies the relief requested, grants it with conditions or requires modification of the Agreement in a manner that has a material adverse effect on a Party, then the Party that is adversely affected may seek judicial review of the decision within thirty (30) days following the CPUC order. In the event that judicial review is sought pursuant to the prior sentence or by a third party, each of the Parties agrees to that it will remain bound to this Agreement for the additional period of one year from the date of the petition for judicial review as required in order to obtain a final, non-appealable order on the Approval Application. In the event that a final, non-appealable order (of the CPUC, on remand, or appellate body) denies the relief requested in the Approval Application, conditions its approval or requires modification of the Agreement in a manner that has a material adverse effect on a Party or fails to issue within the one-year period, then each Party that is adversely affected may (in its sole discretion) elect to notify the other Party in writing within ten (10) Business Days of the issuance of such order that it will accept the terms of this Agreement as so conditioned or modified; and if each Party that is adversely affected delivers such Notice, then the order shall be deemed to be a CPUC Approval. Absent delivery of such Notice by each adversely affected Party within 10 Business Days of such order or receipt of an order, or in the case of delivery by each adversely affected Party that it elects to terminate this Agreement, in either case within the one year period that such order would become final and non-appealable, this Agreement shall terminate automatically without further liability or obligation of the Parties to one another. Within ten

Business Days of such termination, Buyer shall return to Seller its Offer Deposit.

(vi) Within ten (10) Business Days of the date on which an order becomes a CPUC Approval, Seller shall post the Delivery Date Security. Within ten (10) Business Days of the date on which Buyer receives Seller's Delivery Date Security, Buyer shall return to Seller the Offer Deposit in full. If Seller fails to post the Delivery Date Security in accordance with this Section 11.1(a)(vi) and such failure remains uncured for three Business Days after receipt of Notice of such failure from Buyer, Buyer may retain Seller's Offer Deposit as liquidated damages and terminate this Agreement by Notice without further liability or obligation of the Parties to one another.

(vii) If the CPUC has not issued any decision on the merits in response to the Approval Application within eight months of the date on which Buyer files the Approval Application, or if a petition for judicial review of the CPUC's decision on the merits is filed (before, on or after such date), then the Expected Initial Delivery Date and each Critical Milestone shall be extended day for day for each day commencing on the date that is eight months after the date on which the Buyer files the Approval Application and ending on the date on which an order on the merits becomes final and non-appealable.

#### 11.2 Construction.

(a) Design, Development and Construction. As between Buyer and Seller, Seller shall have sole responsibility for designing and constructing (or causing the design and construction) of the Facility, Transmission Upgrades (if any) and all related metering and submetering facilities, including the obligation to perform all studies, including environmental studies, pay all fees, obtain all necessary Governmental Approvals and execute all necessary agreements with the CAISO and the Participating Transmission Owner for the Electrical Interconnection Facilities and Transmission Upgrades and with the applicable Gas pipeline or LDC for the Gas Interconnection Facilities necessary for the ownership, construction, operation and maintenance of the Units and delivery of Seller's Product. All Electrical Interconnection Facilities and Gas Interconnection Facilities, including metering and submetering facilities and Transmission Upgrades must be of sufficient capacity as of the Initial Delivery Date to permit the Units to operate at all times during each month at the Maximum Contract Capacity (in addition to such capacity as required for units located at the Facility that are not committed to Buyer). Metering and submetering facilities must meet such additional specifications as set forth in Section 3.8.

(b) Permitting. No later than 31 months prior to the Expected Initial Delivery Date ("Permitting Application Milestone"), Seller must apply for all Governmental Approvals necessary for the construction and operation of the Facility and no later than 14 months prior to the Expected Initial Delivery Date ("Permitting Milestone"), Seller shall have received, and shall provide Notice to Buyer demonstrating that it has received, such Governmental Approvals. In the event that following the Permitting Application Milestone, after making all commercially reasonable efforts to do so, Seller determines that it cannot satisfy the condition set forth in the prior sentence in the time allowed, then, at Seller's election Seller may terminate this Agreement any time prior to the date on which the Governmental Approvals necessary for the construction and operation of the Facility are received by providing Notice of such termination to Buyer no less than three (3) Business Days prior to the effective termination date; and within ten (10)

Business Days of receipt of such Notice by Buyer, Buyer will return to Seller the Delivery Date Security adjusted as follows:

(i) if the Notice of termination is delivered on or prior to twelve (12) months after the Permitting Application Milestone, Buyer shall retain as liquidated damages an amount equal to \$5,000 multiplied by the Maximum Contract Capacity;

(ii) if the Notice of termination is delivered after twelve (12) months but on or before eighteen (18) months after the Permitting Application Milestone, Buyer shall retain as liquidated damages an amount equal to \$10,000 multiplied by the Maximum Contract Capacity;

(iii) if the Notice of termination is delivered after eighteen (18) months but on or before twenty-four (24) months after the Permitting Application Milestone, Buyer shall retain as liquidated damages an amount equal to \$15,000 multiplied by the Maximum Contract Capacity; and

(iv) if the Notice of termination is delivered after twenty-four (24) months after the Permitting Application Milestone, Buyer shall retain as liquidated damages the full amount of the Delivery Date Security.

(c) Critical Milestones. The Seller shall cause the development and construction of the Facility to meet each of the Critical Milestones. Critical Milestones means each of (i) Seller's receipt of notice of data completion from the CEC by not later than 852 days prior to the Expected Initial Delivery Date, (ii) completion of the Permitting Application Milestone and Permitting Milestone by no later than the applicable dates as set forth in Section 11.2(b), (iii) Seller's issuance of unlimited notice to proceed under the EPC Contract by not later than 304 days prior to the Expected Initial Delivery Date, (iv) clearing of the Site and ground breaking by not later than 243 days prior to the Expected Initial Delivery Date, (v) completion of the Electrical Interconnection Facilities, all Transmission Upgrades and installation of the electrical metering and submetering as required pursuant to Section 11.3(a) by not later than 91 days prior to the Expected Initial Delivery Date, (vi) completion of the Gas Interconnection Facilities and all associated metering and submetering as required pursuant to Section 11.3(a) by not later than 122 days prior to the Expected Initial Delivery Date, (vii) delivery at the Site of the major equipment comprising the Facility's power island by not later than 183 days prior to the Expected Initial Delivery Date, and (viii) achievement of Mechanical Completion by not later than 45 days prior to the Expected Initial Delivery Date.

(d) Default. If Seller fails to complete any Critical Milestone within 455 days of the date such event is scheduled to occur, such failure will be deemed an Event of Default and Buyer may elect to exercise the remedies that are available upon an Event of Default pursuant to Article V, including termination of this Agreement after Notice.

(e) Reports. Within five (5) days after the close of each calendar month until the Initial Delivery Date, Seller shall provide to Buyer a Monthly Construction Progress Report addressing each of the Milestones (see Appendix VII) including projected time to completion, and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Buyer shall have the right,

during business hours and upon reasonable Notice, to inspect the Site and/or on-Site Seller data and information pertaining to the Units and otherwise inspect or audit to enforce its rights pursuant to this section.

### 11.3 Initial Delivery Date.

(a) Conditions Precedent. The Initial Delivery Date shall occur upon the date designated by Seller which shall be the first day of a month and shall not occur more than two (2) months prior to the Expected Initial Delivery Date nor prior to the day on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties for at least one (1) Unit. The Final Delivery Date shall occur upon the date designated by Seller which shall be the first day of a month and shall not occur prior to the day on which each of the following conditions precedent have been satisfied or waived by written agreement of the Parties for all four (4) Units.

(i) At Seller's expense, Seller shall construct or cause to be constructed the Facility, including all four Units, which shall include the equipment and characteristics as described in Appendix II, and which can reasonably be expected to enable Seller to satisfy the obligations of the Seller herein. The Initial Delivery Date may occur prior to completion of all Units, provided that at least one (1) Unit is Commercially Operable on or prior to the Initial Delivery Date and all four Units are completed prior to the Final Delivery Date.

(ii) At Seller's expense, Seller shall construct or cause to be constructed the Electrical Interconnection Facilities such that the Electrical Interconnection Facilities are capable of delivering the Maximum Contract Capacity to and at the Electrical Delivery Point during each month (in addition to any other output of the Facility as the Electric Interconnection Facilities are required to transmit) and shall cause them to be placed into service, in each case, in accordance with the requirements of the interconnecting transmission owner and/or operator, and applicable rules, if any, of FERC, CAISO, WECC and any other organization charged with reliability responsibilities or Governmental Authority.

(iii) At Seller's expense, Seller shall cause any and all Transmission Upgrades identified by PG&E, in a role other than as Buyer, and agreed to by Seller required to enable the grid to accept delivery of the full Contract Capacity for all Units (in addition to any other output of the Facility) at all times during each month, to be constructed and placed into service, including, to the extent necessary, by funding the Transmission Upgrades.

(iv) At Seller's expense, Seller shall construct or cause to be constructed the Gas Interconnection Facilities identified by PG&E, in a role other than as Buyer, and agreed to by Seller as necessary to deliver Gas to and at the Gas Delivery Point in volumes and at pressures that enable the Units to generate Energy utilizing the Maximum Contract Capacity at all times during each month (in addition to such other volumes of Gas as the Gas Interconnection Facilities are required to deliver to the Facility), and shall cause them to be placed into service.

(v) At Seller's expense, Seller shall secure all Governmental Approvals required for the lawful operation and maintenance of the Facility, inclusive of the Electrical Interconnection Facilities and Gas Interconnection Facilities, including all those related to environmental matters, as necessary to permit each Unit to operate for up to 5000 hours per year (with a quarterly distribution of 1100 hours in the first quarter, 1100 hours in the second quarter, 1600 hours in the third quarter, and 1200 hours in the fourth quarter) assuming operation at partial or full load, and up to 365 starts per year per Unit, and, in addition, that permit each Unit, so long as it operates in compliance with all applicable emissions limits and regulations, to operate at an unspecified minimum load level that is below 50% but no lower than 35% of the Unit's rated load; and to the extent applicable demonstrate that it possesses emission credits necessary for such operation of the Units.

(vi) Seller shall have executed a WECC Reliability Management System Agreement, which shall be in full force and effect as of the Initial Delivery Date.

(vii) The Commercial Operation Date for at least one Unit shall have occurred or will occur simultaneously with the Initial Delivery Date.

(viii) Seller shall provide Buyer with Notice that the Commercial Operation Date for at least one Unit has occurred or will occur simultaneously with the Initial Delivery Date.

(ix) No default shall have occurred and remain uncured as of the Initial Delivery Date.

(x) Seller shall have provided Buyer with Notice of the expected occurrence of the Commercial Operation Date with respect to each Unit no later than seven days prior and again three days prior to its occurrence and again immediately prior to the date it occurs.

(xi) Seller shall have executed a CAISO Participating Generator Agreement, which shall be in full force and effect.

(b) The Final Delivery Date shall occur no later than 455 days after the Expected Initial Delivery Date. The Final Delivery Date must occur on the first day of a calendar month. In the event that Seller has not satisfied the conditions precedent for the Final Delivery Date within 455 days of the Expected Initial Delivery Date, the Seller's failure to satisfy such conditions will constitute an Event of Default pursuant to Section 5.1(a)(vi) of this Agreement.

11.4 Delay Damages; Termination Upon Delay. In the event that the conditions precedent to the occurrence of the Initial Delivery Date are not satisfied or waived on or prior to the Expected Initial Delivery Date, for each day beginning with the day after the Expected Initial Delivery Date through and including the date on which the Initial Delivery Date occurs, Seller will be required to pay liquidated damages in the amount of \$125 per day for the first thirty (30) days of delay, but only if the first thirty (30) days of delay occurs in a Summer Month, and \$250 per day for each additional day multiplied by the Maximum Contract Capacity during the Summer Months and \$62.25 per day multiplied by the Maximum Contract Capacity during the Non-Summer Months, of Delay Damages for a period of time up to a maximum of 365 days. If

such amounts are due, then Buyer shall invoice Seller in accordance with Section 6.1 and Seller shall pay Buyer in accordance with Article VI. If Seller fails to pay Delay Damages when due, Buyer may deduct amounts due from the Delivery Date Security. In the event that Seller has not satisfied the conditions precedent to the Initial Delivery Date within 365 days of the Expected Initial Delivery Date, the Seller's failure to satisfy such conditions will constitute an Event of Default pursuant to Section 5.1(a)(vi) of this Agreement. If such an Event of Default occurs, then any time prior to the satisfaction of the conditions precedent, Buyer may elect to exercise the remedies that are available upon an Event of Default pursuant to Article V, or in the alternative, Buyer will have the option to extend the end date of the Services Term by a period equal to the difference between the Expected Initial Delivery Date and actual Initial Delivery Date.

11.5 Return of Delivery Date Security. Within ten Business Days following the Final Delivery Date, Buyer will return the remainder of the Delivery Date Security to Seller (after satisfaction of any amounts then due pursuant to Section 11.4).

11.6 Effect of Force Majeure. Each Critical Milestone and the Expected Initial Delivery Date shall be extended on a day-for-day basis without the payment of liquidated damages, not exceeding an aggregate extension of 365 days, to the extent that such Critical Milestone or Expected Initial Delivery Date is delayed as a result of a Force Majeure Event invoked by the Seller in accordance with Section 3.11.

11.7 Partial Commercial Operations. In the event that the Initial Delivery Date and the Final Delivery Date do not occur on the same day, Seller shall be permitted additional testing rights as set forth in Section 3.13 such that Seller will have the opportunity to increase the Monthly Contract Capacity in accordance with the procedures set forth therein as of the first day of each month following the Initial Delivery Date through and including the Final Delivery Date. Seller shall continue to be responsible for liquidated damages in the amount of \$125 per day for the first thirty (30) days of delay, but only if the first thirty (30) days of delay occurs in a Summer Month, and \$250 per day for each additional day, in each case, multiplied by the Pro Rata Capacity Adjustment during the Summer Months and \$62.25 per day multiplied by the Pro Rata Capacity Adjustment during the Non-Summer Months for each day occurring between (a) the later of the Expected Initial Delivery Date and the Initial Delivery Date and (b) the earlier of the Final Delivery Date or the 455<sup>th</sup> day following the Expected Initial Delivery Date.

## **ARTICLE XII. DISPUTE RESOLUTION**

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

### **12.2 Management Negotiations.**

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or any related agreements by prompt negotiations between each Party's Authorized Representative, or such other person designated in writing as a representative of the Party (each a "Manager"). Either Manager may request a meeting in writing to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within 15

Business Days of their first meeting (“Initial Negotiation End Date”), the Managers shall refer the matter to the designated senior officers of their respective companies (“Executive(s)”), who shall have authority to settle the dispute. Within five (5) Business Days of the Initial Negotiation End Date (“Referral Date”), each Party shall provide one another written Notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

(d) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (b) above, refuses or does not meet within the 30 calendar day period specified in subpart (b) above, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be so resolved by negotiation as set forth in Section 12.2 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association (“AAA”). As the first step the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA’s commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within 60 days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a panel of three arbitrators selected in accordance with AAA’s Commercial Arbitration Rules conducted in San Francisco, California, administered by and in accordance with AAA’s Commercial Arbitration Rules (“Arbitration”). The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the 60 day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate arbitration by filing with the AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.

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

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.

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

(c) The arbitrator’s award shall be made within six (6) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties. Any court having jurisdiction over the Parties may enter judgment upon any award rendered by the arbitrator. The Parties are aware of the decision in *Advanced Micro Devices, Inc. v. Intel Corp.*, 9 Cal. 4<sup>th</sup> 362 (1994), and, except as modified by this Agreement, intend to limit the power of the arbitrator to that of a Superior Court judge enforcing California Law. The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys’ fees.

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

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

### ARTICLE XIII. NOTICES

13.1 Notices. Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “Notify”), the Party with such right or obligation shall provide a written communication in the manner specified below; provided, however, that notices of Outages or other intra-day information regarding the Units’ operations are to be provided as required pursuant to Sections 3.5 and 3.10; and provided further, that any scheduling and dispatching shall be done pursuant to the Operating Procedures. Invoices may be sent by facsimile. A Notice sent by facsimile transmission will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5 p.m. Pacific prevailing time (and if received after 5 p.m., on the next Business Day) and a Notice by overnight mail or courier shall be deemed to have been received two Business Days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior verbal communication, in which case any such Notice shall be deemed received on the day sent.

All Notices to Seller:

Energy Investors Funds  
Street: Three Charles River Place  
City: Needham Zip: 02494  
Attn: Herbert Magid  
Phone: (781) 292-7001  
Facsimile: (781) 292-7099  
Duns: NA  
Federal Tax ID Number: 20-4535062

Invoices:

Attn: Contract Manager  
Phone: (781) 292-7000  
Facsimile: (781) 292-7099

Scheduling:

Attn: Contract Manager  
Phone: (781) 292-7000  
Facsimile: (781) 292-7099

Payments:

Attn: Contract Manager  
Phone: (781) 292-7000  
Facsimile: (781) 292-7099

Wire Transfer:

BNK: Silicon Valley Bank  
ABA: 121140399  
ACCT: 3300515280  
FOR CREDIT OF: EIF Panoche LLC

Credit and Collections:

Attn: Contract Manager  
Phone: (781) 292-7000  
Facsimile: (781) 292-7099

With additional Notices of an Event of Default  
to Contract Manager:

Attn: Contract Manager  
Phone: (781) 292-7000  
Facsimile: (781) 292-7099

All Notices to Buyer

Pacific Gas and Electric Company  
Street: P.O. Box 770000, MC N12G  
City: San Francisco Zip: 94177  
Attn: Contract Administration  
Phone: (415) 973-0070  
Facsimile: (415) 973-9176  
Duns: 556650034  
Federal Tax ID Number: 94-0742640

Invoices:

Attn: Ted Yura  
Phone: (415) 973-8660  
Facsimile: (415) 973-2151

Scheduling:

Attn: Kevin Coffee  
Phone: (415) 973-7631  
Facsimile: (415) 973-5333

Payments:

Attn: Ted Yura  
Phone: (415) 973-8660  
Facsimile: (415) 973-2151

Wire Transfer:

BNK: Mellon Trust of New England, N.A.  
ABA: 011001234  
ACCT: 059994  
FOR CREDIT OF: PG&E

Credit and Collections:

Attn: Manager, Credit Risk  
Phone: (415) 972-5422  
Facsimile: (415) 973-7301

With additional Notices of an Event of Default  
to Contract Manager:

Attn: Jim Shandalov  
Phone: (415) 973-7114  
Facsimile: (415) 973-0585

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

Seller: PANOCHE ENERGY CENTER, LLC

Buyer: PACIFIC GAS AND ELECTRIC COMPANY

By: EIF PANOCHE, LLC, sole member

By:

By: UNITED STATES POWER FUND II, L.P., member

Name:

By: EIF US POWER II, LLC, general partner

Title:

By: ENERGY INVESTORS FUNDS GROUP, LLC, sole member

By:

Jonathan M. January  
Partner

By: USPF II INSTITUTIONAL FUND, L.P., member

By: EIF US POWER II, LLC, general partner

By: ENERGY INVESTORS FUNDS GROUP, LLC, sole member

By:

Jonathan M. January  
Partner

## Appendix I - General Definitions

“AAA” has the meaning set forth in Section 12.1(c).

“Actual Tested Heat Rate” shall have the meaning set forth in Section 4.2(b)(ii).

“Additional Gas” has the meaning set forth in Section 3.3(e).

“Additional Gas Payment” has the meaning set forth in Section 3.3(e).

“Additional Test Costs” has the meaning set forth in Section 3.13(d)(v).

“Adjusted Guaranteed Heat Rates” has the meaning set forth in Section 4.2(b)(v).

“Adverse Credit Event” means with respect to Seller, Buyer or Seller’s Guarantor, as applicable, that one or more of the applicable entity’s Credit Ratings have been downgraded to a level below BBB- or Baa3; or with respect to Seller’s Guarantor, a failure to meet each of the conditions set forth in Section 8.2(a)(ii); or with respect to Seller, Buyer or Seller’s Guarantor, as applicable, such entity is no longer rated.

“Affiliate” of a Person means any other Person that (a) directly or indirectly controls the specified Person; (b) is controlled by or is under direct or indirect common control with the specified Person; or (c) is an officer, director, employee, representative or agent or subsidiary of the Person. For the purposes of this definition, “control”, when used with respect to any specified Person, means the power to direct the management or policies of the specified Person, directly or indirectly, whether through the ownership of voting securities, partnership or limited liability company interests, by contract or otherwise.

“Agreement” has the meaning ascribed in Section 1.1.

“Ancillary Services” means regulation (including load following) spinning reserves, non-spinning reserves, and replacement reserves associated with the Units (in each case as defined by the CAISO Tariff), and all other products authorized to be ancillary services under the CAISO Tariff by FERC as of the Effective Date or a future date during the Contract Term, as is described in Appendix II.

“Approval Application” has the meaning set forth in Section 11.1.

“Arbitration” has the meaning set forth in Section 12.3.

“Authorized Representative” has the meaning set forth in Section 1.4.

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

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

“Average Monthly Conditions” means, in relation to any month, the ambient conditions (temperature and humidity for the Site) based on the average of the monthly average temperatures and corresponding humidity conditions of the 10 years 1995 through 2004 for such month as provided by the National Climatic Data Center (“NCDC”) at <http://www.ncdc.noaa.gov/servlets/ULCD>, and as specified in Appendix II. Data from the NCDC

must be for a geographically nearby weather station that approximates the conditions at the Site. The weather station to be used with respect to the Units is Fresno Yosemite International Airport.

“Balancing Payments” has the meaning set forth in Section 3.3(f).

“Base Load” means, when used in relation to a simple cycle combustion turbine Unit, that the combustion turbine(s) is operating on its base load temperature control curve with inlet cooling in service, as applicable to the ambient temperature conditions, and with zero power augmentation and zero duct firing. Water injection for NOx control shall not be considered power augmentation.

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

“Buyer” means PG&E in its capacity as a purchaser of Products and Tolling Services and other merchant functions, as distinct from the function of PG&E as a transmission owner. For avoidance of doubt, PG&E is subject to regulations requiring the separation of its transmission and merchant functions pursuant to FERC’s Standards of Conduct requirements as set forth at 18 C.F.R. Part 358. Accordingly, as set forth in Section 3.1(f), Buyer expressly disclaims all rights, obligations and liabilities of PG&E to Seller that have been assumed by PG&E in PG&E’s capacity as an owner or provider of electrical interconnection or transmission service or as a natural gas local distribution company.

“Buyer Group” has the meaning set forth in Section 10.2(a).

“Buyer’s Capacity Test” has the meaning set forth in Section 3.13(d)(v).

“Buyer’s Collateral Threshold Amount” has the meaning set forth in Section 8.2 (b).

“Buyer’s Gas” has the meaning set forth in Section 3.3(b).

“Buyer’s Schedule” has the meaning ascribed in Section 3.5(b).

“Buyer’s Scheduling Error” means the difference between the amount, quantity or location of a Product delivered to the CAISO grid and the amount, quantity or location of a Product scheduled to be delivered to the CAISO grid that results due to (i) Buyer providing different schedules to the Seller and the CAISO or (ii) due to failure of Buyer to change a schedule when Unit operations have changed from those previously scheduled after Buyer has received Notice of the change in Unit operations from Seller and Buyer has had a commercially reasonable period of time to make the schedule change but has failed to do so.

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

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owners that have been placed under the CAISO’s operational control.

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

“CAISO Tariff” means the FERC-approved CAISO FERC Electric Tariff, First Replacement Volume No. 1, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

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

“Capacity Degradation Factor” or “CDF” has the meaning set forth in Section 4.2(b)(v).

“Capacity Payment Rate” or “CPR” has the meaning set forth in Section 4.3(a).

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

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

“Cold Start-Up” means a Start-Up that occurs more than 4 hours after a Shut-Down.

“Cold Scheduled Start-Up” means a Cold Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

“Collateral” has the meaning set forth in Section 8.1.

“Collateral Requirement” has the meaning set forth in Section 8.2.

“Collateral Threshold Amount” means Seller’s Collateral Threshold Amount or Buyer’s Collateral Threshold Amount.

“Commercially Operable” with respect to any Unit, is a condition occurring after such time as Mechanical Completion has occurred, commissioning is complete, the Unit has been shown by an Initial Capacity Test, adjusted to ISO Conditions or Peak July Conditions, as applicable, to be capable of delivering at least 95% of the Design Capacity as set forth in Appendix II or July Design Capacity, respectively, to the grid on a sustained basis and the Unit has been released by the contractor to Seller for commercial operations.

“Commercial Operation Date” with respect to a Unit is the date on which such Unit at the Facility has become Commercially Operable. The Units’ Commercial Operation Date shall be no earlier than June 1, 2009.

“Contract Capacity” is the amount of Capacity offered by the Seller as set forth in Appendix II, which shall be equal to the Design Capacity of the Units, reasonably adjusted (if necessary due to the technology of the Units) for Average Monthly Conditions.

“Contract Term” has the meaning set forth in Section 2.1.

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

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in

terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

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

"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including cost recovery of payments to be made by Buyer, subject to CPUC review of Buyer's administration of the Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

"Credit Rating" means with respect to any entity, on any Date of Determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S& P and/or Moody's or if such entity does not have a unsecured, senior long-term debt rating, then the rating assigned to such entity as its "issuer rating" by S&P and/or Moody's.

"Critical Milestones" has the meaning set forth in Section 11.2(c).

"Cure" has the meaning set forth in Section 8.3(a).

"Current MIV" is an amount as defined in Section 8.2 and calculated in accordance with Appendix VI.

"Date of Determination" shall be any Business Day on or after the Initial Delivery Date on which the Collateral Threshold Amount is determined for Seller and Buyer.

"Defaulting Party" has the meaning set forth in Section 5.1.

"Delay Damages" equals up to \$45,626.75 calculated as the sum of (1) for each Summer Month, the product of \$250 multiplied by the number of days in such month and (2) for each Non-Summer Month, the product of \$62.25 multiplied by the number of days in such month, calculated as set forth in Section 11.4; provided, however, that if the first 30 days of Delay occur during a Summer Month, the actual Delay Damages for that first 30 day period shall be the product of \$125 multiplied by the number of days, up to but not exceeding 30 days, and multiplied by the Maximum Contract Capacity during a Summer Month, as set forth in Section 11.4.

"Delivery Date Security" means an amount posted by the Seller for the benefit of Buyer in the form of a Letter of Credit in an amount equal to (1) at all times after the receipt of the CPUC Approval and prior to the occurrence of the events set forth in clause 2 of this definition, \$15,000 multiplied by the Maximum Contract Capacity and (2) at all times following the earlier of (i) receipt of final and nonappealable order of the CEC, without conditions unacceptable to the Parties, or either of them, approving the Project or (ii) the date 23 full calendar months following the Permitting Application Milestone, \$60,626.75 (determined as the sum of \$15,000 and the Delay Damages) multiplied by the Maximum Contract Capacity; provided that Seller may use a guaranty in a form and amount acceptable to Buyer from a creditworthy guarantor as determined by Buyer in its sole discretion, to satisfy a portion of Seller's Delivery Date Security described in section (ii) of this definition.

“Deposit Account Agreement” means an agreement in the form set forth in Appendix VIII establishing an appropriate account for holding cash collateral.

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

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

“Direct Claim” means any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim.

“Disclosing Party” has the meaning set forth in Section 10.7.

“Disclosure Order” has the meaning set forth in Section 10.7.

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

“Effective Date” is a date on which the conditions precedent to the full effectiveness of this Agreement occur as set forth in Article 11.1.

“Electrical Delivery Point” means the 230kV bus at PG&E’s Panoche Substation in Firebaugh, California, within NP15 on the CAISO-controlled grid.

“Electrical Interconnection Facilities” means the apparatus required to safely and reliably interconnect with and deliver the Products at the Maximum Contract Capacity to the Electrical Delivery Point by means of either the PG&E electric system or the CAISO Grid, including connection, transformation, switching, metering, communications, control, and safety equipment, such as equipment required to protect (a) the PG&E electric system (or other systems to which the PG&E electric system is connected, including the CAISO Grid) and PG&E’s customers from faults occurring at the Units, and (b) the Units from faults occurring on the PG&E electric system or on the systems of others to which the PG&E electric system is directly or indirectly connected.

“Emergency” means an actual or imminent condition or situation, which jeopardizes PG&E electric system integrity or the integrity of other systems to which PG&E is connected, as determined by PG&E in its sole discretion, or any condition so defined and declared by the CAISO.

“Energy” means electric energy, measured in MWhs and net of auxiliary loads and station electrical uses (unless otherwise specified).

“Engine Hour” as applied to a Unit, is an hour or partial hour in which the Unit was operated at full or partial load, measured from the time of Start-Up until Shut-Down is completed.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, directly attributable to the generation from the Units. Environmental Attributes include: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate

Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include 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 kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Units, (ii) production tax credits associated with the construction or operation of the energy projects 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 pre-existing pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Units for compliance with local, state, or federal operating and/or air quality permits. If Seller's Units are a biomass or landfill gas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net greenhouse gases associated with the production of electricity from such facility.

"EPC Contract" means the Seller's engineering, procurement and construction contract with the EPC Contractor.

"EPC Contractor" means the engineering, procurement and construction contractor.

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

"Event of Default" means a Seller's Event of Default and/or a Party's Event of Default.

"Exceptional Case Agreement" means an agreement between PG&E, as the Seller's LDC, and Seller (or its representative) for Gas LDC service that contains negotiated terms and conditions approved by the CPUC, such as may be done when the costs of a gas service connection, including reinforcement, for a specific customer's project exceeds the revenue expected to be collected from the customer under the LDC's standard tariff.

"Excused Events" means (i) Buyer's failure to cause Gas to be available to Seller at the Gas Delivery Point, (ii) the Buyer's failure to take energy from and after the Electrical Delivery Point, and (iii) an event of Force Majeure that is claimed by Buyer.

"Excused Hours" means the number of hours equal to (i) the maximum number of Scheduled Maintenance Outage hours permitted pursuant to Section 3.10(e)(ii) beginning with the Initial Delivery Date and continuing through the date on which the determination is made less the number of hours used for Scheduled Maintenance Outages or Force Majeure during such period; plus (ii), at Seller's option and upon Notice by Seller to Buyer, an additional number of "borrowed" hours to be designated by Seller that does not exceed a cumulative amount of 1000 hours per Force Majeure event nor, cumulatively, the number of hours for Schedule Maintenance Outages available under Section 3.10(e)(ii) remaining, as of the date of the Notice, in the lesser of

the five years following the date of the Notice or the remaining years of the Contract Term, provided that the number of hours permitted pursuant to Section 3.10(e)(ii) for Scheduled Maintenance Outages in each of the five calendar years following the date on which such Notice is received by Buyer shall be reduced by one-fifth of the total amount of "borrowed" hours as set forth in such Notice or if less than five years are remaining the Contract Term as of the date of such Notice, then by one divided by the remaining years in the Contract Term as of the date of the Notice.

"Execution Date" has the meaning ascribed in the first paragraph of the Agreement.

"Executive" has the meaning set forth in Section 12.2(a).

"Expected Initial Delivery Date" means August 1, 2009.

"Facility" means the generation facility described in Appendix II, consisting of one or more Units committed to Buyer and the Electrical Interconnection Facilities and the Gas Interconnection Facilities associated with the Units, and any and all other units (whether complete or under construction) which are owned, operated or controlled by Seller or any Affiliate of Seller and are located on the same Site or adjacent sites and/or use the same Electrical Interconnection Facilities and/or Gas Interconnection Facilities; provided that for purposes of Section 3.1(e), a "Facility" shall further include any electrical generating facilities that are deemed by any Governmental Authority to be part of the same facility or at the same location as the Units or that are directly or indirectly affected by the Facility at which the Units are located.

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

"Final Delivery Date" means the date on which all of the Units have become Commercially Operable.

"Fired Hour" as applied to a Unit, is an hour or partial hour in which the Unit was scheduled by Buyer to run to meet Scheduled Operations, measured from the time of Start-Up until Shut-Down is completed.

"Fixed O&M Rate" or "FOMR" has the meaning set forth in Section 4.3(a).

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

enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation, transportation accidents affecting delivery of equipment only if such accident occurs prior to the Commercial Operation Date, unavailability of fuel, power or raw materials if the cause thereof otherwise would qualify as a Force Majeure Event, and restraint by a court order or other Governmental Authority. Force Majeure Events shall not include (i) strikes not of a national scale, all strikes that affect only the Seller's EPC Contractor and/or a subcontractor on the Site and/or the Seller, whether or not of a national scale, and all other labor disputes (including collective bargaining disputes and lockouts), (ii) late delivery or breakage of equipment or materials (except to the extent due to a Force Majeure Event otherwise excusable hereunder), (iii) lack of funds or change in economic circumstance, (iv) shortage or unavailability of labor or climatic conditions (including severe or extreme weather that would not otherwise qualify as a Force Majeure Event) that are reasonably to be expected for the geographic area where the Site is located, (v) a failure of performance of any third party, including any party providing electric transmission service or natural gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above, (vi) failure to timely apply for or obtain Governmental Approvals or (vii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure Event as defined above).

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

“Fuel Manager Fee” has the meaning set forth in Section 3.3(e).

“Gains” means, with respect to any Party, an amount equal to the present value of the economic gain to it, if any (exclusive of Costs), for the remaining term of this Agreement following a termination of this Agreement, determined (i) in the case of Buyer as the Non-Defaulting Party as the present value over the remaining term of the difference between the payments which would have been payable under this Agreement and the payments payable under a reasonably available replacement contract having a term equal to the remaining term of this Agreement, or (ii) in the case of Seller as the Non-Defaulting Party, the present value over the remaining term of the difference between the payments payable under a reasonably available replacement contract having a term equal to the remaining term of this Agreement and the payments which would have been payable under this Agreement; provided that, in Appendix VI, “Gains” has the meaning set forth therein; provided further, that in no event shall either Party be required to enter into a replacement contract.

“Gas” means natural gas, which will be any mixture of hydrocarbons or of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.

“Gas Delivery Point” is the downstream flange of the Gas Meter Set.

“Gas Distribution Reimbursements” has the meaning set forth in Section 3.3(d).

“Gas Index Price, High” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through [www.platts.com](http://www.platts.com)), or its successor, in the table

entitled “Daily price survey” under the heading “Common High” for the applicable date of delivery for PG&E Citygate or in the event of a Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Index Price, Low” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through [www.platts.com](http://www.platts.com)), or its successor, in the table entitled “Daily price survey” under the heading “Common Low” for the applicable date of delivery for PG&E Citygate or in the event of a Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Index Price, Midpoint” means the daily index cost of Gas as published by Platt’s Gas Daily (in the Internet publication currently accessed through [www.platts.com](http://www.platts.com)), or its successor, in the table entitled “Daily price survey” under the heading “Midpoint” for the applicable date of delivery for PG&E Citygate or in the event of a Index Disruption Event, the applicable Gas trading point, to be designated.

“Gas Interconnection Facilities” means the apparatus between the Units and the outlet flange of the Gas Meter Set (owned by Seller) and from the downstream flange of the Gas Meter Set to the existing transmission or distribution system (owned by the interconnecting pipeline or LDC but constructed or improved for the purposes of serving the Units) required to safely and reliably deliver Gas in volumes and at pressures sufficient to permit the Units to operate at the Maximum Contract Capacity.

“Gas Meter” means the measurement device used by the interconnecting pipeline or LDC to measure Gas deliveries for purposes of billing.

“Gas Meter Set” means the Gas meter, service regulator, overpressure protection devices and all associated PG&E piping and fittings.

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

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

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

“Governmental Charges” has the meaning set forth in Section 9.2.

“Governmental Charges Payment” has the meaning set forth in Section 9.2.

“Green Tags” has the meaning ascribed in connection with the definition of “Environmental Attributes.”

“Guaranteed Heat Rate” has the meaning set forth in Section 4.2(a).

“Guaranteed Heat Rate Curve” has the meaning set forth in Section 4.2(a).

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls (“PCBs”), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Heat Rate Adjustment” or “HRA” has the meaning set forth in Section 4.2(b)(v).

“Heat Rate Degradation Factor” or “HDF” has the meaning set forth in Section 4.2(b)(iv).

“Higher Heating Value” or “HHV” means the total heat content, expressed in Btus per cubic foot (Btu/ft<sup>3</sup>), produced by the complete combustion of 1 cubic foot of natural gas at a temperature of 60° Fahrenheit with the natural gas free of water vapor and at a pressure of 14.73 pounds per square inch absolute with the products of combustion to be cooled to the initial temperature of the natural gas and the water formed by the combustion reaction condensed to the liquid state.

“Hot Start-Up” means a Start-Up that occurs 1 hours or less after a Shut-Down.

“Hot Scheduled Start-Up” means a Hot Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

“Imbalance Amount” has the meaning set forth in Section 3.3(f).

“Indemnifiable Loss” means any and all damages, claims, losses, liabilities, obligations, costs and expenses, including reasonable legal, accounting and other expenses, and the costs and expenses of any and all actions, suits, proceedings, demands (by any Person, including any Governmental Authority), assessments, judgments, settlements and compromises.

“Indemnitee” has the meaning set forth in Section 10.2(e).

“Indemnitor” has the meaning set forth in Section 10.2(e).

“Index Disruption Event” means an event which results in the unavailability of a Platts’ Gas Daily PG&E Citygate Midpoint, Common High or Common Low price for the applicable day (exclusive of days which are not customarily reported) including unavailability resulting from the following: (i) failure of Platts’ Gas Daily to announce or publish the PG&E Citygate midpoint price for the applicable day, (ii) the temporary or permanent discontinuance or unavailability of the Platts’ Gas Daily PG&E Citygate price index, (iii) the temporary or permanent suspension or discontinuance of Gas trading or reporting of Gas prices at the location identified as of the Execution Date as the PG&E Citygate, (iv) a material change in the content, composition or constitution of the Gas traded at the location identified as of the Execution Date as the PG&E Citygate, (v) a substantial reduction in the volume of reported trades at the PG&E Citygate, whether temporary or permanent, such that the reported price cannot reasonably be deemed a reliable indicator of the market price of Gas at that location for the applicable day. In the event of an Index Disruption Event the applicable Gas Index Price will be determined in accordance with the first of the following clauses as applies: (i) for a period of no more than two consecutive weeks, the Gas Index Price shall be the average of the comparable prices reported by Platt’s Gas Daily for Gas delivered at Topock and at Malin, plus the average of the cost of transportation at as available rates from Topock to PG&E Citygate and Malin to PG&E Citygate (if available), (ii)

in the event of a long-term or permanent disruption to the Platt's Gas Daily Index, such other index for daily Gas prices as the Parties agree has been commonly accepted in the industry as a leading price index for Gas trading in or around California, (iii) a methodology agreed to by the Parties' Authorized Representatives, (iv) by reference to an index price or methodology based on a reported index price that is determined by arbitration conducted in accordance with Article XIII to most closely approximate the pricing that would be expected if the Index Disruption Event had not occurred.

"Inflation Index" means the annual percentage change in the Consumer Price Index (CPI) published by the U.S. Bureau of Labor Statistics for All Urban Consumers; San Francisco-Oakland-San Jose; 1982-84=100, calculated using the most recent 12 calendar months of CPI data.

"Initial Base Capacity" or "Ci" has the meaning set forth in Section 4.2(b)(i).

"Initial Base Capacity Test" has the meaning set forth in Section 4.2(b)(i).

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

"Initial Delivery Date" is the date on which the Buyer's right to receive the Tolling Services and Products and the Seller's obligation to deliver the Tolling Services and Products upon dispatch by Buyer commence for at least one (1) Unit.

"Initial Guaranteed Heat Rates" has the meaning set forth in Section 4.2(b)(iii).

"Initial MIV" is an amount as defined in Section 8.2 and calculated in accordance with Appendix VI.

"Initial Negotiation End Date" has the meaning set forth in Section 12.2(a).

"Initial Offer Deposit" has the meaning set forth in the Recitals.

"Instructed Operations" means (i) an Operational Order, (ii) a mandatory direction of the CAISO or (iii) as required pursuant to its CAISO Participating Generator Agreement (explicitly incorporating Section 5 of the CAISO Tariff) to meet Emergencies and reliability needs including voltage support.

"Interest Rate" means the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

"ISO Conditions" means 59 degrees Fahrenheit and 60% relative humidity and the associated Site standard barometric pressure at the Site elevation of 372 feet above mean sea level.

"July Design Capacity" means Design Capacity as adjusted to Peak July Conditions.

"Law" means any statute, law, treaty, rule, regulation, ordinance, code, Permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction,

including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which become effective during the Contract Term; or any binding interpretation of the foregoing.

“Letter(s) of Credit” shall mean one or more irrevocable, standby letters of credit in the form of Appendix V issued by a U.S. commercial bank (or a foreign bank with a U.S. branch acceptable to the Buyer, in its sole discretion) having total assets of at least \$10 billion and a senior unsecured long term debt rating of no lower than A2 from Moody’s or A from S&P.

“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), for the remaining term of this Agreement following a termination of this Agreement, determined(i) in the case of Seller as the Non-Defaulting Party as the present value over the remaining term of the difference between the payments which would have been payable under this Agreement and the payments payable under a reasonably available replacement contract having a term equal to the remaining term of this Agreement, or (ii) in the case of Buyer as the Non-Defaulting Party, the present value over the remaining term of the difference between the payments payable under a reasonably available replacement contract having a term equal to the remaining term of this Agreement and the payments which would have been payable under this Agreement; provided that, in Appendix VI, “Losses” has the meaning set forth therein; provided further, that in no event shall either Party be required to enter into a replacement contract.

“LDC” means local distribution company, a distributor of Gas for consumption.

“Manager” has the meaning set forth in Section 12.2(a).

“Mark to Market Value” is an amount as defined in Section 8.2 and calculated in accordance with Appendix VI.

“Maximum Contract Capacity” shall mean, for each Unit, the greatest Contract Capacity committed to Buyer by Seller from the Unit for any month during the Service Term.

“Mechanical Completion” means, as to a Unit, when, except for minor items of work that would not affect the safety and/or performance or operation of the Facility such as painting, landscaping and so forth, (a) all materials and equipment required to be installed by the EPC Contractor for the Unit have been installed, calibrated, loop checked and checked for alignment, lubrication, rotation and hydrostatic and pneumatic pressure integrity; (b) all systems required to be installed by the EPC Contractor have been installed and tested at significant loads; (c) such systems have been flushed and cleaned out as necessary; (d) all such equipment and systems have been fully operated in a safe and prudent manner at nominal ratings and have been installed in a manner that does not (i) void any subcontractor or vendor equipment, system or other warranties or (ii) violate any Governmental Approvals; and (e) all systems required to be installed by the EPC Contractor and necessary for power generation are ready to commence testing and operations, the distributed control system for the Facility is operational and the continuous emissions monitoring system has been installed.

“Milestone” has the meaning set forth in Appendix VII, Section 1.0.

“Monthly Construction Progress Report” means the report similar in form and content attached hereto as Appendix VII.

“Monthly Contract Capacity” or “MCC” means, for a Unit, the maximum amount of Capacity from the Unit that Seller has committed to sell to Buyer during such month. Prior to the Initial Delivery Date, the Monthly Contract Capacity for a Unit shall be equal to the Contract Capacity that is applicable in such month as set forth in Appendix II. On and after the Initial Delivery Date, the Monthly Contract Capacity for each Unit shall be established pursuant to Section 3.13(d).

“Monthly Fixed Payment” or “MFP” has the meaning set forth in Section 4.3(b).

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

“Monthly Variable Payment” or “MVP” has the meaning set forth in Section 4.3(b).

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

“MW” means megawatts.

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

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

“Non-Summer Months” means the calendar months of January, February, March, April, May, October, November and December.

“Notice” means a written communication which is delivered in the manner required by Section 13.1, as applicable to that communication.

“Notice of Claim” has the meaning set forth in Section 10.2(c).

“Notify” means to provide a Notice.

“Offer Deposit” is an amount posted by Seller in accordance with Section 11.1.

“Operational Limitations” of a Unit are the parameters set forth in Appendix II, describing the physical capabilities of the Unit, including the time required for Start-Up, the limitation on the number of Scheduled Start-Ups per Contract Year and the minimum operating limits for the Unit.

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

“Operating Procedures” has the meaning set forth in Section 3.14.

“Other Products” shall mean, for each Unit, (1) all Ancillary Services that a Unit is capable of producing; (2) all Environmental Attributes and Green Tags; (3) rights associated with Resource Adequacy Requirements; and (4) all products or services similar to the foregoing which can be produced by or are associated with the Capacity of the Unit.

“Outage” means the partial or full unavailability or inability of a Unit to operate at 100% of its Monthly Contract Capacity due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure, including any derating or inability to produce a Product (other than as disclosed in Appendix II as an Operational Limitation).

“Outage/Availability Notification Form” means the notice form attached to Appendix III. (Buyer reserves the right to revise or change the form upon written notice to Seller).

“Party’s Event of Default” has the meaning set forth in Section 5.1(b).

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

“Peak July Conditions” means the ambient conditions (temperature and humidity for the Site) based on the average of the monthly maximum peak temperatures (106.4 degrees Fahrenheit) and corresponding humidity conditions (15.7%) of the 10 years preceding the Execution Date for the month of July as provided by the National Climatic Data Center (“NCDC”) at <http://www.ncdc.noaa.gov/servlets/ULCD>. Data from the NCDC must be for a geographically nearby weather station that approximates the conditions at the Site. The weather station to be used with respect to the Units is Fresno Yosemite International Airport.

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

“Permitting Application Milestone” has the meaning set forth in Section 11.2(b).

“Permitting Milestone” has the meaning set forth in Section 11.2(b).

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

“PG&E” means Pacific Gas and Electric Company.

“PG&E Transmission” means PG&E in its capacity as a provider of electric transmission, Gas transportation or LDC services, including matters related to interconnection for such services.

“Posting Party” has the meaning set forth in Section 8.1(a).

“Pro Rata Capacity Adjustment” shall mean, for the Facility, the Maximum Contract Capacity committed to Buyer by Seller from the Facility for any month during the Services Term, multiplied by a fraction the numerator of which is the number of Units that are yet to be become Commercially Operable and the denominator is four.

“Product” shall mean each of Energy, Capacity and, to the extent applicable, each Other Product, as defined herein.

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

“Qualified Institution” means a commercial bank or trust company organized under the Laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) “A-” by S&P and “A3” by Moody’s, if such entity is rated by both S&P and Moody’s or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, and (ii) having a capital and surplus of at least \$1,000,000,000.

“Qualifying Facility” has the meaning set forth in 18 C.F.R. 292.101(b)(1).

“Recording” has the meaning set forth in Section 1.3.

“Regulatory Disclosures” has the meaning set forth in Section 10.7.

“Referral Date” has the meaning set forth in Section 12.2(a).

“Reliability Organization” means an “Electricity Reliability Organization” as defined in Section 215(a)(2) of the FPA or a “regional entity” as defined in Section 215(a)(7) of the FPA.

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

“RMR” means Reliability Must Run.

“Scheduled Availability Notices” has the meaning set forth in Section 3.5(b)(i).

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

“Scheduled Maintenance” means removing the equipment, or any portion thereof, from service availability, in whole or in part, for inspection and/or general overhaul of one or more major equipment groups of the type that is (i) necessary to reliably maintain the Units, (ii) cannot be reasonably conducted during Unit operations, (iii) causes the available Capacity to be reduced to less than 100% of the Monthly Contract Capacity (as applicable for such month) and (iv) has been scheduled and Noticed in accordance with the requirements of Section 3.10(b) through 3.10(f).

“Scheduled Maintenance Outage” is the period in which Scheduled Maintenance is performed provided that only a period which has been Noticed and is otherwise in accordance with Section 3.10(b) through 3.10(f) shall be considered a Scheduled Maintenance Outage. A Scheduled Maintenance Outage may be a CAISO Maintenance Outage, but not all CAISO Maintenance Outages shall be deemed to be Scheduled Maintenance Outages. A CAISO Maintenance Outage that is not also a Scheduled Maintenance Outage shall be a Forced Outage.

“Scheduled Operations” means operation of a Unit as required to satisfy Buyer’s Schedule or Instructed Operations.

“Scheduled Shut-Down” means a Shut-Down required by Scheduled Operations. Cessation of operations due to Outages or an action of Seller that is not required for Scheduled Operations is not a Scheduled Shut-Down.

“Scheduled Start-Up” means a Start-Up required for Scheduled Operations following a Scheduled Shut-Down. “Scheduled Start-Up” includes a Hot Scheduled Start-Up, Warm Scheduled Start-Up or Cold Scheduled Start-Up.

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, including Sections 2.2.3, 2.2.4, and 2.5.6 of the CAISO Tariff, for the purposes of undertaking the functions specified in Section 2.2.6, “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff.

“Seasonal Base Capacity Test” has the meaning set forth in Section 4.2(b)(ii).

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

“Secured Party” has the meaning set forth in Section 8.1(a).

“Seller Group” has the meaning set forth in Section 10.2(b).

“Seller’s Capacity Test” has the meaning set forth in Section 3.13 (d)(iv).

“Seller’s Collateral Threshold Amount” has the meaning set forth in Section 8.2 (a).

“Seller’s Deviation” has the meaning set forth in Section 3.5(d).

“Seller’s Event of Default” has the meaning set forth in Section 5.1(a).

“Seller’s Guarantor” has the meaning set forth in Section 8.2(a)(ii).

“Seller’s Guaranty” is a guarantee of payment from Seller’s Guarantor for the benefit of Buyer in the amount specified in Section 8.2(a)(ii) and otherwise in form and substance acceptable to Buyer, in its reasonable discretion.

“Services Term” has the meaning set forth in Section 2.1.

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

“Site” means the real property on which the Facility is located, as identified in Appendix II, and described as a 12 acre portion of Assessor’s Parcel Number 027-060-78S on the southern side of Panoche Road, contiguous with and to the west of the PG&E substation.

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

“Start-Up” means the action of bringing a Unit from non-operation to operation at the minimum load specified in Appendix II. “Start-Up” includes a Hot Start-Up, Warm Start-Up or Cold Start-Up.

“Start-Up Adjustment” has the meaning set forth in Section 4.5(a).

“Start-Up Charge” has the meaning set forth in Section 4.4.

“Start-Up Factor” has the meaning set forth in Section 4.5(a).

“Start-Up Factor Discount” has the meaning set forth in Section 4.5(b).

“Successful Start-Up” means that the Unit has completed Start-Up no later than 30 minutes after the time required by Buyer’s Schedule.

“Summer Month” means the calendar months of June, July, August and September.

“Termination Payment” has the meaning used in Section 5.2.

“Test Procedures” has the meaning set forth in Section 3.13(b).

“Tested Base Capacity” has the meaning set forth in Section 4.2(b)(ii).

“Tested Capacity” has the meaning set forth in Section 3.13(b)(iv).

“Third Party” means a Person that is not a member of the Buyer Group or the Seller Group.

“Third Party Claim” means a claim, suit or similar demand by a Third Party.

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

“Tolling Services” means the process whereby Buyer delivers Gas to the Units at the Gas Delivery Point, Seller accepts such Gas and utilizes it to operate its Units to convert the Gas into Energy or Ancillary Services (as required in accordance with the terms of the Agreement) and the converted Gas is redelivered to Buyer in the form of Energy or Ancillary Services at the Electrical Delivery Point.

“Transmission Upgrades” are any additions and/or reinforcements to an electric transmission system that are required as a result of the interconnection of the Units to that transmission system or an interconnected transmission system and/or to permit delivery of the Products into the electric transmission system at the Electrical Delivery Point safely and reliably, in the quantities and at the times at which delivery of such Products may be required under this Agreement, up to and including quantities that can be produced utilizing all of the Maximum Contract Capacity, including upgrades to the network at points beyond the Electrical Delivery Point.

“Unit” means a gas turbine generation unit described in Appendix II from which Seller has agreed to provide Products to Buyer pursuant to this Agreement. For avoidance of doubt, there are four Units at this Facility that are committed to Buyer pursuant to this Agreement.

“Variable O&M Rate” or “VOMR” has the meaning set forth in Section 4.3(a).

“Warm Start-Up” means a Start-Up that occurs 1 to 4 hours after a Shut-Down.

“Warm Scheduled Start-Up” means a Warm Start-Up required for Scheduled Operations following a Scheduled Shut-Down.

“WECC” means the Western Electricity Coordinating Council.

“Winter Months” means the calendar months of December and January.

“Work” means with reference to a Person, hereinafter “You,” (a) work or operations performed by you or on your behalf; and (b) materials, parts or equipment furnished in connection with such work or operations; including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and (ii) the providing of or failure to provide warnings or instructions.

## Appendix II - Description of Facility, Units and Operational Limitations

### FACILITY DESCRIPTION

Facility name Panoche Energy Center, LLC

Facility Site name: Panoche

Facility physical address: West Panoche Road, Firebaugh, CA

Total number of units at the facility (committed and not committed to Buyer) 4

Number of Units at the Facility committed to Buyer 4

### UNITS DESCRIPTION

Units (for each unit committed to Buyer):

Unit name: Panoche No.

Technology type: Simple Cycle Gas Turbine

Specific Unit description: GE LMS100

Design capacity: 99.654 MW

Maximum contract capacity: 100.240 MW

CAISO resource ID: \_\_\_\_\_

Other unit(s) (not committed to Buyer) that are located at the Facility or that utilize the same Electrical Interconnection Facilities or same Gas Interconnection Facilities as any Unit:

Unit name: \_\_\_\_\_

Technology type: \_\_\_\_\_

Specific unit description: \_\_\_\_\_

Design capacity: \_\_\_\_\_

Maximum contract capacity: \_\_\_\_\_

CAISO resource ID: \_\_\_\_\_

Interconnection. The Electrical Delivery Point for the Units with the following CAISO resource ID(s) \_\_\_\_\_ is described as follows:

Distribution Area: Fresno

Congestion Zone: NP15

Demand Zone: PGE3

Load Group: to be determined

Delivery Point: 230kV bus at PG&E's Panoche Substation in Firebaugh, California

Delivery Point Address: West Panoche Road, Firebaugh, California

Additional Information: \_\_\_\_\_

The Electrical Delivery Point for the units (not committed to Buyer) with the following CAISO resource ID(s) \_\_\_\_\_ is described as follows:

Delivery Point: \_\_\_\_\_

Delivery Point Address: \_\_\_\_\_

Additional Information: \_\_\_\_\_

The Gas Delivery Point for the Units (committed to Buyer) with the following CAISO resource ID(s) \_\_\_\_\_ is described as follows:

Delivery Point: \_\_\_\_\_

Delivery Point Address: \_\_\_\_\_

Additional Information: \_\_\_\_\_

The Gas Delivery Point for the units (not committed to Buyer) with the following CAISO resource ID(s) \_\_\_\_\_ is described as follows:

Delivery Point: \_\_\_\_\_

Delivery Point Address: \_\_\_\_\_

Additional Information: \_\_\_\_\_

Operating Parameters:

Operating Hour Limits per Unit per Year, pursuant to Section 11.3(a)(v) –

- Q1 – 1100 hours
- Q2 – 1100 hours
- Q3 – 1600 hours
- Q4 – 1200 hours

Scheduled Start-Ups per Year, pursuant to Section 11.3(a)(v) – 365 per Unit

Start-Up time from cold iron to full load power – 10 minutes or less

Gas requirements for Scheduled Start-Up and Shut Down – total of 81 MMBtu per Unit

Minimum Run Time – 1 hour

Minimum Down Time after Shut Down – 1 hour

Ramp rates – 10 MW per minute per Unit

Minimum loading per Unit – 50%, but subject to lower limit per operating permit pursuant to Section 11.3(a)(v)

Ancillary services –

Non-spinning Reserves - 100% of each Unit;

Spinning Reserves – at a minimum from 50% to 100% of each Unit, but subject a higher range based on Minimum loading;

Regulating Reserves – at a minimum from 50% to 100% of each Unit but subject a higher range based on Minimum loading

HEAT RATE

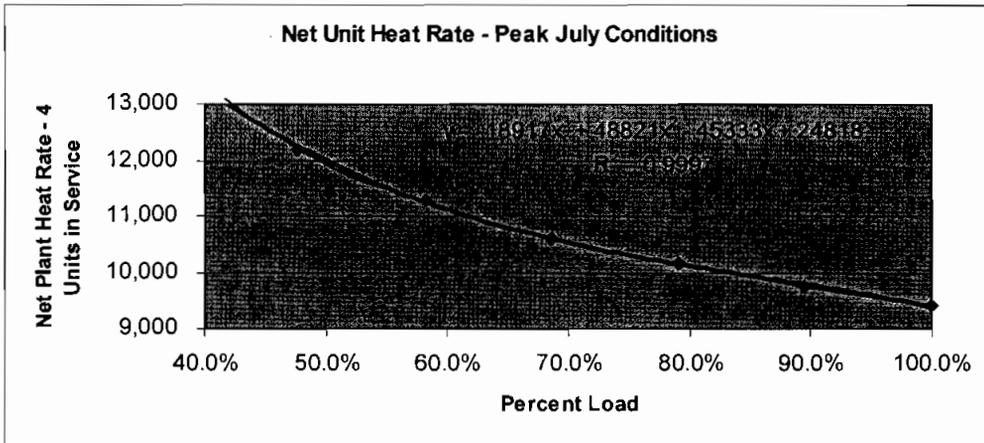
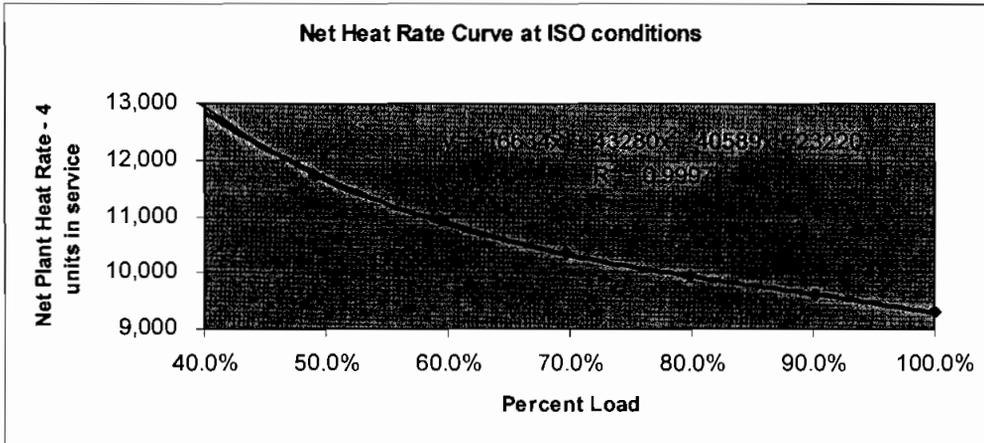
Guaranteed Net Electric Output and Guaranteed Heat Rate Points- The Guaranteed Net Electrical Output for the Unit(s) (kW) and the corresponding Guaranteed Heat Rates (MMBtu/MWh), based on Higher Heating Value (“HHV”) and based on Energy delivered at the Electrical Delivery Point at (i) ISO Conditions (which is the Design Capacity) and (ii) as adjusted for Peak July Conditions are as follows:

Loading	ISO Conditions	ISO Conditions	ISO Conditions	ISO Conditions	ISO Conditions	July Peak Conditions	July Peak Conditions
	Gross Electrical Output (kW)	Gross Unit Heat Rate (MMBtu/MWh)	Station Service (Auxiliary) Plant Loads (kW)	Guaranteed Net Electrical Output (kW)	Guaranteed Heat Rate (MMBtu/MWh)	Guaranteed Net Electrical Output (kW)	Guaranteed Heat Rate (MMBtu/MWh)
100% Base Load	104,108	8.893	4,454	99,654	9.290	95,238	9.402
90% Base Load	94,077	9.160	4,231	89,846	9.591	85,286	9.759
80% Base Load	83,629	9.450	4,009	79,620	9.926	75,320	10.137
75% Base Load	78,405	9.630	3,898	74,507	10.135	70,336	10.371
70% Base Load	73,180	9.809	3,786	69,394	10.344	65,353	10.604
60% Base Load	62,733	10.312	3,563	59,170	10.933	55,388	11.284
50% Base Load	52,287	10.959	3,341	48,946	11.707	45,424	12.196
At minimum load*	37,039	12.566	3,341	33,698	13.812	31,390	14.516

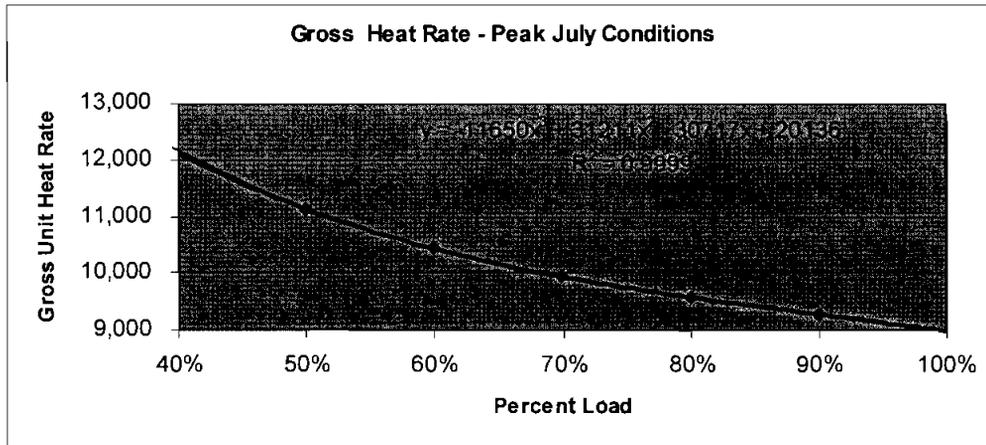
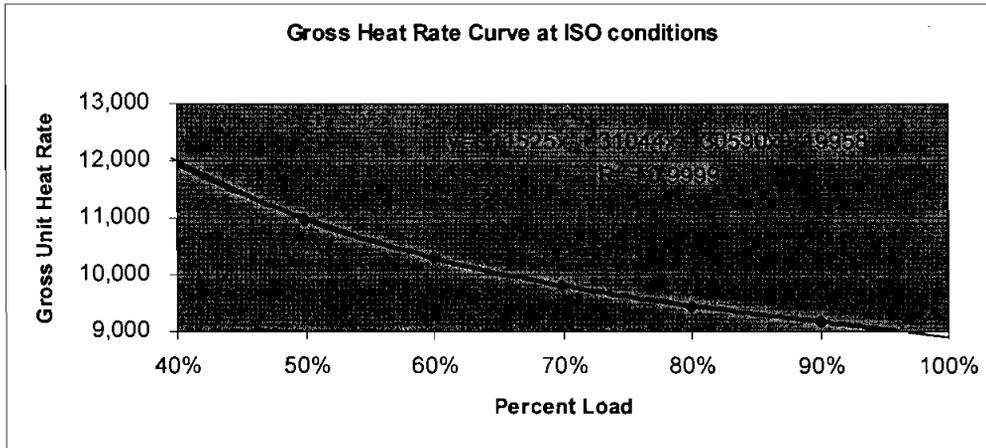
\*Subject to permitting requirements

Heat Rate Curve equation:

Net Unit Heat Rate with 4 Units in Service



Gross Unit Heat Rate with 1 Unit in Service



CONTRACT CAPACITY

Seller will provide to Buyer all the Capacity of the Units during:

- All months of the year
- June, July, August and September
- December and January

For the months selected above, as of the Execution Date the Contract Capacity for such month shall be the Design Capacity of each Unit, reasonably adjusted (if necessary due to the technology of the Units) for Average Monthly Conditions, resulting in the values set forth below:

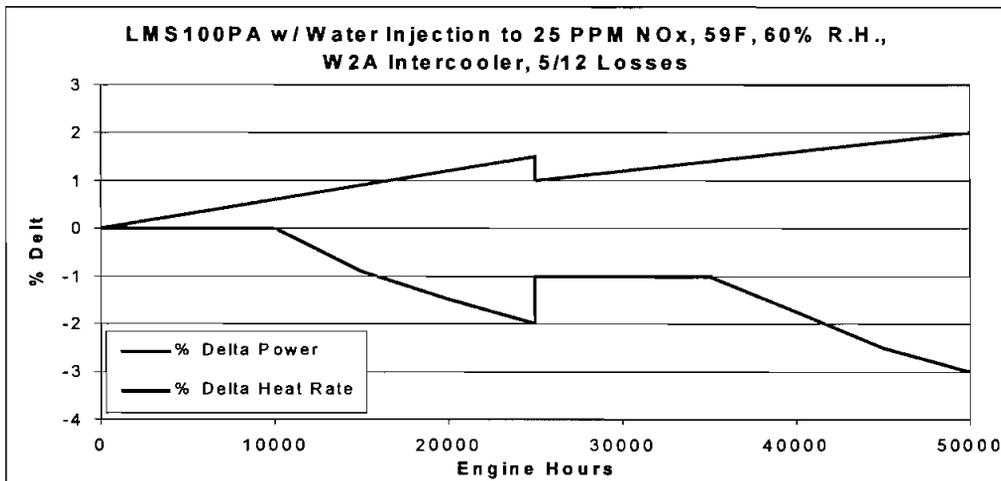
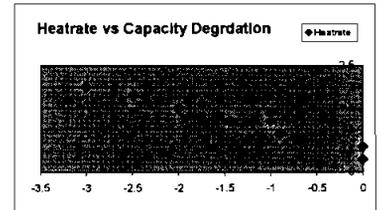
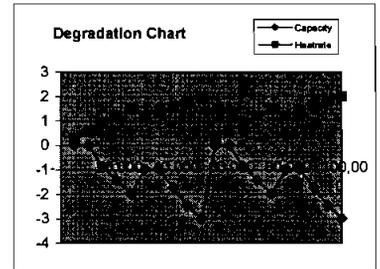
<b>Monthly Contract Capacity</b>				
<u>Month</u>	<u>Temperature (Dry Bulb – degrees F)</u>	<u>R.H. %</u>	<u>kW</u>	<u>kW/Unit</u>
January	47.6	81.0%	398,168	99,542
February	50.8	74.8%	398,744	99,686
March	57.4	65.0%	399,982	99,996
April	61.3	54.0%	400,628	100,157
May	70.3	44.7%	400,961	100,240
June	77.1	41.7%	398,801	99,700
July	82.3	39.5%	393,015	98,254
August	81.3	42.3%	392,898	98,224
September	76.8	43.8%	398,273	99,568
October	65.8	52.4%	398,915	99,729
November	54.3	70.7%	399,422	99,856
December	47.0	75.5%	397,960	99,490

## HEAT RATE DEGRADATION FACTOR

CAPACITY DEGRADATION				slope	intercept
x1, y1 =	10,000	-	-	-0.0001782	1.7821782
x2, y2 =	15,050	(0.90)			
x1, y1 =	15,050	(0.90)		-0.00011	0.7555
x2, y2 =	25,050	(2.00)			
x1, y1 =	25,050	(1.00)		0	-1
x2, y2 =	35,050	(1.00)			
x1, y1 =	35,050	(1.00)		-0.000149	4.22245
x2, y2 =	45,050	(2.49)			
x1, y1 =	45,050	(2.49)		-0.000103	2.1515152
x2, y2 =	50,000	(3.00)			

HEAT RATE DEGRADATION				slope	intercept
x1, y1 =	-	-	-	0.00006	1.11E-16
x2, y2 =	25,050	1.50			
x1, y1 =	25,050	1.00		4.0E-05	-0.004008
x2, y2 =	50,000	2.00			

DEGRADATION FACTORS			
Year	Hours	Capacity	Heatrate
2009	-	-	-
2010	5,000	0.000	0.300
2011	10,000	0.000	0.600
2012	15,000	-0.891	0.900
2013	20,000	-1.445	1.200
2014	25,000	-1.995	1.500
2015	30,000	-1.000	1.198
2016	35,000	-1.000	1.399
2017	40,000	-1.738	1.599
2018	45,000	-2.483	1.800
2019	50,000	-3.000	2.000
2020	55,000	0.000	0.300
2021	60,000	0.000	0.600
2022	65,000	-0.891	0.900
2023	70,000	-1.445	1.200
2024	75,000	-1.995	1.500
2025	80,000	-1.000	1.198
2026	85,000	-1.000	1.399
2027	90,000	-1.738	1.599
2028	95,000	-2.483	1.800
2029	100,000	-3.000	2.000



**NOTE:** This curve must be applied to the **GUARANTEE** power and heat rate, and is **NOT** meant to be a characteristic of an engine relative to its initial installation.

## APPENDIX III

### COUNTERPARTY NOTIFICATION REQUIREMENTS FOR OUTAGES, AVAILABILITY AND GENERATION SCHEDULES

#### A. AREA CONTROL CENTERS NOTIFICATION REQUIREMENTS

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

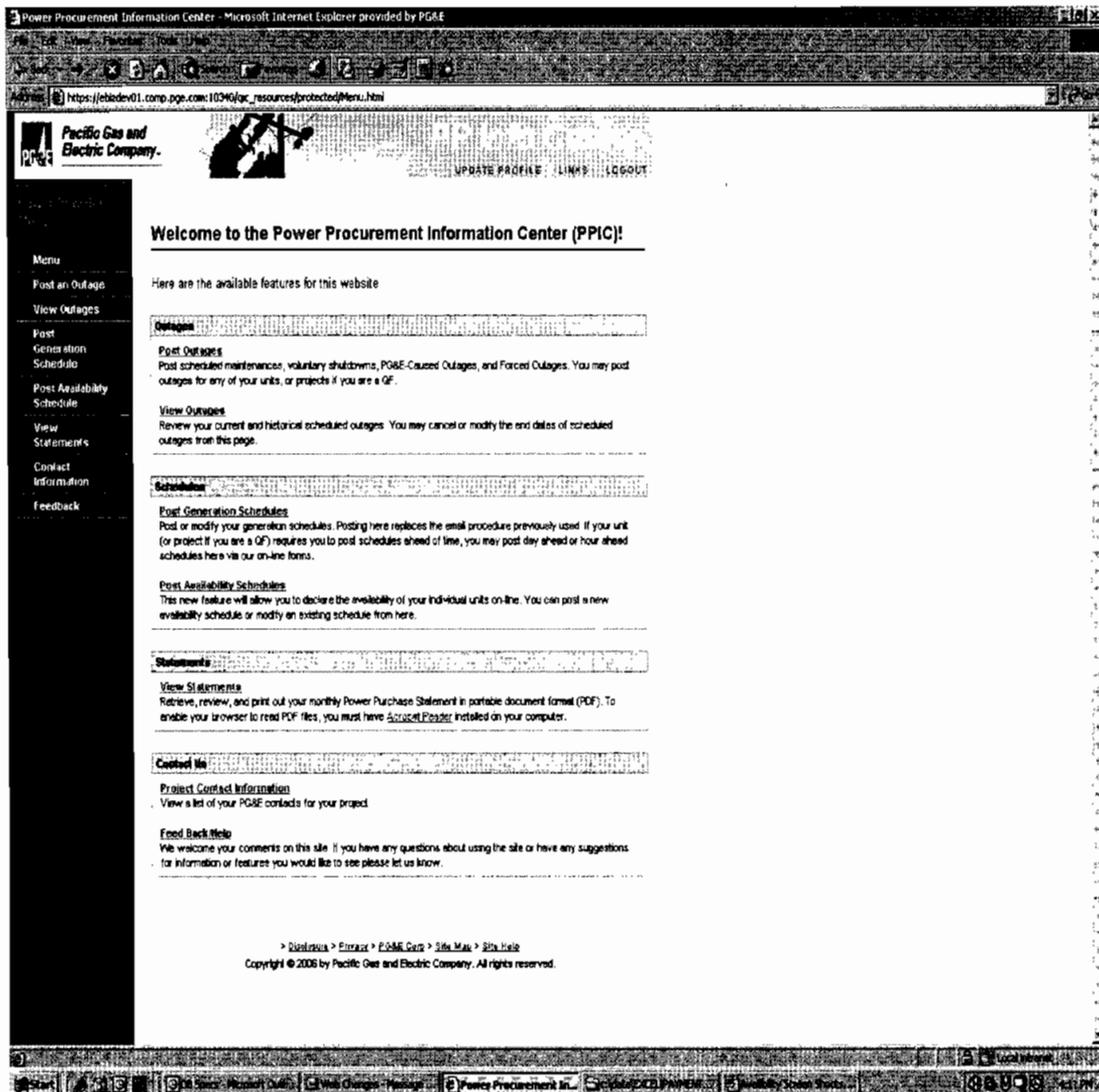
- Call for permission to parallel before any Start-Up at (559) 237-2952
- Call your Area Control Center again after Start-Up with parallel time.
- Call your Area Control Center after any separation and report separation time as well as date and time estimate for return to service.

#### B. COUNTERPARTY SETTLEMENTS NOTIFICATION REQUIREMENTS

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

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

1. Submit weekly or daily Generation and/or Availability Schedules by posting to the following secure internet site: [http://www.pge.com/suppliers\\_purchasing/power\\_procurement/index.html](http://www.pge.com/suppliers_purchasing/power_procurement/index.html). Contact PG&E's Bilateral Settlements' group to get permission and your password to access this web site. Once logged into the registered web site, select either the "Post Generation Schedules" or "Post Availability Schedules". This is the recommended method as it will allow your unit's schedules to be automatically uploaded if they meet contractual terms and conditions and to be viewable for further corrections if necessary. Note that this web site is also used for unit Changes in Availability and Outage Notifications. *(A full set of PG&E's screen shots to "Post Availability Schedules" is included at the bottom of this Appendix – see Attachment A.)*



2. If internet is unavailable, use either of the following methods:

- a. Email to [BilateralSchedules@pge.com](mailto:BilateralSchedules@pge.com). Using this method, data is to be submitted using an Excel spreadsheet in the following format: assigned log # of unit in first column; date and time (i.e., Hour Ending) in second column; and, generation or availability level in kW in third column. Contact your designated PG&E Settlement Analyst or the Manager of Bilateral Settlements if you encounter any issue. ***(This method should only be used if submission of data via web site is not working properly.)***
- b. Via Facsimile to (415) 973-2151, Attention: Manager of Bilateral Settlements. Using the same format as in (b), submit your unit schedules and be sure to include the name and phone number of the individual that is providing this information. ***(This method is discouraged as it involves additional steps, one of which may be manual data entry if the document cannot be scanned and read properly.)***

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

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

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

**C. SHORT-TERM ELECTRIC SUPPLY NOTIFICATION REQUIREMENTS**

1. ALWAYS notify appropriate PG&E Day-Ahead or Hour-Ahead schedulers of outages and schedule changes if options in part B above are not available (i.e., past the cut off time to submit Day-Ahead data or changes).
  - a. Day-Ahead Schedule (see table below) for the next day must be sent to Day-Ahead Trading Desk on a daily basis between the hours of 12:01 a.m. and 5 a.m.
  - b. Realtime curtailments, trips and any other schedule changes must be immediately conveyed to the PG&E Hour-Ahead Trading Desk via phone call.
  - c. In addition to sending any Outage/Availability Notification Form to Bilateral Settlements, that form should also be faxed to PG&E's Outage Coordinator:

Day-Ahead Trading Desk  
 Tel: 415-973-6222  
 Fax: 415-973-0400  
[daenergy@pge.com](mailto:daenergy@pge.com)

Hour-Ahead Trading Desk  
 Tel: 415-973-7900  
 Fax: 415-972-5340  
[rtenergy@pge.com](mailto:rtenergy@pge.com)

Outage Coordinator  
 Tel: 415-973-2038  
 Fax: 415-973-5333  
[res9@pge.com](mailto:res9@pge.com)

**DAY-AHEAD SCHEDULE**

**Unit/Facility Name:** \_\_\_\_\_ **PG&E Log #:** \_\_\_\_\_

**Name of Person Submitting Data:** \_\_\_\_\_ **Phone #:** \_\_\_\_\_

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

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

SEND VIA FAX  
To Pacific Gas & Electric Company

DATE: \_\_\_\_\_

Attention: Manager, Bilateral Settlements      FAX NUMBER: (415) 973-2151  
Attention: Outage Coordinator                      FAX NUMBER: (415) 973-5533

PG&E LOG NUMBER: \_\_\_\_\_

Unit/Facility Name: \_\_\_\_\_

**NOTIFICATION OF:**

**SCHEDULED OUTAGE / FORCED OUTAGE / DERATE / PROLONGED OUTAGE**

The Unit will shut down for SCHEDULED OUTAGE from:

\_\_\_\_\_ to \_\_\_\_\_

(Date and Time)

(Date and Time)

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

(Date and Time)

(Date and Time)

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

(Date and Time)

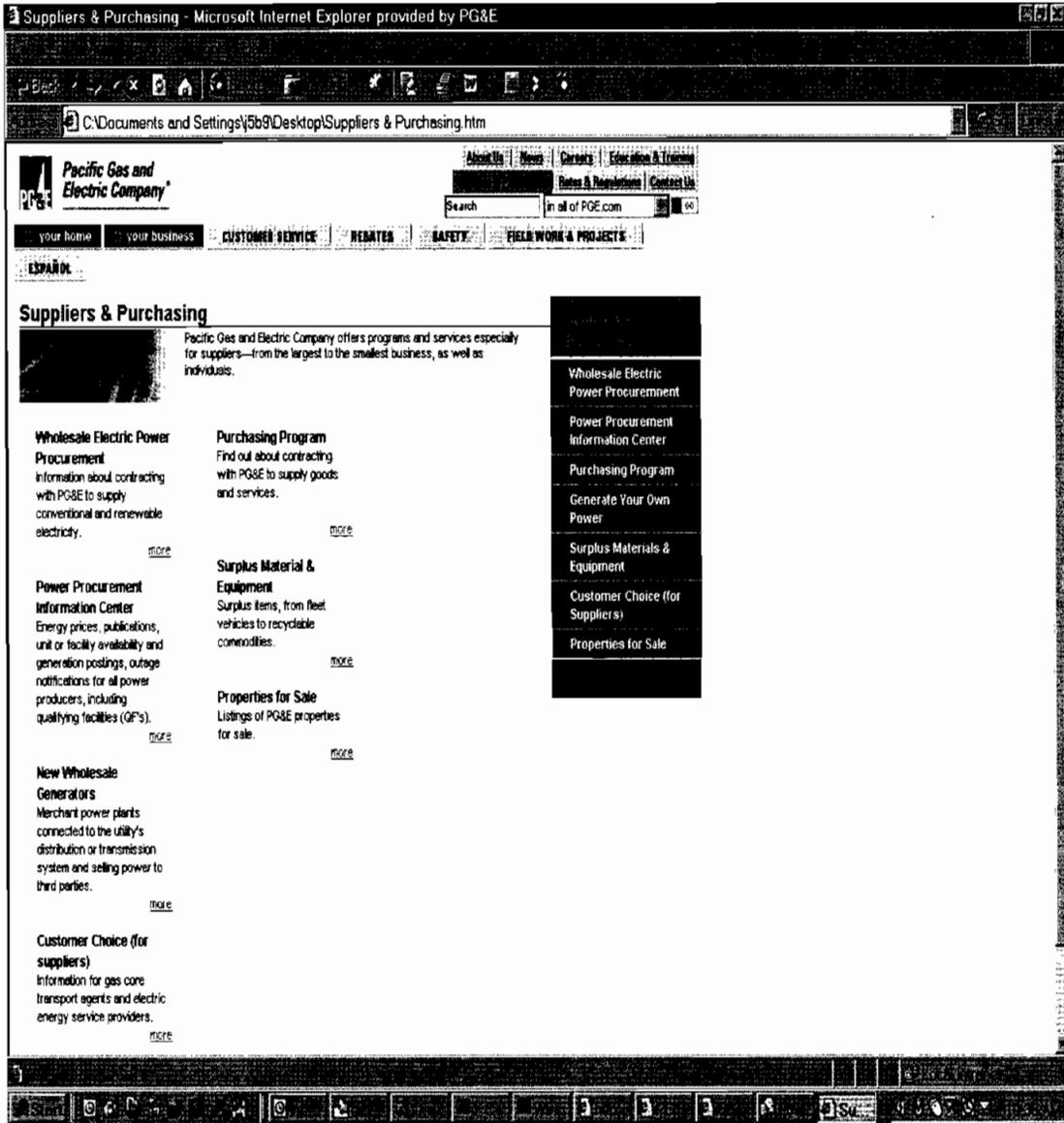
(Name of PG&E Individual)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Outage Notification Form submitted by: \_\_\_\_\_ Phone #: \_\_\_\_\_

(Print Name)



Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E

C:\Documents and Settings\5b9\Desktop\Qualifying Facilities Information Center.htm

**Pacific Gas and Electric Company**

About Us | News | Careers | Education & Training  
Pricing & Transactions | Contact Us

Search in all of PGE.com

your home | your business | CUSTOMER SERVICE | REGISTRY | SAFETY | FIELD WORK & PROJECTS

### Power Procurement Information Center

**Welcome to the Power Procurement Information Center**

If you are involved or interested in the power procurement energy business, you may find this Web site useful.

This site provides information on current energy prices and special programs offered for power providers including Qualifying Facilities. In addition, registered users with PG&E can use the interactive pages for posting:

- Unit Availability
- Unit Generation Schedules
- Unit Outages (Scheduled, voluntary, forced or PG&E caused)

**Latest News**

In addition to being able to notify PG&E of outages and scheduled maintenances, power providers will now also be able to post availability and generation schedules.

**Find out more about:**  
[Prices for Qualifying Facilities](#)  
[Cogeneration and Small Power Production Annual Report](#)  
[Who to contact](#)

**For registered Power Producers, including Qualifying Facilities:**  
[Power Procurement Information Center](#)

We hope this enhances our service to our energy suppliers. We welcome your [feedback](#) on how we can make this site more useful to you. Thanks for visiting!

[back to top](#)

> [Deregulate](#) > [Feedback](#) > [PG&E Corp](#) > [Site Map](#) > [Site Help](#) > [Claims](#)

Copyright © 2009 by Pacific Gas and Electric Company. All rights reserved.

Wholesale Electric Power Procurement

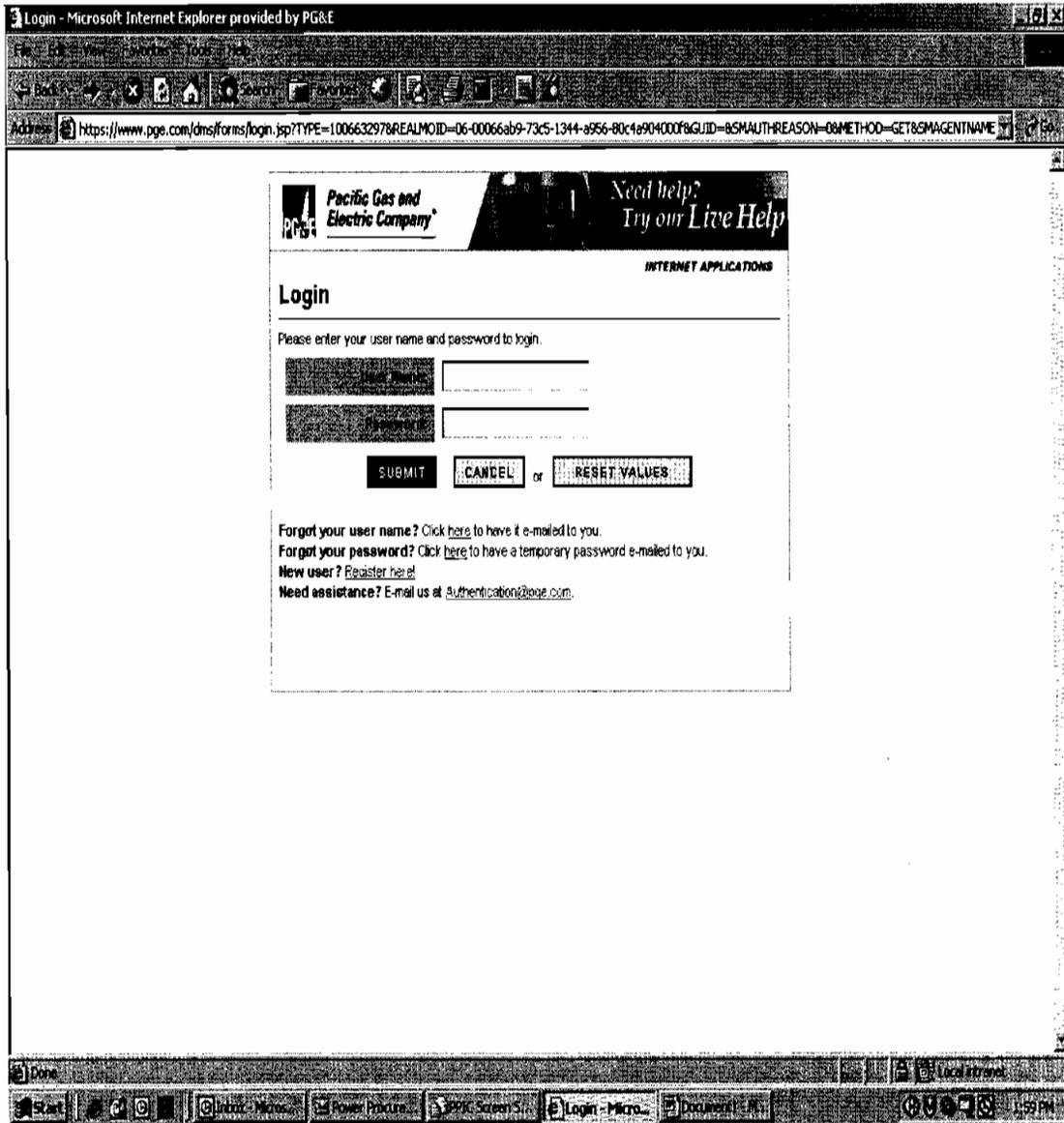
Purchasing Program

Generate Your Own Power

Surplus Materials & Equipment

Customer Choice (for Suppliers)

Properties for Sale



The screenshot shows a web browser window displaying the Power Procurement Information Center (PPIC) website. The browser's address bar shows the URL: [https://ebiddev01.com.pge.com:10340/pk\\_resources/projected/Menu.html](https://ebiddev01.com.pge.com:10340/pk_resources/projected/Menu.html). The website header includes the Pacific Gas and Electric Company logo and navigation links for "UPDATE PROFILE", "LINKS", and "LOGOUT".

The main content area is titled "Welcome to the Power Procurement Information Center (PPIC)!" and lists available features for the website:

- Outages:**
  - Post Outages:** Post scheduled maintenances, voluntary shutdowns, PGE-Caused Outages, and forced Outages. You may post outages for any of your units, or projects if you are a GF.
  - View Outages:** Review your current and historical scheduled outages. You may cancel or modify the end dates of scheduled outages from this page.
- Schedules:**
  - Post Generation Schedules:** Post or modify your generation schedules. Posting here replaces the email procedure previously used. If your unit (or project if you are a GF) requires you to post schedules ahead of time, you may post day ahead or hour ahead schedules here via our on-line forms.
  - Post Availability Schedules:** This new feature will allow you to declare the availability of your individual units on-line. You can post a new availability schedule or modify an existing schedule from here.
- Statements:**
  - View Statements:** Retrieve, review, and print out your monthly Power Purchase Statement in portable document format (PDF). To enable your browser to read PDF files, you must have [Adobe Reader](#) installed on your computer.
- Contact Us:**
  - Project Contact Information:** View a list of your PGE contacts for your project.
  - Feedback/Help:** We welcome your comments on this site. If you have any questions about using the site or have any suggestions for information or features you would like to see please let us know.

At the bottom of the page, there is a breadcrumb trail: [Home](#) > [Energy](#) > [PGE Corp](#) > [Site Map](#) > [Site Info](#). Below this is the copyright notice: "Copyright © 2008 by Pacific Gas and Electric Company. All rights reserved."

The screenshot shows a web browser window with the title "Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E". The address bar contains the URL "https://eb2dev01.comp.pge.com:10340/gc/OKInteractive.jsp". The page header features the Pacific Gas and Electric Company logo and navigation links for "UPDATE PROFILE", "LINKS", and "LOGOUT".

The main content area is titled "Availability Posting: Select Options" and "Step 1 of 4". It contains the following text:

You may post or modify availability data for your units from here. Posting or modifying here replaces the e-mail procedure you may currently be using.

**To post new availability data:** Select the project and the date range you wish to show availability for, then click on the 'CONTINUE' button. You can post availability for a maximum of 7 days at one time.

**To view and/or modify existing availability data:** Enter the project and date range you wish to modify, then click the 'CONTINUE' button. The data entry forms will be populated with the most current values submitted.

The deadline for posting or modifying availability data is 19 hours before the trade day (5am).

The form includes a "Select Project" dropdown menu with "PANOCH ENERGY CENTER" selected, and a "Select Schedule Dates" section with "From" and "To" date pickers. A "CONTINUE" button is located below the date pickers.

At the bottom of the page, there are navigation links: "Home", "PGE Data", "Site Map", and "Site Help". The footer text reads: "Copyright © 2006 by Pacific Gas and Electric Company. All rights reserved."

Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E

Address: https://hbiddev01.comp.pge.com:10340/gc/Interactive.jsp

**Pacific Gas and Electric Company.**

UPDATE PROFILE LINKS LOGOUT

**AVAILABILITY: Enter Data** Step 2 of 4

Below are forms for availability data starting with the date you entered in the previous step. You can post a maximum of 7 days at a time. If no data has been posted yet for a particular day, all the KW fields will be empty. You can use the 'FILL FORM' button to automatically insert the value entered in the 'Set Default KW' field into all hours for a particular day to save time (you can also edit individual hours after doing this). Enter your contact information and click on the 'CONTINUE' button at the bottom of the page when done.

**SATURDAY 01/26/2008**

Hour	KW	Hour	KW	Hour	KW	Hour	KW
1	50000	7	50000	13	50000	19	50000
2	50000	8	50000	14	50000	20	50000
3	50000	9	50000	15	50000	21	50000
4	50000	10	50000	16	50000	22	50000
5	50000	11	50000	17	50000	23	50000
6	50000	12	50000	18	50000	24	50000

Set Default KW: 50000

**SUNDAY 01/27/2008**

Hour	KW	Hour	KW	Hour	KW	Hour	KW
1	75000	7	75000	13	75000	19	75000
2	75000	8	75000	14	75000	20	75000
3	75000	9	75000	15	75000	21	75000
4	75000	10	75000	16	75000	22	75000
5	75000	11	75000	17	75000	23	75000
6	75000	12	75000	18	75000	24	75000

Set Default KW: 75000

**MONDAY 01/28/2008**

Hour	KW	Hour	KW	Hour	KW	Hour	KW
1	100000	7	100000	13	100000	19	100000

Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E

Address: https://ebadev01.comp.pge.com:10240/gc/Qc/interactive.jsp

4	10000	18	10000	18	10000	22	10000
6	10000	11	10000	17	10000	23	10000
6	10000	12	10000	18	10000	24	10000

Set Default kWh: 10000

**THURSDAY 02/02/2006**

Hour	MW	Hour	MW	Hour	MW	Hour	MW
1	15000	7	15000	13	15000	19	15000
2	15000	8	15000	14	15000	20	15000
3	15000	9	15000	15	15000	21	15000
4	15000	10	15000	16	15000	22	15000
5	15000	11	15000	17	15000	23	15000
6	15000	12	15000	18	15000	24	15000

Set Default kWh: 15000

**FRIDAY 02/03/2006**

Hour	MW	Hour	MW	Hour	MW	Hour	MW
1	20000	7	20000	13	20000	19	20000
2	20000	8	20000	14	20000	20	20000
3	20000	9	20000	15	20000	21	20000
4	20000	10	20000	16	20000	22	20000
5	20000	11	20000	17	20000	23	20000
6	20000	12	20000	18	20000	24	20000

Set Default kWh: 20000

Contact Name:

Contact E-mail Address:

[Home](#)
[Privacy](#)
[FAQ](#)
[Contact Us](#)
[Site Map](#)
[Site Help](#)  
 Copyright © 2006 by Pacific Gas and Electric Company. All rights reserved.

Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E

https://elabdev01.comp.pge.com:10240/pc/Kinteractive.jsp



UPDATE PROFILE LIBRS: E0800V

### AVAILABILITY: Confirmation Step 3 of 4

Please confirm the data entries below by clicking on the 'CONFIRM' button. Click on the 'EDIT' button if you wish to change any of the values for the schedule.

SATURDAY 01/26/2008			
Hour	KWh	Hour	KWh
1	50000	13	50000
2	50000	14	50000
3	50000	15	50000
4	50000	16	50000
5	50000	17	50000
6	50000	18	50000
7	50000	19	50000
8	50000	20	50000
9	50000	21	50000
10	50000	22	50000
11	50000	23	50000
12	50000	24	50000

SUNDAY 01/27/2008			
Hour	KWh	Hour	KWh
1	75000	13	75000
2	75000	14	75000
3	75000	15	75000
4	75000	16	75000
5	75000	17	75000
6	75000	18	75000
7	75000	19	75000
8	75000	20	75000
9	75000	21	75000
10	75000	22	75000
11	75000	23	75000
12	75000	24	75000

MONDAY 01/28/2008			
Hour	KWh	Hour	KWh
1	100000	13	100000
2	100000	14	100000
3	100000	15	100000
4	100000	16	100000
5	100000	17	100000
6	100000	18	100000
7	100000	19	100000
8	100000	20	100000
9	100000	21	100000
10	100000	22	100000
11	100000	23	100000
12	100000	24	100000

TUESDAY 01/29/2008			
Hour	KWh	Hour	KWh
1	0.0	13	0.0
2	0.0	14	0.0
3	0.0	15	0.0
4	0.0	16	0.0
5	0.0	17	0.0
6	0.0	18	0.0
7	0.0	19	0.0
8	0.0	20	0.0
9	0.0	21	0.0
10	0.0	22	0.0
11	0.0	23	0.0
12	0.0	24	0.0

WEDNESDAY 02/01/2008			
Hour	KWh	Hour	KWh
1	100000	13	100000
2	100000	14	100000
3	100000	15	100000
4	100000	16	100000
5	100000	17	100000

THURSDAY 02/02/2008			
Hour	KWh	Hour	KWh
1	150000	13	150000
2	150000	14	150000
3	150000	15	150000
4	150000	16	150000
5	150000	17	150000

Power Procurement Information Center - Microsoft Internet Explorer provided by PG&E

Address: https://hbxdev01.comp.pge.com:10340/pc/ICInterActive.jsp

Hour	MWh	Hour	MWh	Hour	MWh	Hour	MWh
1	100000	13	100000	1	0.0	13	0.0
2	100000	14	100000	2	0.0	14	0.0
3	100000	15	100000	3	0.0	15	0.0
4	100000	16	100000	4	0.0	16	0.0
5	100000	17	100000	5	0.0	17	0.0
6	100000	18	100000	6	0.0	18	0.0
7	100000	19	100000	7	0.0	19	0.0
8	100000	20	100000	8	0.0	20	0.0
9	100000	21	100000	9	0.0	21	0.0
10	100000	22	100000	10	0.0	22	0.0
11	100000	23	100000	11	0.0	23	0.0
12	100000	24	100000	12	0.0	24	0.0

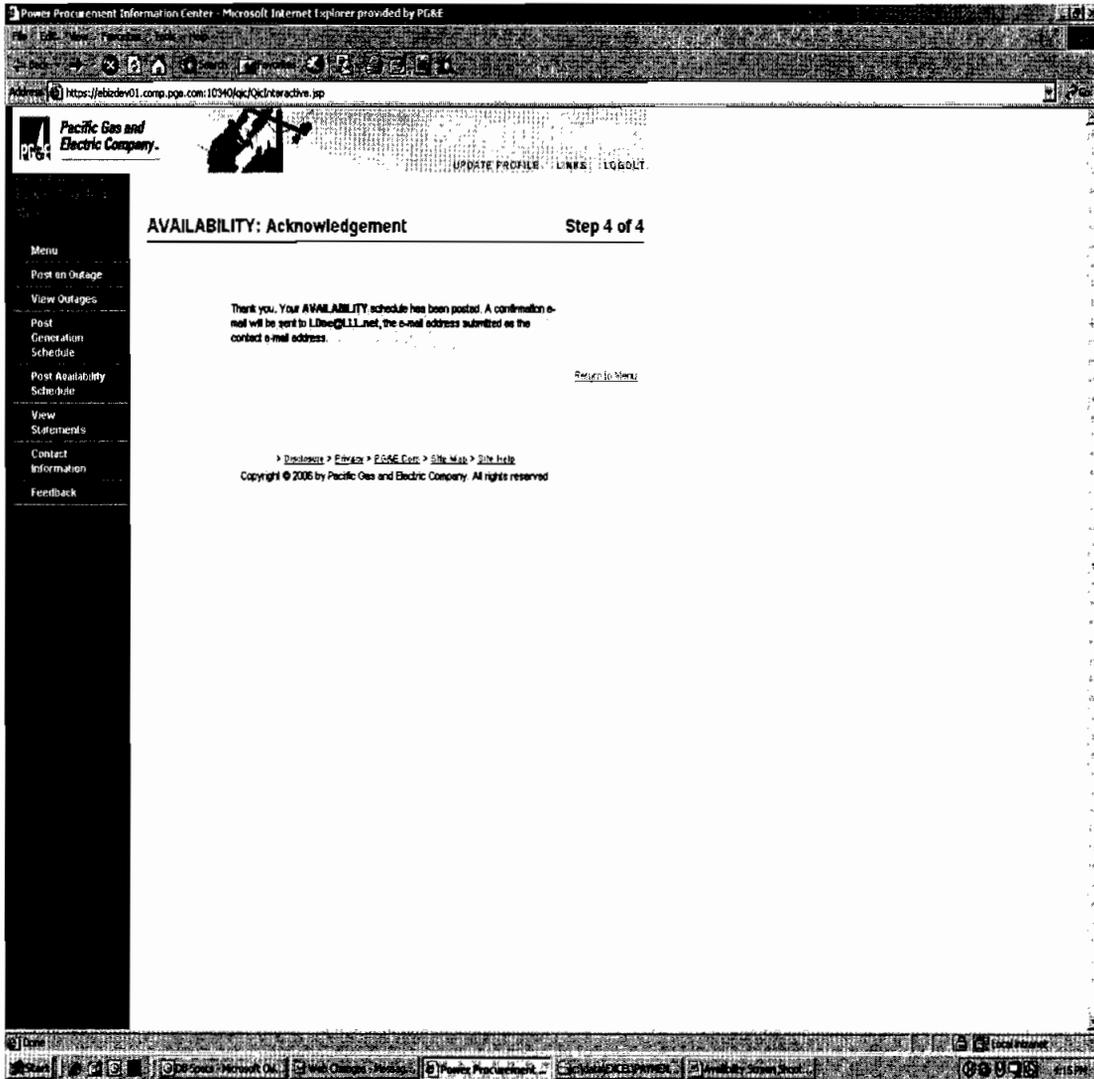
WEDNESDAY 02/12/2008				THURSDAY 02/13/2008			
Hour	MWh	Hour	MWh	Hour	MWh	Hour	MWh
1	100000	13	100000	1	150000	13	150000
2	100000	14	100000	2	150000	14	150000
3	100000	15	100000	3	150000	15	150000
4	100000	16	100000	4	150000	16	150000
5	100000	17	100000	5	150000	17	150000
6	100000	18	100000	6	150000	18	150000
7	100000	19	100000	7	150000	19	150000
8	100000	20	100000	8	150000	20	150000
9	100000	21	100000	9	150000	21	150000
10	100000	22	100000	10	150000	22	150000
11	100000	23	100000	11	150000	23	150000
12	100000	24	100000	12	150000	24	150000

FRIDAY 02/15/2008			
Hour	MWh	Hour	MWh
1	200000	13	200000
2	200000	14	200000
3	200000	15	200000
4	200000	16	200000
5	200000	17	200000
6	200000	18	200000
7	200000	19	200000
8	200000	20	200000
9	200000	21	200000
10	200000	22	200000
11	200000	23	200000
12	200000	24	200000

EDIT SUBMIT

> [Home](#) > [Enrize](#) > [EZME GUI](#) > [Site Map](#) > [Site Help](#)  
 Copyright © 2008 by Pacific Gas and Electric Company. All rights reserved.



**Appendix IV - Fixed Payment Allocations by Month**

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

**Appendix V - Form of Letter Of Credit**

**ISSUING BANK LETTERHEAD  
ADDRESS**

Date: \_\_\_\_\_

Irrevocable Standby Letter of Credit Number: \_\_\_\_\_

Beneficiary: [Pacific Gas and Electric Company

77 Beale Street, Mail Code B28L

San Francisco, CA 94105

Attn: Credit Risk Management Unit<sup>2</sup>

[Advising Bank, if applicable]

[Confirming Bank, if applicable]

Amount: USD [Amount]

US Dollars [Spell out amount in words]

Applicant: [Seller] \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

We hereby issue our Irrevocable Standby Letter of Credit at this office in your favor for the account of Applicant by sight payment against the following documents:

1. Your sight draft drawn on us marked "drawn under [Issuing Bank] [Letter of Credit Number] dated [Date]";

AND

2. Beneficiary's signed statement certifying:

"Applicant is in default under that certain Agreement dated \_\_\_ by and between Applicant and Beneficiary and the amount drawn hereunder is not greater than the amount due and owing to Beneficiary pursuant to that agreement."

OR

"This Letter of Credit will expire in thirty (30) calendar days or less and Applicant has not provided alternate security acceptable to the Beneficiary."

This Letter of Credit expires at our counters located at [INSERT ADDRESS] on [INSERT DATE], ("Expiration Date").

Special Conditions:

1. Partial drawing(s) are permitted.
2. All banking charges associated with this Letter of Credit are for the account of the Applicant.

<sup>2</sup> **If PG&E is the Posting Party, the information for Beneficiary and Applicant would be reversed.**

3. This Letter of Credit is not transferable.

We hereby engage with you that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored if drawn and presented for payment at any time before the close of business [INSERT TIME] at our counters located at [INSERT ADDRESS] on or before the Expiration Date or in the event of Force Majeure, as defined under Article 17 of the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500 ("UCP"), interrupting our business, within fifteen (15) days after resumption of our business, whichever is later.

Except as otherwise stated herein, this Letter of Credit is subject to and governed by the Laws of the State of New York.

If you have any questions regarding this Letter of Credit, please call [Telephone No.].

By: \_\_\_\_\_

Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## Appendix VI - Determination Of Mark To Market Value

### **Formula Definitions:**

$t_0$  – Effective Date

$t$  - ongoing Transaction date after Initial Delivery Date

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

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

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

$VOMR$ , - Variable O&M Rate (measured in \$/MWh) for year of current month set forth in Section 4.3(a) of the Agreement for month  $i$

$HR$  – the Initial Guaranteed Heat Rate at Base Load at ISO Conditions.

$HourlyVolume$  – Monthly Contract Capacity for the specific month

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

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

### **Calculation of “Mark-to-Market Value”:**

Mark-to-Market Value = Sum Over next twenty-four (24) or sixty (60) Months[Gains or Losses(i)]

Gains or Losses(i) =  $MIV(i,t) - MIV(i,t_0)$

Initial MIV calculation formula:

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

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

Current MIV calculation formula:

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

**Appendix VII - Form Of Monthly Construction Progress Report**

Monthly Progress Report  
of  
Panoche Energy Center, LLC  
("Seller")  
provided to  
Pacific Gas & Electric Company  
("Buyer")  
[Date]

## 1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the meaning ascribed to them in the Power Purchase and Sale Agreement by and between Panoche Energy Center, LLC ("Seller") and Pacific Gas & Electric Company dated \_\_\_\_\_, 2006 (the "Agreement").

Seller shall review the status of each Critical Milestone and other significant milestone as discussed herein ("Milestone") of the construction schedule (the "Schedule") for the Units and related project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the commercially reasonable actions which Seller intends to take to mitigate the effects of such matters. Such matters are comprised of the following:

- (i) Any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a Law, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Units or related project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Milestone.
- (ii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Milestone;
- (iii) Any material change in the Seller's schedule for initiating or completing any material aspect of Project;
- (iv) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

Seller shall complete, certify, and deliver this form of Monthly Construction Progress Report to [\_\_\_\_\_] together with all attachments and exhibits, with three (3) copies of this report delivered to [\_\_\_\_\_] and [\_\_\_\_\_].

**2.0 Executive Summary.**

**2.1 Major activities to be performed for each aspect of the Project during the current calendar month.**

Please provide a brief summary of the major activities to be performed for each of the following aspects of the Project during the current calendar month:

- 2.1.1 Design
- 2.1.2 Property Acquisition
- 2.1.3 Engineering
- 2.1.3 Major Equipment procurement
- 2.1.4 Construction and Interconnection
- 2.1.5 Milestone report
- 2.1.6 Governmental Approvals (See Section 3.0 below)
- 2.1.7 Startup Testing and Commissioning

**2.2 Major activities scheduled to be performed in the previous calendar month but not completed as scheduled.**

Please provide a brief summary of the major activities which were scheduled to be performed in the previous calendar month and their status, including those activities that were not completed as scheduled:

- 2.2.1 Design
- 2.2.2 Property Acquisition
- 2.2.3 Engineering
- 2.2.3 Major Equipment procurement
- 2.2.4 Construction and Interconnection
- 2.2.5 Milestone report
- 2.2.6 Governmental Approvals
- 2.2.7 Startup Testing and Commissioning

**3.0 Governmental Approvals.**

The following describes each of the major Governmental Approvals required for the construction of the Unit(s) and the status thereof:

**3.1 State and/or Federal Governmental Approvals.**

Please describe each of the major state and/or Federal Governmental Approvals to be obtained by Seller (or Seller’s contractor or construction engineer (the “EPC Contractor”) (including its subcontractors)) and the status thereof:

<u>DESCRIPTION</u>	<u>STATUS</u>

**3.2 Local and/or county Governmental Approvals.**

Please describe each of the major local and/or county Governmental Approvals to be obtained by Seller (or the EPC Contractor (including its subcontractors)) and the status of each.

<u>DESCRIPTION</u>	<u>STATUS</u>

**3.3. Governmental Approval activities that occurred during the previous calendar month.**

Please list all Governmental Approval activities that occurred during the previous calendar month.

**3.4 Governmental Approval activities occurring during the current calendar month.**

Please list all Governmental Approval activities that are expected to occur during the current calendar month.

**3.5 Governmental Approval Notices received from EPC Contractor.**

Please attach to this Monthly Progress Report copies of any notices related to Governmental Approval activities received from EPC Contractor (including its subcontractors) during the previous calendar month.

**4.0 Design Activities.**

**4.1 Table of design schedule to be followed by Seller and its subcontractors.**

The following table lists the design schedule to be followed by Seller and the EPC Contractor (including its subcontractors).

<b>ACTIVITY</b>	<b>EPC CONTRACTOR/ SUBCONTRACTOR</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>

**4.2 Design activities to be performed during the current calendar month.**

Please explain in detail the design activities that are expected to be performed during the current calendar month.

**4.3. Table of design activities completed during the previous calendar month.**

Please explain in detail the design activities that were completed during the previous calendar month.

**5.0 Property Acquisition Activities.**

**5.1 Table of property acquisition schedule to be followed by Seller.**

The following table lists the property acquisition schedule to be followed by Seller.

<b>ACTIVITY</b>	<b>SCHEDULED COMPLETION DATE</b>	<b>ACTUAL COMPLETION DATE</b>

**5.2 Property Acquisition activities to be performed during the current calendar month.**

Please explain in detail the property acquisition activities that are expected to be performed during the current calendar month.

**5.3. Table of property acquisition activities completed during the previous calendar month.**

Please explain in detail the property acquisition activities that were completed during the previous calendar month.

**6.0 Engineering Activities.**

**6.1 Table of engineering schedule to be followed by Seller and the EPC Contractor (including its subcontractors).**

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

**6.2 Engineering activities to be performed during the current calendar month.**

Please explain in detail the engineering activities that are expected to be performed during the current calendar month.

**6.3. Engineering activities completed during the previous calendar month.**

Please explain in detail the engineering activities that were completed during the previous calendar month.

**6.4. Three-month look-ahead engineering schedule.**

Please provide a three-month look ahead engineering schedule.

**7.0 Major Equipment Procurement.**

**7.1 Table of major equipment to be procured by Seller or the EPC Contractor (including its subcontractors).**

The following table lists major equipment to be procured by Seller or the EPC Contractor (including its subcontractors):

EQUIPMENT DESCRIPTION	MANUFACTURER	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLMENT DATE

**7.2 Major Equipment procurement activities to be performed during the current calendar month.**

Please explain in detail the major equipment procurement activities that are expected to be performed during the current calendar month.

**7.3 Major Equipment procurement activities completed during the previous calendar month.**

Please explain in detail the major equipment procurement activities that were completed during the previous calendar month.

**8.0 Construction and Interconnection Activities.**

**8.1 Table of construction and interconnection activities to be performed by Seller or EPC Contractor (including its subcontractors).**

The following tables lists construction and interconnection activities to be performed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

**8.2 Construction interconnection activities to be performed during the current calendar month.**

Please explain in detail the construction and interconnection activities that are expected to be performed during the current calendar month.

**8.3 Construction and interconnection activities completed during the previous calendar month.**

Please explain in detail the construction and interconnection activities were completed during the previous calendar month.

**8.4 EPC Contractor Monthly Construction Progress Report.**

Please attach a copy of the Monthly Construction Progress Reports received during the previous calendar month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

**8.5 Three-month look-ahead construction and interconnection schedule.**

Please provide a three-month look-ahead construction schedule.

**9.0 Milestones.**

**9.1 Milestone schedule.**

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar month.

**9.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).**

Please explain in detail each of the following aspects of Seller's Remedial Action Plan:

**9.2.1 Missed Milestone**

**9.2.2 Plans to achieve missed Milestone**

**9.2.3 Plans to achieve subsequent Milestone**

**9.2.4 Delays in engineering schedule**

Please explain in detail any delays beyond the scheduled Milestone dates stated in Section 11.2, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

**9.2.5 Delays in Major Equipment procurement**

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 11.3, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

**9.2.6 Delays in construction and interconnection schedule**

Please explain in detail any delays beyond the scheduled completion dates stated in Section 11.2, any impact from the delays on the construction and interconnection schedule, and Seller's plans to remedy such impact.

**10.0 Safety and Health Reports**

**10.1 Please list all accidents from the previous calendar month:**

**10.2 Any work stoppage from the previous calendar month:**

**10.3 Work stoppage impact on construction of the Units:**

I, \_\_\_\_\_, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in this Seller's Monthly Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Units as of the date specified below.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX VIII**

**DEPOSIT ACCOUNT AGREEMENT**

This Deposit Account Agreement (Agreement) is made by and among: (a) \_\_\_\_\_ (Posting Party); (b) \_\_\_\_\_ (Bank); and (c) \_\_\_\_\_ (Secured Party), each of which is a Party and all of which are Parties.

1. Posting Party solely owns the following account at Bank (the Deposit Account):  
Account number \_\_\_\_\_. Additional amounts may be deposited into this account from time to time.
2. Pursuant and subject to the terms of the Power Purchase & Sale Agreement, dated \_\_\_\_\_, 200\_ (Power Agreement), Posting Party and Secured Party intend that Secured Party have a first priority perfected security interest in and sole and exclusive control over the Deposit Account and all property, including interest and dividends credited thereto and all proceeds thereof.
3. Posting Party, Secured Party and Bank agree that, during the term of this Agreement, Bank shall comply with the instructions originated by Secured Party directing disposition of the funds in the Deposit Account and that Bank shall comply with such instructions without any further consent by Posting Party. Such instructions shall be in the form of a written document signed by an authorized representative of Secured Party and shall be effective upon receipt by Bank. Delivery may be by facsimile. Secured Party agrees to provide contemporaneously a copy of any such instruction to Posting Party; however,

Bank's obligation to comply with Secured Party's instructions is not conditioned upon Posting Party's receipt of a copy. Bank shall comply with Secured Party's instructions within forty-eight (48) hours of receipt of the same. Though Bank shall have no obligation to verify the existence of a default in honoring Secured Party's instructions, Secured Party agrees that (a) it shall not draw on the funds in the Deposit Account except on the occasion of a default by Posting Party under the Power Agreement (b) Secured Party shall instruct Bank to release funds from the Deposit Account to Posting Party periodically if the amount of collateral required for transactions between the Parties under the Power Agreement is less than the then-current amount in the Deposit Account.

4. Posting Party shall pay all fees, charges, and costs to establish, maintain, and close the Deposit Account. Posting Party shall also pay any taxes on interest income generated by the Deposit Account and shall receive all related tax information and forms from Bank.
5. Bank shall pay interest at Bank's usual rate for such accounts on the balance in the Deposit Account by crediting such interest to the account. Bank may invest the amount in the Deposit Account into an institutional money market fund or into a demand deposit account at Bank paying Bank's current rate of interest thereon.
6. Posting Party agrees to indemnify Bank against and hold Bank harmless from all costs, liability, damages, claims, suits and expenses (including reasonable attorney's fees and costs) arising from or related to Bank's release of funds from the Deposit Account to Secured Party, except to the extent such cost, liability, damage, claim, suit, or expense results from Bank's negligence or willful

misconduct. Secured Party agrees to indemnify Posting Party against and hold Posting Party harmless from all costs and expenses (including reasonable attorney's fees and costs) arising from or related to Secured Party's erroneous, negligent or faulty instructions to Bank resulting in an improper release of funds by Bank.

7. In performing its duties hereunder, Bank shall not be liable to any Party for consequential damages, including lost profits, losses, or expenses except to the extent any of the same result from Bank's negligence or willful misconduct. Bank shall not incur any such liability for (a) any act or failure to act made or omitted in good faith, or (b) any action taken or omitted in reliance on any instrument or written statement that Bank believes in good faith to be genuine. Bank shall not be responsible for verifying the authority of any person acting or purporting to act on behalf of a Party.
8. All notices and instructions entitled or required to be given under this Agreement shall be in writing and shall be sent via a commercial courier service guaranteeing next-day delivery and requiring a receipt of delivery (such as Federal Express) or by facsimile to the following addresses or fax numbers:

If to Bank:

Contact Person:  
Address:  
E-Mail Address:  
Phone:  
Fax:

If to Posting Party:

Contact Person:  
Address:  
E-Mail Address:

Phone:

Fax:

If to Secured Party:

Contact Person:

Address:

E-Mail Address:

Phone:

Fax:

9. Bank shall act only as the holder of the Deposit Account and shall have no fiduciary duty to Secured Party. During the term of this Agreement, Bank shall be entitled to rely on any written instruction signed by an authorized representative of Secured Party that it reasonably believes to be genuine and shall not be required to investigate the legitimacy of such written instruction or the authority of the person executing the same.
10. Bank may resign as the holder of the Deposit Account at any time upon giving both the Secured Party and Posting Party at least thirty (30) days' written notice; provided that, such resignation shall not be effective until a successor Bank has accepted in writing its appointment as the holder of the Deposit Account and has signed this Agreement and agreed to succeed to the duties and obligations of Bank hereunder. Upon receipt by the Parties of the successor bank's written acceptance, Bank shall be discharged from any further duties and liability under this Agreement.
11. Any entity into which Bank may be merged or with which it may be consolidated, or any entity to which Bank may transfer a substantial portion of its business of maintaining accounts such as the Deposit Account, shall be the successor to Bank hereunder without the execution or filing of any paper or any further act by any

Party.

12. Secured Party and Bank shall not disclose the balance in the Deposit Account or any associated financial information to any non-Party other than to a governmental agency or authority with jurisdiction over the disclosing Party. The disclosing Party shall, if practicable, immediately notify the other Parties of any request or demand to disclose before such disclosure is made.
13. Bank represents and warrants to Secured Party that the Deposit Account and all agreements between Bank and Posting Party related thereto are governed by the law of the State of New York. Bank covenants that it will not, without Secured Party's prior written consent, amend those account agreements to change their governing law or to provide that secured transactions relating to the Deposit Account are governed by the law of another jurisdiction [see, Section 9304 of Revised UCC].
14. This Agreement is governed by the laws of the State of New York.
15. The initial term of this Agreement is through June 31, 2008 . This Agreement may be terminated by any Party on or after that date by written notice to the other Parties, such termination to be effective the earlier of (a) thirty (30) days following delivery date of such notice. This Agreement sets forth the entire agreement among the Parties regarding the subject matter hereof and, as such, supersedes any prior and contemporaneous oral or written agreements of the Parties with respect to the subject matter hereof. To the extent this Agreement conflicts with the provisions of any other agreement between Bank and Posting Party, the provisions of this Agreement shall control.

16. No amendment of this Agreement will be binding unless it is in writing and signed by Posting Party, Bank, and Secured Party, and no waiver of any right under this Agreement will be binding unless it is in writing and signed by the waiving Party.
17. The provisions of this Agreement shall be binding on and shall inure to the benefit of Bank, Posting Party, Secured Party and their respective successors and permitted assigns.
18. Nothing in this Agreement shall be deemed to create any agency, fiduciary, joint venture, or partnership relationship between or among Bank, Posting Party, and Secured Party.
19. This Agreement may be executed in counterparts, each of which shall be an original and all of which taken together shall constitute a single instrument.
20. The effectiveness of this Agreement is conditioned on the execution of it by each Party and the subsequent delivery of the signed document to the other Parties. Execution may be in counterparts, and a facsimile copy shall have the same legal effect as an original. This Agreement shall be effective as of the date of the last signature.

21. This Agreement shall be executed by an authorized representative of each Party.

**BANK**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**POSTING PARTY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SECURED PARTY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX IX

### FORM OF CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of [\_\_\_\_\_] among PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (the “Consenting Party”) and PANOCHÉ ENERGY CENTER, LLC a Delaware limited liability company (the “Borrower”), for the benefit of [\_\_\_\_\_] as administrative agent (together with its successors in such capacity, the “Administrative Agent”) for the financial institutions (the “Lenders”) which are or from time to time may become a party to the Loan Agreement (as defined below).

#### RECITALS

WHEREAS, the Borrower proposes to finance, develop, construct, own and operate a 400 MW gas-fired simple cycle generating plant, together with related facilities, located in the \_\_\_\_\_, in the State of California (the “Project”); WHEREAS, the Borrower and the Consenting Party have entered into that certain [CONTRACT], dated as of [\_\_\_\_\_] (as amended, restated, modified or otherwise supplemented from time to time in accordance with the terms thereof, the “Assigned Agreement”);

WHEREAS, the Borrower, the Administrative Agent and the Lenders have entered into a Credit Agreement, dated as of [\_\_\_\_\_] 200\_\_ (as amended, restated, modified or otherwise supplemented from time to time, the “Loan Agreement”), pursuant to which the Lenders will make loans to the Borrower for the purpose of financing the cost of the construction and operation of the Project and certain related expenses (the “Loans”);

WHEREAS, as security for the Loans and all other obligations under the Loan Agreement, the Borrower has assigned all of its right, title and interest in, to and under, and granted a security interest in, the Assigned Agreement to the Administrative Agent pursuant to the Assignment and Security Agreement, dated as of [\_\_\_\_\_] 200\_\_ between the Borrower and the Administrative Agent (as amended, restated, modified or otherwise supplemented from time to time, the “Security Agreement”); and WHEREAS, it is a condition precedent to the Lenders’ obligations to make the Loans under the Loan Agreement that the Consenting Party execute and deliver this Consent. NOW, THEREFORE, as an inducement to the Lenders to make the Loans and in consideration of good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Consenting Party hereby agrees as follows:

## SECTION 1. CONSENT TO ASSIGNMENT, ETC.

### 1.1 Consent to Assignment.

The Consenting Party (a) acknowledges that the Administrative Agent and the Lenders are entering into the Loan Agreement and making the Loans in reliance upon the execution and delivery by the Consenting Party of the Assigned Agreement and this Consent, (b) consents in all respects to the pledge and collateral assignment to the Administrative Agent of all of the Borrower's right, title and interest in, to and under the Assigned Agreement pursuant to the Security Agreement and (c) acknowledges the right, but not the obligation, of the Administrative Agent or the Administrative Agent's designee, in the exercise of the Administrative Agent's rights and remedies under the Security Agreement, to make all demands, give all notices, cure all defaults, take all actions and exercise all rights of the Borrower in accordance with the Assigned Agreement, and agrees that in such event the Consenting Party shall continue to perform its obligations under the Assigned Agreement.

### 1.2 Substitute Owner.

The Consenting Party agrees that, if the Administrative Agent shall notify the Consenting Party that an event of default under the Loan Agreement has occurred and is continuing and that the Administrative Agent has exercised its rights (a) to have itself or its designee substituted for the Borrower under the Assigned Agreement or (b) to sell, assign, transfer or otherwise dispose of the Assigned Agreement to any person, including, without limitation, any purchaser or grantee at a judicial or non-judicial foreclosure and sale or by a conveyance by the Borrower in lieu of foreclosure, then the Administrative Agent, the Administrative Agent's designee or such person (each, a "Substitute Owner") shall be substituted for the Borrower under the Assigned Agreement and that, in such event, the Consenting Party will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner; provided, however, that the Administrative Agent's exercise of its rights under subclause (a) or (b) above shall be subject to the Consenting Party's consent, not to be unreasonably withheld so long as the Substitute Owner (i) assumes the obligations of the Borrower under the Assigned Agreement and (ii) has the financial and operational capability to perform the responsibilities of the Borrower under the Assigned Agreement. Upon the transfer to and acceptance by any Substitute Owner of the rights and obligations of the Borrower under the Assigned Agreement pursuant to this Section 1.2, such Substitute Owner shall (w) succeed to all rights, benefits, and obligations of the Borrower under the Assigned Agreement to the same extent as if such Substitute Owner were named in place of the Borrower in the Assigned Agreement; (x) be subject to all the terms and conditions of the Assigned Agreement applicable to the Borrower, including, without limitation, the limitations on the Consenting Party's liability and the responsibilities of the Borrower as defined therein; (y) be bound by all actions taken by and notices given to the Consenting Party prior to any such exercise so that the Consenting Party shall not be required to perform any obligation under the Assigned Agreement more than once (unless such performance is so required under the Assigned Agreement); and (z) be obligated to cure any default of the Borrower then continuing under the Assigned Agreement.

### 1.3 Right to Cure.

The Consenting Party agrees that in the event of a default by the Borrower in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable the Consenting Party to terminate or suspend its obligations or exercise any other right or remedy under the Assigned Agreement or under applicable law (hereinafter a “default”), the Consenting Party will continue to perform its obligations under the Assigned Agreement and will not exercise any such right or remedy until it first gives prompt written notice of such default to the Administrative Agent and affords the Administrative Agent, the Administrative Agent’s designee and the Lenders a period of at least thirty (30) days (or if such default is a non-monetary default, such longer period not to exceed sixty (60) days as is required so long as any such party has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that if any such party is prohibited from curing any such default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding involving the Borrower, then the time periods specified in this Section 1.3 for curing a default shall be extended for the period of such prohibition, but in no event more than six (6) months.

### 1.4 No Termination, Assignments or Material Amendments.

The Consenting Party will not, without the prior written consent of the Administrative Agent, enter into any consensual cancellation or termination of the Assigned Agreement, or assign or otherwise transfer, by operation of law or otherwise, any of its right, title and interest thereunder or consent to any such assignment or transfer by the Borrower. The Consenting Party will not enter into any amendment, supplement or other modification of the Assigned Agreement (other than ministerial amendments, supplements or other modifications) (an “Amendment”) until after the Administrative Agent has been given ten (10) days prior written notice of the proposed Amendment by the Borrower (a copy of which notice will be provided to the Consenting Party by the Borrower), and will not then enter into such Amendment if the Consenting Party has, within such ten (10) day period, received a copy of (i) the Administrative Agent’s objection to such Amendment or (ii) the Administrative Agent’s request to the Borrower for additional information with respect to such Amendment. In the event that the Administrative Agent requests additional information with respect to an Amendment, the Administrative Agent shall have ten (10) Business Days commencing upon the receipt of such requested information to deliver to the Consenting Party its objection to such Amendment, it being understood that, if no such objection is received by the Consenting Party within such ten (10) Business Day period, the Consenting Party and the Borrower may enter into such Amendment.

### 1.5 Replacement Agreement.

In the event that the Assigned Agreement is terminated as a result of any bankruptcy or insolvency proceeding affecting the Borrower, the Consenting Party will, at the option of the Administrative Agent, within forty-five (45) days after such termination, enter into a new agreement with the Administrative Agent (or its transferee or other nominee that owns or leases the Project and has the operational and financial capability to perform the responsibilities of the Borrower under the Assigned Agreement); provided, that (a) except to the extent set forth in clause (b) below, such new agreement shall contain the same conditions, agreements, terms, provisions and limitations as such Assigned Agreement; (b) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement; (c) the Administrative Agent (or such transferee or nominee) agrees to perform all of the duties and obligations of "Seller" under the Assigned Agreement; and (d) the Administrative Agent (or such transferee or nominee) shall be subject to, and shall be required to cure, any and all Seller defaults or breaches under the Assigned Agreement that was terminated (except for any such Seller Events of Default that, by their nature, are not capable of being cured by assignee as promptly as possible after the execution of the new agreement, but in no event later than sixty (60) days after the execution of such new agreement.

1.6 No Liability.

The Consenting Party acknowledges and agrees that neither the Administrative Agent, the Administrative Agent's designee nor the Lenders shall have any liability or obligation under the Assigned Agreement as a result of this Consent, the Security Agreement or otherwise, nor shall the Administrative Agent, the Administrative Agent's designee or the Lenders be obligated or required to (a) perform any of the Borrower's obligations under the Assigned Agreement, except, in the case of the Administrative Agent or the Administrative Agent's designee, during any period in which the Administrative Agent or the Administrative Agent's designee is a Substitute Owner pursuant to Section 1.2, in which case (i) the obligations of such Substitute Owner shall be no more than those of the Borrower under the Assigned Agreement and (ii) such Substitute Owner shall cure any defaults under the Assigned Agreement, or (b) take any action to collect or enforce any claim for payment assigned under the Security Agreement.

1.7 The Borrower's Liability.

The Borrower agrees that it shall remain liable to the Consenting Party for all obligations of the Borrower under the Assigned Agreement, notwithstanding the security assignment contemplated in the Security Agreement.

1.8 Delivery of Notices.

The Consenting Party shall deliver to the Administrative Agent, concurrently with the delivery thereof to the Borrower and in accordance with Section 5.1 hereof, a copy of each notice, request or demand given by the Consenting Party pursuant to the Assigned Agreement.

## SECTION 2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

### Payments.

The Consenting Party will pay all amounts payable by it under the Assigned Agreement, if any, in the manner required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person or account as shall be specified from time to time by the Administrative Agent to the Consenting Party in writing.

## SECTION 3. REPRESENTATIONS AND WARRANTIES OF THE CONSENTING PARTY

In order to induce the Administrative Agent and the Lenders to enter into the Loan Agreement and to induce the Lenders to make the Loans, the Consenting Party makes the following representations and warranties as of the date hereof.

### 3.1 Organization; Power and Authority.

The Consenting Party is a corporation duly organized, validly existing and in good standing under the laws of the state of California, and is duly qualified, authorized to do business and in good standing in every jurisdiction in which the nature of its business requires it to be so qualified, and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

### 3.2 Authorization.

The execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary corporate action on the part of the Consenting Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Consenting Party or (b) any other person or entity, except approvals or consents which have previously been obtained.

### 3.3 Execution and Delivery; Binding Agreements.

Each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of the Consenting Party by the appropriate officers of the Consenting Party, and constitutes the legal, valid and binding obligation of the Consenting Party, enforceable against the Consenting Party in accordance with its terms except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

3.4 Compliance with Other Instruments, etc.

The Consenting Party is not in violation of its charter or by-laws, and the execution, delivery and performance by the Consenting Party of this Consent and the Assigned Agreement and the consummation of the transactions contemplated hereby and thereby will not result in any violation of, breach of or default under any term of its charter or by-laws.

3.5 No Default or Amendment. Neither the Consenting Party nor, to the best of the Consenting Party's knowledge after due inquiry, any other party to the Assigned Agreement is in default of any of its obligations thereunder. The Consenting Party has no existing counterclaims, offsets or defenses against the Borrower. The Consenting Party and, to the best of the Consenting Party's knowledge after due inquiry, each other party to the Assigned Agreement have complied with all conditions precedent to the respective obligations of such party to perform under the Assigned Agreement. To the best of the Consenting Party's knowledge after due inquiry, no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either the Consenting Party or the Borrower to terminate or suspend its obligations under the Assigned Agreement. The Assigned Agreement has not been amended, modified or supplemented in any manner.

SECTION 4. OPINION OF COUNSEL

The Consenting Party shall deliver an opinion of counsel, relating to the Assigned Agreement and this Consent, which opinion shall be substantially in the form attached hereto as Exhibit B.

SECTION 5. MISCELLANEOUS

5.1 Notices.

All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by a nationally recognized courier service, and shall be directed as follows:

If to the Consenting Party: Pacific Gas & Electric Company

Attention: [            ]  
Telephone: [           ]  
Fax:           [           ]

If to the Borrower: Panoche Energy Center, LLC

[            ]  
[            ]  
  
Attention: [            ]  
Telephone: [           ]  
Fax:           [           ]

If to the Administrative Agent:            [            ]

Attention: [            ]  
Telephone: [           ]  
Fax:           [           ]

The above parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent.

5.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAWS OF THE STATE OF [NEW YORK] (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW [EXCEPT SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW]).

(b) Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of New York or of the United States of America for the Southern District of New

York, and, by execution and delivery of this Consent, each of the Consenting Party, the Borrower and the Administrative Agent hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Each of the Consenting Party and the Borrower hereby irrevocably designates, appoints and empowers [TO BE INSERTED] as its designee, appointee and agent to receive, accept and acknowledge for and on its behalf, and in respect of its property, service of any and all legal process, summons, notices and documents which may be served in any action or proceeding. If for any reason such designee, appointee and agent shall cease to be available to act as such, the Borrower and the Consenting Party, as applicable, agrees to designate a new designee, appointee and agent in New York City on the terms and for the purposes of this provision satisfactory to the Administrative Agent. Each of the Consenting Party, the Borrower and the Administrative Agent irrevocably consents to the service of process out of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to the Consenting Party at its notice address provided pursuant to Section 5.1 hereof. Each of the Consenting Party, the Borrower and the Administrative Agent hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of the Administrative Agent or its designees to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Consenting Party in any other jurisdiction.

5.3 Counterparts.

This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

5.4 Headings Descriptive.

The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

5.5 Severability.

In case any provision in or obligation under this Consent 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.

5.6 Amendment, Waiver.

Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Consenting Party, the Borrower, and the Administrative Agent.

5.7 Termination.

(a) The Consenting Party's obligations hereunder are absolute and unconditional, and the Consenting Party has no right, and shall have no right, to terminate this Consent or to be released, relieved or discharged from any obligation or liability hereunder until all obligations under the Loan Agreement have been indefeasibly satisfied in full, notice of which shall be provided by the Administrative Agent when all such obligations have been so satisfied (the "Termination Notice").

(b) In the event that the Administrative Agent delivers the Termination Notice to the Consenting Party pursuant to this Section 5.7, this Consent shall terminate for all purposes as to the Administrative Agent and the Loan Agreement, and the Administrative Agent and the Lenders shall have no further rights or obligations under this Consent; provided, however, that the Consenting Party agrees that this Consent shall continue to apply for the benefit of the Borrower and the providers of new credit facilities to replace the Loan Agreement (the "New Lender"), provided further that (i) within five (5) days following delivery by the Administrative Agent to the Consenting Party of the Termination Notice pursuant to this Section 5.7, the New Lender or an agent, trustee or other representative of the New Lender, shall have notified the Consenting Party that it assumes the rights and the prospective obligations of the "Administrative Agent" under this Consent, and shall have supplied substitute notice address information for Section 5.1 and new payment instructions (countersigned on behalf of the Borrower) for Exhibit A, (ii) the amount of the new credit facilities does not exceed the original amount of commitments by the Lenders to make loans and extend other credit facilities under the original Loan Agreement, and (iii) thereafter, (A) the term "Loans" under this Consent shall be deemed to refer to the new credit facilities, (B) the term "Administrative Agent" or "Lenders" shall be deemed to refer to the New Lender or any agent or trustee for the New Lender, (C) the term "Loan Agreement" shall be deemed to refer to the credit agreement, indenture or other instrument providing for the new credit facilities and (D) the term "Security Agreement" shall be deemed to refer to the security agreement under which the Assigned Agreement is assigned as collateral to secure performance of the obligations of the Borrower under the new credit facilities.

5.8 Successors and Assigns.

This Consent shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties, their designees and their respective permitted successors and assigns.

5.9 Further Assurances.

The Consenting Party agrees to execute such acknowledgments or such other instruments and take such other actions as the Administrative Agent shall reasonably request in connection with the transactions provided for in this Consent.

5.10. Waiver of Trial by Jury.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE CONSENTING PARTY, THE BORROWER AND THE AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT.

5.11 Survival.

All agreements, statements, representations and warranties made by the Consenting Party herein shall be considered to have been relied upon by the Administrative Agent and the Lenders and shall survive the execution and delivery of this Consent.

5.12 No Waiver; Remedies Cumulative.

No failure or delay on the part of the Administrative Agent in exercising any right, power or privilege hereunder and no course of dealing between the Consenting Party and the Administrative Agent shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other exercise, or the further exercise, of any other right, power or privilege hereunder. The rights and remedies herein expressly provided are cumulative and not exclusive of any rights or remedies which the Administrative Agent would otherwise have.

5.13 Entire Agreement. This Consent embodies the complete agreement between the parties hereto and supersedes all other oral or written understandings or agreements.

[THE NEXT PAGE IS THE SIGNATURE PAGE]

IN WITNESS WHEREOF, the Consenting Party, the Borrower and the Administrative Agent have caused this Consent to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

PACIFIC GAS & ELECTRIC COMPANY

By: \_\_\_\_\_  
Name:  
Title:

PANOCHÉ ENERGY CENTER,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

[ \_\_\_\_\_ ]  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

Exhibit A to  
Form of Consent and Agreement

PAYMENT INSTRUCTIONS

[ _____ _____ _____] ]	ABA# [_____] ] Account Number: [_____] ] Account Name: Revenue Account for the benefit of [_____] as Administrative Agent
---------------------------------	---

FORM OF OPINION OF COUNSEL

1. Pacific Gas & Electric Company (the “Company”) is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and is qualified to do business and is in good standing in each jurisdiction in which failure to qualify would have a material adverse effect on the ability of the Company to perform its obligations under the Assigned Agreement and the Consent (collectively, the “Documents”).

2. The Company has full corporate power and authority to enter into, deliver and perform its obligations under each of the Documents.

3. The Company has taken all necessary corporate action to authorize the execution, delivery and performance by it of each Document.

4. The Company has duly executed and delivered each Document.

5. Each Document constitutes the legally valid and binding obligation of the Company enforceable against the Company in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors’ rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

6. The execution, delivery and performance by the Company of the Documents will not: (i) contravene any applicable provision of any law, regulation, ruling, order or decree of any governmental authority to which or by which the Company or any of its property or assets is subject or bound or (ii) violate any provision of the Governing Documents of the Company. The execution, delivery and performance by the Company of the Documents does not and will not, to the best of my knowledge after due inquiry, conflict with, result in any breach of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any lien or encumbrance upon any of the property or assets of the Company pursuant to any provision of any securities issued by the Company, or any indenture, mortgage, deed of trust, contract, undertaking, document, instrument or other agreement to which the Company is a party or by which it or any of its property or assets is bound.

7. No consent, order, authorization, waiver, approval or any other action, or registration, declaration or filing with, any person, board or body, public or private (collectively, the “Approvals”), is required to be obtained by the Company in connection with the execution, delivery or performance of the Documents or the consummation of the transactions contemplated thereby, except as listed on Schedule A hereto. All such

Approvals listed on Schedule A, except for those set forth in Part II thereof, are Final (as defined below). An Approval shall be Final if it has been validly issued, is in full force and effect, is not subject to any condition (other than compliance with terms thereof), does not impose restrictions or requirements inconsistent with the terms of the Documents, and is final and not subject to any appeal.

8. To the best of my knowledge after due inquiry, there are no pending or threatened actions or proceedings affecting the Company or any of its properties or assets that individually or in the aggregate could prohibit or limit in any way the execution, or delivery by the Company of any of the Documents or could reasonably be expected to prohibit or limit in a materially way the performance by the Company of any of the Documents.

## Appendix X - Example of Section 3.3(f)

Illustrative Example of Section 3.3(f) using Generic Heat Rate Curve - Actual Gas >1% higher than Expected Gas										
MW's	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn		
50.0	11,992	12,232	1	75.00	10,330	774.78	75.50	10,518	794.14	
50.5	11,941	12,180	2	50.00	11,992	599.59	50.50	12,180	615.07	
51.0	11,890	12,128	3	50.00	11,992	599.59	50.50	12,180	615.07	
51.5	11,841	12,078	4	60.00	11,124	667.44	60.50	11,310	684.28	
52.0	11,792	12,028	5	80.00	10,167	813.33	80.50	10,355	833.61	
52.5	11,745	11,979	6	90.00	9,938	894.38	90.50	10,127	916.51	
53.0	11,698	11,932	7	90.00	9,938	894.38	90.50	10,127	916.51	
53.5	11,652	11,885	8	90.00	9,938	894.38	90.50	10,127	916.51	
54.0	11,606	11,838	9	90.00	9,938	894.38	90.50	10,127	916.51	
54.5	11,562	11,793	10	90.00	9,938	894.38	90.50	10,127	916.51	
55.0	11,518	11,749	11	90.00	9,938	894.38	90.50	10,127	916.51	
55.5	11,475	11,705	12	90.00	9,938	894.38	90.50	10,127	916.51	
56.0	11,433	11,662	13	90.00	9,938	894.38	90.00	10,136	912.27	
56.5	11,392	11,620	14	90.00	9,938	894.38	90.00	10,136	912.27	
57.0	11,351	11,579	15	90.00	9,938	894.38	90.00	10,136	912.27	
57.5	11,312	11,538	16	90.00	9,938	894.38	90.00	10,136	912.27	
58.0	11,273	11,498	17	90.00	9,938	894.38	90.00	10,136	912.27	
58.5	11,234	11,459	18	90.00	9,938	894.38	90.00	10,136	912.27	
59.0	11,197	11,421	19	90.00	9,938	894.38	90.00	10,136	912.27	
59.5	11,160	11,383	20	90.00	9,938	894.38	90.00	10,136	912.27	
60.0	11,124	11,346	21	90.00	9,938	894.38	91.00	10,118	920.76	
60.5	11,089	11,310	22	90.00	9,938	894.38	91.00	10,118	920.76	
61.0	11,054	11,275	23	90.00	9,938	894.38	91.00	10,118	920.76	
61.5	11,020	11,240	24	75.00	10,330	774.78	76.00	10,500	798.02	
62.0	10,987	11,206								
62.5	10,954	11,173	<b>Expected Daily Gas Burn &gt;</b>		<b>20,328.31</b>	<b>Actual Daily Gas Burn &gt;</b>		<b>20,816.12</b>		
63.0	10,922	11,140								487.81 Difference in Fuel Burn
63.5	10,891	11,108								2.4% Greater than 1%
64.0	10,860	11,077								\$6.00 Price of Gas
64.5	10,830	11,046								<b>Seller Refund to Buyer &gt;</b>
65.0	10,800	11,016								<b>\$2,926.83 Difference x Price</b>
65.5	10,772	10,987								
66.0	10,743	10,958								
66.5	10,716	10,930								
67.0	10,689	10,903								
67.5	10,662	10,875								
68.0	10,637	10,849								
68.5	10,611	10,824								
69.0	10,587	10,798								
69.5	10,562	10,774								
70.0	10,539	10,750								
70.5	10,516	10,726								
71.0	10,493	10,703								
71.5	10,471	10,681								
72.0	10,450	10,659								
72.5	10,428	10,637								
73.0	10,408	10,616								
73.5	10,388	10,596								
74.0	10,368	10,576								
74.5	10,349	10,556								
75.0	10,330	10,537								
75.5	10,312	10,518								
76.0	10,294	10,500								
76.5	10,277	10,483								
77.0	10,260	10,465								
77.5	10,243	10,448								
78.0	10,227	10,432								
78.5	10,212	10,416								
79.0	10,196	10,400								
79.5	10,181	10,385								
80.0	10,167	10,370								
80.5	10,152	10,355								
81.0	10,138	10,341								
81.5	10,125	10,327								
82.0	10,112	10,314								
82.5	10,099	10,301								
83.0	10,086	10,288								
83.5	10,074	10,275								
84.0	10,062	10,263								
84.5	10,050	10,251								
85.0	10,039	10,239								
85.5	10,027	10,228								
86.0	10,016	10,217								
86.5	10,006	10,206								
87.0	9,996	10,195								
87.5	9,985	10,185								
88.0	9,975	10,175								
88.5	9,965	10,165								
89.0	9,956	10,155								
89.5	9,947	10,146								
90.0	9,938	10,136								
90.5	9,929	10,127								
91.0	9,920	10,118								

Heat Rate Curve =  $-0.0116288x^3 + 3.5068281x^2 - 366.7199650x + 23014.4122352$

**Illustrative Example of Section 3.3(f) using Generic Heat Rate Curve - Actual Gas >1% lower than Expected Gas**

MW's	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn	
50.0	11.992	11.632	1	75.00	10.330	774.78	74.50	10.039	747.88
50.5	11.941	11.582	2	50.00	11.992	599.59	50.00	11.632	581.61
51.0	11.890	11.534	3	50.00	11.992	599.59	50.00	11.632	581.61
51.5	11.841	11.486	4	60.00	11.124	667.44	53.50	10.825	644.10
52.0	11.792	11.439	5	60.00	10.167	813.33	79.50	9.876	785.12
52.5	11.745	11.392	6	90.00	9.936	894.38	89.50	9.648	863.52
53.0	11.696	11.347	7	90.00	9.936	894.38	91.00	9.622	875.62
53.5	11.652	11.302	8	90.00	9.936	894.38	90.50	9.631	871.58
54.0	11.606	11.258	9	90.00	9.936	894.38	90.50	9.631	871.58
54.5	11.562	11.215	10	90.00	9.936	894.38	90.50	9.631	871.58
55.0	11.518	11.173	11	90.00	9.936	894.38	90.50	9.631	871.58
55.5	11.475	11.131	12	90.00	9.936	894.38	90.50	9.631	871.58
56.0	11.433	11.090	13	90.00	9.936	894.38	90.50	9.631	871.58
56.5	11.392	11.050	14	90.00	9.936	894.38	90.50	9.631	871.58
57.0	11.351	11.011	15	90.00	9.936	894.38	90.00	9.639	867.55
57.5	11.312	10.972	16	90.00	9.936	894.38	90.00	9.639	867.55
58.0	11.273	10.935	17	90.00	9.936	894.38	90.00	9.639	867.55
58.5	11.234	10.897	18	90.00	9.936	894.38	90.00	9.639	867.55
59.0	11.197	10.861	19	90.00	9.936	894.38	90.00	9.639	867.55
59.5	11.160	10.825	20	90.00	9.936	894.38	90.00	9.639	867.55
60.0	11.124	10.790	21	90.00	9.936	894.38	89.00	9.657	859.50
60.5	11.089	10.756	22	90.00	9.936	894.38	89.00	9.657	859.50
61.0	11.054	10.722	23	90.00	9.936	894.38	89.00	9.657	859.50
61.5	11.020	10.689	24	75.00	10.330	774.78	76.00	9.966	759.90
62.0		10.987							
62.5	10.954	10.625			<b>Expected Daily Gas Burn &gt;</b>	<b>20,328.31</b>		<b>Actual Daily Gas Burn &gt;</b>	<b>19,723.20</b>
63.0	10.922	10.594							
63.5	10.891	10.564							
64.0	10.860	10.534							
64.5	10.830	10.505							
65.0	10.800	10.476							
65.5	10.772	10.448							
66.0	10.743	10.421							
66.5	10.716	10.394							
67.0	10.689	10.368							
67.5	10.662	10.343							
68.0	10.637	10.317							
68.5	10.611	10.293							
69.0	10.587	10.269							
69.5	10.562	10.246							
70.0	10.539	10.223							
70.5	10.516	10.200							
71.0	10.493	10.178							
71.5	10.471	10.157							
72.0	10.450	10.136							
72.5	10.428	10.116							
73.0	10.408	10.096							
73.5	10.388	10.076							
74.0	10.368	10.057							
74.5	10.349	10.039							
75.0	10.330	10.021							
75.5	10.312	10.003							
76.0	10.294	9.986							
76.5	10.277	9.969							
77.0	10.260	9.952							
77.5	10.243	9.936							
78.0	10.227	9.921							
78.5	10.212	9.905							
79.0	10.196	9.890							
79.5	10.181	9.876							
80.0	10.167	9.862							
80.5	10.152	9.848							
81.0	10.138	9.834							
81.5	10.125	9.821							
82.0	10.112	9.808							
82.5	10.099	9.796							
83.0	10.086	9.783							
83.5	10.074	9.771							
84.0	10.062	9.760							
84.5	10.050	9.748							
85.0	10.039	9.737							
85.5	10.027	9.727							
86.0	10.016	9.716							
86.5	10.006	9.706							
87.0	9.995	9.695							
87.5	9.985	9.686							
88.0	9.975	9.676							
88.5	9.965	9.667							
89.0	9.956	9.657							
89.5	9.947	9.648							
90.0	9.938	9.639							
90.5	9.929	9.631							
91.0	9.920	9.622							

**Reduction in Fuel Cost** (33,630.86) **Difference x Price**

**Buyer Refund to Seller >** **\$544.60**

**Buyer Keeps 85%**

Heat Rate Curve = -0.0116268x³ + 3.5068281x² - 366.7199650x + 23014.4122352

**Illustrative Example of Section 3.3(f) using Generic Heat Rate Curve - Actual Gas within 1% of Expected Gas**

MWs	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn	
50.0	11.992	11.932	1	75.00	10.330	774.78	74.50	10.297	767.15
50.5	11.941	11.881	2	50.00	11.992	599.59	50.00	11.932	596.60
51.0	11.890	11.831	3	50.00	11.992	599.59	50.00	11.932	596.60
51.5	11.841	11.782	4	60.00	11.124	667.44	59.50	11.104	660.70
52.0	11.792	11.733	5	80.00	10.167	813.33	79.50	10.130	805.36
52.5	11.745	11.686	6	90.00	9.938	894.38	89.50	9.887	885.77
53.0	11.698	11.639	7	90.00	9.938	894.38	91.00	9.870	896.19
53.5	11.652	11.593	8	90.00	9.938	894.38	90.50	9.879	894.04
54.0	11.606	11.548	9	90.00	9.938	894.38	90.50	9.879	894.04
54.5	11.562	11.504	10	90.00	9.938	894.38	90.50	9.879	894.04
55.0	11.518	11.461	11	90.00	9.938	894.38	90.50	9.879	894.04
55.5	11.475	11.418	12	90.00	9.938	894.38	90.50	9.879	894.04
56.0	11.433	11.376	13	90.00	9.938	894.38	90.50	9.879	894.04
56.5	11.392	11.335	14	90.00	9.938	894.38	90.50	9.879	894.04
57.0	11.351	11.295	15	90.00	9.938	894.38	90.00	9.888	889.91
57.5	11.312	11.255	16	90.00	9.938	894.38	90.00	9.888	889.91
58.0	11.273	11.216	17	90.00	9.938	894.38	90.00	9.888	889.91
58.5	11.234	11.178	18	90.00	9.938	894.38	90.00	9.888	889.91
59.0	11.197	11.141	19	90.00	9.938	894.38	90.00	9.888	889.91
59.5	11.160	11.104	20	90.00	9.938	894.38	90.00	9.888	889.91
60.0	11.124	11.068	21	90.00	9.938	894.38	89.00	9.906	881.65
60.5	11.089	11.033	22	90.00	9.938	894.38	89.00	9.906	881.65
61.0	11.054	10.999	23	90.00	9.938	894.38	89.00	9.906	881.65
61.5	11.020	10.965	24	75.00	10.330	774.78	76.00	10.243	778.46
62.0	10.987	10.932							
62.5	10.954	10.899							
63.0	10.922	10.867							
63.5	10.891	10.836							
64.0	10.860	10.806							
64.5	10.830	10.776							
65.0	10.800	10.746							
65.5	10.772	10.718							
66.0	10.743	10.690							
66.5	10.716	10.662							
67.0	10.689	10.635							
67.5	10.662	10.609							
68.0	10.637	10.583							
68.5	10.611	10.558							
69.0	10.587	10.534							
69.5	10.562	10.510							
70.0	10.539	10.486							
70.5	10.516	10.463							
71.0	10.493	10.441							
71.5	10.471	10.419							
72.0	10.450	10.397							
72.5	10.428	10.376							
73.0	10.408	10.356							
73.5	10.388	10.336							
74.0	10.368	10.316							
74.5	10.349	10.297							
75.0	10.330	10.279							
75.5	10.312	10.261							
76.0	10.294	10.243							
76.5	10.277	10.226							
77.0	10.260	10.209							
77.5	10.243	10.192							
78.0	10.227	10.176							
78.5	10.212	10.161							
79.0	10.196	10.145							
79.5	10.181	10.130							
80.0	10.167	10.116							
80.5	10.152	10.102							
81.0	10.138	10.088							
81.5	10.125	10.074							
82.0	10.112	10.061							
82.5	10.099	10.048							
83.0	10.086	10.036							
83.5	10.074	10.023							
84.0	10.062	10.011							
84.5	10.050	10.000							
85.0	10.039	9.988							
85.5	10.027	9.977							
86.0	10.015	9.966							
86.5	10.006	9.956							
87.0	9.995	9.945							
87.5	9.985	9.935							
88.0	9.975	9.925							
88.5	9.965	9.916							
89.0	9.956	9.906							
89.5	9.947	9.897							
90.0	9.938	9.888							
90.5	9.929	9.879							
91.0	9.920	9.870							

**Expected Daily Gas Burn > 20,328.31      Actual Daily Gas Burn > 20,231.53**

**(96.78) Difference in Fuel Burn  
0.5% Within 1% band**

**No Balancing True-up**

Heat Rate Curve =  $-0.0116288x^3 + 3.5068281x^2 - 366.7199650x + 23014.4122352$

**Appendix XI - Example of Section 3.5(d)**  
**Illustrative Example of Section 3.5(d)**

	Case 1	Case 2	Case 3	Case 4	Unit of Measure
Scheduled Energy	100	100	100	100	MW
Delivered Energy	99	101	90	110	MW
Imbalance Energy Price	\$ 50.00	\$ 50.00	\$ 50.00	\$ 50.00	\$/MWh
Deviation - Amount of Over(Under)-delivery	(1)	1	(10)	10	MW
CAISO payment(charge) to Buyer for energy	\$ (50.00)	\$ 50.00	\$ (500.00)	\$ 500.00	\$
Deviation within tolerance band - no penalties	(1)	1	(5)	5	MW
Deviation outside of tolerance band - with penalties	0	0	(5)	5	MW
CAISO penalty charged to Buyer	\$0	\$0	\$ (125.00)	\$ (250.00)	\$
Seller payment to Buyer (Buyer payment to Seller)	\$ 50.00	\$ (50.00)	\$ 625.00	\$ (250.00)	\$
Net Impact to Buyer	\$0	\$0	\$0	\$0	\$

Calculations to be done for each CAISO settlement interval  
Tolerance band and penalties will be pursuant to CAISO tariff

## Appendix XII – Example of Section 3.13(d)(ii)

### Illustrative Example of Section 3.13(d)(ii)

	Guaranteed @ ISO	100.00	Tested @ ISO	105.00	104.00	103.00	102.00	101.00	100.00	99.00	98.00	97.00
	Guaranteed @ Peak July	95.00	Tested @ Peak July	99.00	98.00	97.00	96.00	95.00	94.00	93.00	92.00	91.00
	MCC		Adjusted MCC following initial and/or seasonal capacity tests									
January	100.00		104.00	104.00	103.00	102.00	101.00	100.00	100.00	100.00	100.00	97.00
February	99.00		102.96	102.96	101.97	100.98	99.99	99.00	99.00	99.00	99.00	96.03
March	98.00		101.92	101.92	100.94	99.96	98.98	98.00	98.00	98.00	98.00	95.06
April	98.00		101.92	101.92	100.94	99.96	98.98	98.00	98.00	98.00	98.00	95.06
May	97.00		100.88	100.88	99.91	98.94	97.97	97.00	97.00	97.00	97.00	94.09
June	96.00		99.84	99.03	98.02	97.01	96.00	96.00	96.00	93.98	92.97	91.96
July	95.00		98.80	98.00	97.00	96.00	95.00	95.00	95.00	93.00	92.00	91.00
August	95.00		98.80	98.00	97.00	96.00	95.00	95.00	95.00	93.00	92.00	91.00
September	96.00		99.84	99.03	98.02	97.01	98.00	96.00	96.00	93.98	92.97	91.96
October	97.00		100.88	100.88	99.91	98.94	97.97	97.00	97.00	97.00	97.00	94.09
November	99.00		102.96	102.96	101.97	100.98	99.99	99.00	99.00	99.00	99.00	96.03
December	100.00		104.00	104.00	103.00	102.00	101.00	100.00	100.00	100.00	100.00	97.00

If ISO test is less than 98% of Guarantee, then non-summer MCC is adjusted downward by the % decrease from Guaranteed @ ISO to Tested @ ISO  
 If Peak July test is less than 98% of Guarantee, then summer MCC is adjusted downward by the % decrease from Guaranteed @ Peak July to Tested @ Peak July

If ISO test is between 98% and 100% of Guarantee, there is no adjustment to non-summer MCC  
 If Peak July test is between 98% and 100% of Guarantee, there is no adjustment to summer MCC

If ISO test is more than 100% of Guarantee, then non-summer MCC is adjusted upward by the % increase from Guaranteed @ ISO to Tested @ ISO, but capped at 4%  
 If Peak July test is more than 100% of Guarantee, then summer MCC is adjusted upward by the % increase from Guaranteed @ Peak July to Tested @ Peak July, but capped at 4%

## Appendix XIII – Example of Sections 4.1(b), 4.1(c), and 4.3(b)

### Illustrative Example of Sections 4.1(b), 4.1(c), and 4.3(b)

#### Example of 4.1(b)

Assume the following:

The month is April

Monthly Contract Capacity(MCC) of Unit	100 MW
Hours in month (mnthhrs)	720
Scheduled Maintenance Hours (full outage)	72
Scheduled Maintenance Hours (50% derate)	36
mainthrs = 72 + 0.50*36 =	90
Unavailable Hours	48

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

Numerator

$$\begin{aligned} \text{totpotenrgy} &= \text{MCC} * (\text{mnthhrs} - \text{mainthrs} - \text{unavailhrs}) \\ \text{totpotenergy} &= 100 * (720 - 90 - 48) = 58200 \text{ MWh} \end{aligned}$$

Denominator

$$\begin{aligned} &[\text{MCC} * (\text{mnthhrs} - \text{mainthrs})] \\ &[100 \text{ MW} * (720 - 90)] = 63000 \text{ MWh} \end{aligned}$$

$$\text{Availability} = 58200 / 63000 = 92.38\%$$

#### Example of 4.1(c)

$$\text{AA} = 100\% - [(94\% - \text{Availability}) * 2] = 96.76\%$$

#### Example of 4.3(b)

Using AA from above and assuming the following:

The Capacity Payment Rate (CPR) is =	100 \$/kw-yr
The Fixed O&M Rate (FOMR) is =	20 \$/kw-yr
The Monthly Allocation Factor (MAF) is =	4%
The Monthly Contract Capacity (MCC) is =	100 MW

MCC is as stated in Appendix II, or as adjusted per Section 3.13(d)

$$\text{The Monthly Fixed Payment (MFP)} = (\text{CPR} + \text{FOMR}) * \text{MAF} * \text{MCC} * \text{AA}$$

$$\text{MFP} = (100 + 20) * 1000 \text{ kWh/MWh} * 4\% * 100 \text{ MW} * 96.76\% = \$ 464,448$$

## Appendix XIV – Example of Section 4.2

### Illustrative Example of Section 4.2

#### **4.2 (a) Guarantee Heat Rate**

Unit capacity = Design Capacity

Assume Design Capacity = 100 MW (Assumed)

Guaranteed Heat Rate Equation:

$$HR_{Unit\ output} = -16,634 \left( \frac{Unit\ output}{Design\ Capacity} \right)^3 + 43,280 \left( \frac{Unit\ output}{Design\ Capacity} \right)^2 - 40,589 \left( \frac{Unit\ output}{Design\ Capacity} \right) + 23,220$$

Unit Output (MW)	% Load*	HR <sub>D</sub>
99.654	100%	9,277
89.846	90%	9,616
79.620	80%	9,935
74.507	75%	10,115
69.394	70%	10,326
59.170	59%	10,896
48.946	49%	11,754
33.698	34%	13,801

\* % Load = Ratio of Unit output / Unit Capacity

#### **4.2(b)(i) Initial Base Capacity (C<sub>i</sub>)**

C<sub>i</sub> = 99.0 MW (Assumed)

#### **4.2(b)(ii) Tested Base Capacity (C<sub>b</sub>)**

C<sub>b</sub> = 98.0 MW (Assumed)

#### **4.2(b)(iii) Initial Guaranteed Heat Rates (HR<sub>i</sub>)**

Initial Guaranteed Heat Rates, before first Season Capacity Test:

$$HR_{Unit\ output} = -16,634 \left( \frac{Unit\ output}{C_i} \right)^3 + 43,280 \left( \frac{Unit\ output}{C_i} \right)^2 - 40,589 \left( \frac{Unit\ output}{C_i} \right) + 23,220$$

Unit capacity = Initial Base Capacity = C<sub>i</sub>

Unit Output (MW)	% Load*	HR <sub>i</sub>
99.000	100%	9,277
89.256	90%	9,616
79.097	80%	9,935
74.018	75%	10,115
68.939	70%	10,326
58.782	59%	10,896
48.625	49%	11,754
33.477	34%	13,801

$$HR_{Unit\ output} = -16,634 \left( \frac{Unit\ output}{C_b} \right)^3 + 43,280 \left( \frac{Unit\ output}{C_b} \right)^2 - 40,589 \left( \frac{Unit\ output}{C_b} \right) + 23,220$$

Unit capacity = Tested Base Capacity =  $C_b$

Unit Output (MW)	% Load*	HR <sub>i</sub>
98.000	100%	9,277
88.355	90%	9,616
78.299	80%	9,935
73.270	75%	10,115
68.242	70%	10,326
58.188	59%	10,896
48.134	49%	11,754
33.139	34%	13,801

\* Ratio of Unit output / Unit Capacity = % Load

#### **4.2(b)(iv) Heat Rate Degradation Factor (HDF)**

For example, assume HDF= 0.5 **(Assumed)**

#### **4.2(b)(v) Capacity Degradation Factor (CDF) and Heat Rate Adjustment (HRA)**

CDF =  $(1 - C_b/C_i)$                       0.0101  
HRA = CDF x HDF                        0.00505

#### **4.2(b)(vi) Adjusted Guaranteed Heat Rates, HR<sub>c</sub>**

Assume HRA<sub>previous</sub> = 0.00600 **(Assumed)**

(I)  $1 + HRA =$                                       1.00505  
(II)  $1 + (HRA_{previous} * 1.0025) =$             1.00602

(A) = Lesser of (I) or (II)

(B) = HR<sub>i</sub>

HR<sub>c</sub> = (A) x (B)

Unit Output (MW)	% Load*	HR <sub>c</sub>
98.000	100%	9,324
88.355	90%	9,664
78.299	80%	9,985
73.270	75%	10,166
68.242	70%	10,378
58.188	59%	10,951
48.134	49%	11,814
33.139	34%	13,870

**Appendix XV – Example of Section 4.5(b)**

This example represents a calculation for the first quarter. As the table shows, the assumed Number of Starts Requested (NSR) for the quarter is 41 and Completed Number of Starts (CNS) for the quarter is 38. This results in a Startup Factor of 92.68%. According to the Start-Up Adjustment Table, an NSR between 30 and 50 and a Start-Up Factor of between 85% and 94.9% results in a Start-Up Adjustment Factor of 5%. This 5% Start-Up Adjustment will be subtracted from the calculated Availability value for each month in the quarter and the resulting number shall be the final Availability value that is applied to the Non-Availability Discount and the Availability Bonus. Thus, if the actual availability for January, February and March was 97%, 95% and 96% respectively, the “Start-Up” adjusted availability would be 92% for January, 90% for February and 91% for March. If a reduction was applicable, as in this example, the reduction would be calculated for each month per the methodology applied for calculating Non-Availability Discounts; the monthly values are summed for the quarter, then divided by 12 and applied monthly to reduce the next 12 month's Capacity and Fixed O&M payments owed to Seller, as shown in the table below.

	Number of Starts Requested	Completed Number of Starts	Availability	Start-Up Adjusted Availability	% Reduction in Monthly Charge	Monthly Fixed Payment (MFP) before adjustment	\$ Reduction in Monthly Charge
January	20	18	97%	92%	4%	\$900,000.00	\$36,000.00
February	15	14	95%	90%	8%	\$600,000.00	\$48,000.00
March	6	6	96%	91%	6%	\$500,000.00	\$30,000.00
Total	41	38					\$114,000.00
	CNS=	38					
	NSR=	41					
	Start-Up Factor:	92.68%					
	Start-Up Adjustment Factor:	5.00%				Next 12 Months Reduction in Capacity and Fixed O&M Charges:	\$9,500.00