

POWER PURCHASE AND SALE AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY

(as “Buyer,” as further defined herein)

and

DYNEGY MOSS LANDING, LLC

(as “Seller”)

PACIFIC GAS AND ELECTRIC COMPANY  
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**POWER PURCHASE AND SALE AGREEMENT**

This Power Purchase and Sale Agreement is made between Pacific Gas and Electric Company, a California corporation (“PG&E”, and as further defined herein, “Buyer”) and Dynegy Moss Landing, LLC, a Delaware limited liability company (“Seller”) as of \_\_\_\_\_, 2009 (“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 existing renewable generation, distributed generation, Qualifying Facilities (as such term is defined in 18 C.F.R. §292.101(b)(1) (2008)), and/or conventional generation technologies, in order to, among other things, support its intermediate-term procurement needs 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.

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 Power Purchase and Sale 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 or ends, respectively.

(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 unless otherwise specified.

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(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. Words referring to market rules, activities and practices shall have the meaning generally ascribed to such words in California.

(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. on such day, Pacific prevailing time, and actions occurring after 5:00 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 to this Agreement related to the scheduling of any Product or Gas, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement, subject to the confidentiality provisions of Section 10.7. Each Party waives any further notice of such monitoring or recording and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. Failure of a Party either to provide such notification or obtain such consent shall not in any way limit the use of the Recordings pursuant to this Agreement. 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 and specify the scope of their individual

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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.

**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) and subject to Article XI (Effective Date; 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 3 years from the 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.

**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 the Units which shall convey to Buyer the right to receive all the Products provided by the Units, 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. The Parties acknowledge and agree this Agreement is a forward contract (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date).

(b) **Resource Adequacy Requirement.** Seller agrees that the Units offered to Buyer will meet all requirements necessary to qualify as a resource capable of contributing to Buyer’s Resource Adequacy Requirement at all times during the Services Term except during those times during which Scheduled Maintenance occurs. Seller agrees that it will take all measures necessary to qualify the Unit(s) as RA Capacity and will execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Seller’s obligations pursuant to the prior sentence shall include:

(i) Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to



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certify or qualify the Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the CAISO Interconnection Point; and

(ii) Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.

(iii) Complying with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff, including the following:

- Taking all actions to register the Project with the CAISO to ensure that the Project's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity.
- Coordinating with Buyer with regard to the submission of the Annual and Monthly Resource Adequacy Plan, as defined in the CAISO Tariff, to the CAISO.
- Complying with the bidding and dispatch requirements applicable to the Project's resource type, as set forth in Section 40 of the CAISO Tariff; and
- Complying with the applicable reporting requirements such as the Annual and Monthly Supply Plans, as defined in the CAISO Tariff, to the CAISO.

(iv) RA Capacity Delivery Point. The delivery point for the Project, with respect to Buyer's Resource Adequacy Requirements, shall be the Interconnection Point for the Project.

(v) Buyer will have exclusive rights to all RA related products such as capacity tags, capacity credits, or installed capacity ("ICAP") products.

(vi) Notwithstanding any other provision of this Section 3.1(b), Seller shall not be required to implement any change or improvement, 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 (i) an unreimbursed capital cost, over and above administrative costs incurred to remain RA compliant in the normal course of business, that over the expected life of such improvement exceeds \$10,000 per year; or (ii) an unreimbursed operating expense, over and above administrative expenses

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incurred to remain RA compliant in the normal course of business, that exceeds an annual average of \$10,000 per year; provided that Seller shall promptly inform Buyer by written notice of any change or improvement that would cause the total amount of costs to exceed such limits and Buyer shall, within ninety (90) Business Days of its receipt of Seller's notice, provide Seller with its decision as to whether (i) Seller should proceed to implement such change or improvement and agrees to reimburse Seller for any unreimbursed capital cost or operating expense that exceeds the limits specified in this paragraph or (ii) Seller shall not be obligated to proceed to implement such change or improvement.

(c) Control. Seller shall at all times retain operational control of the Units, be responsible for all operation and maintenance of the Units and 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. 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 operate a Unit or 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. 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 Transmission Provider, as applicable, responsible for such Instructed Operation. If during the Services Term Seller requires the ability to operate other than pursuant to Buyer's Schedule or as otherwise expressly contemplated herein (for example, for the purpose of conducting environmental testing or to test newly installed equipment), it 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 Seller shall be liable for Buyer's reasonable costs in accommodating Seller's requests. Operations undertaken pursuant to the prior sentence shall not be deemed to be part of Buyer's Schedule. At all other times during the Services Term, Seller shall sell and make available exclusively to Buyer all the Products of the Units. 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 the Transmission Provider) 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 prior Transmission

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Upgrades pursuant to Section 3.1(f). 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 or increase, modify or decrease the Capacity or modify or decrease the Heat Rate of the Units that are committed to Buyer (as compared to its Design Capacity and Guaranteed Heat Rate); nor take any other action that would, or may reasonably be expected to, impair or limit the ability of a 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 the Units, 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, in its sole discretion, 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 the Units 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 or Heat Rate 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, the Parties acknowledge that the Parties have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as an owner or provider of electrical interconnection or transmission service or as a 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 provide 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 or transportation. If, in accordance with the applicable tariffs, rules, or agreements governing Seller's arrangements for prior 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

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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 prior 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.

**3.2 Interconnection Facilities.**

(a) Reserved.

(b) Maintenance of Electrical Interconnection Facilities. At all times during the Services Term, Seller shall provide and 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 Fuel Handling Facilities including the Gas Interconnection Facilities. At all times during the Services Term, Seller shall provide and maintain and/or cause to be maintained, at its expense, the Gas Interconnection Facilities such that the Fuel Handling Facilities including the Gas Interconnection Facilities are capable of delivering Fuel to and at the Gas Delivery Point, and from the Gas Delivery Point to and at each Unit, in quantities 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 quantities of Fuel as the Fuel Handling 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 and Buyer's Capacity Tests, in each case, in quantities equal to those necessary to perform such operations as

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determined by reference to the most recent 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 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 Gas Delivery Point. 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 Seller's 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.

(i) Seller shall insure that the Units are included in Seller's or Seller's agent's NBAA with the pipeline through the entire month preceding the start of the Services Term. Buyer or Buyer's agent shall include the Units in Buyer's NBAA and Seller shall authorize Buyer to act as Seller's agent during the Services Term, and Seller shall notify the pipeline within the applicable tariff notification requirements. Seller's failure to include the Units in its own or a third party's NBAA prior to the commencement of the Services Term shall cause Seller to be responsible for any imbalance carried forward with respect to the Units, and Seller shall reimburse Buyer for any short gas position and shall pay Buyer for the short quantity of gas multiplied by the higher of the Monthly index price of the carry-forward month or the month the imbalance actually occurred, less 10%.

(ii) During the Services Term and subject to Sections 3.3(e) and 3.3(f) and this Section 3.3(d), Buyer shall be responsible for arranging for the transportation and distribution of all Gas, and all charges, surcharges and fees related to transportation and distribution of Buyer's Gas, to the Gas Delivery Point, including inter-state, intra-state and LDC charges, surcharges and fees. During the Services Term and subject to Sections 3.3(e) and 3.3(f), Buyer shall

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directly pay all charges, surcharges and fees associated with inter-state and/or intra-state transport of Buyer's Gas to the inter-state or intra-state Gas transportation provider. During the Services Term, Seller shall directly pay all invoices from the LDC, subject to reimbursement by Buyer for the portion of such LDC bill that relates to the transportation or distribution of Buyer's Gas. Seller shall invoice Buyer monthly for those LDC costs allocable to Buyer in accordance with the prior sentence ("Gas Distribution Reimbursements") and include a copy of the LDC bill with such invoice. Notwithstanding the foregoing, 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) 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. Buyer shall terminate its NBAA with respect to the Units at the end of the Services Term.

(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 Redacted ("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 MMBtus of Additional Gas delivered (exclusive of Buyer's Gas) multiplied by the Gas Index Price, Midpoint plus all transportation and distribution charges, surcharges and fees 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 Services 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 the Units 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 on the most recent 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 (i.e., (B) is less than (A)) by a margin of 1% or more, Buyer shall owe Seller

Redacted

Redacted

**3.4 Electric Transmission and Delivery.**

(a) Electrical Delivery Point. The “Electrical Delivery Point” shall be a specified point of interconnection at a substation within the CAISO-controlled grid and within what is presently defined as NP-15.

(b) 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.

(c) 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 Products or its delivery of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment up to and at the CAISO Interconnection Point.

(d) 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 Products or its receipt of the Products, including electric transmission costs, transmission losses, congestion costs and all risks and costs associated with any transmission outages or curtailment, from and after the CAISO Interconnection Point. For the avoidance of doubt, Buyer shall also 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.

(e) Change of Market Structure. In the event the CAISO implements changes in the market design such that Seller (due to payment of a nominal fee or at no cost to Seller) becomes exempt from, is reimbursed for or receives any refunds, credits or benefits from the CAISO for congestion charges or losses, whether due to congestion revenue rights, LMP adjustments, market adjustment, invoice adjustments or any other hedging instruments associated with the delivery of Product in accordance with the terms of this Agreement (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions and Seller shall retain the Reductions; provided that Buyer shall be responsible for CAISO charges or losses, and entitled to receive CAISO credits, benefits or reductions related to congestion from and after the CAISO Interconnection Point.

**3.5 Scheduling and Balancing.**

(a) Scheduling Coordinator. During the Services Term, Buyer will be the Scheduling Coordinator 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 scheduling deliveries of Energy and Ancillary Services (as applicable) from the Units throughout the Services Term, reviewing CAISO accounts related to the Units and Products delivered from the Units, discussing and/or resolving disputes related thereto with the CAISO, and compliance with all dispatch and bidding aspects of the Resource Adequacy Requirements. Notwithstanding the foregoing, depending on the Initial Delivery Date and the then-applicable standard scheduling protocols, Buyer will have the right, in accordance with then-applicable standard scheduling protocols, to schedule the Units in advance of the Initial Delivery Date as necessary to commence deliveries of Energy and Ancillary Services on the Initial Delivery Date. 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 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 (such schedule, as modified by Instructed Operations, "Buyer's Schedule"). Buyer shall have the exclusive right to designate the specific Units to be operated and the Products to be provided by each Unit.

(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 Initial Delivery Date and continuing thereafter throughout the Services Term, Seller shall provide Buyer a complete and accurate 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 of, or the amount of, per Buyer's specification, the Monthly Contract Capacity of the Units that is expected to be available for Scheduled Operations and a disclosure of the existence and expected duration of any Outage or any Instructed Operation, the amount of Capacity affected by such Outage and the nature and effect of the Instructed Operation on each Unit's availability, regardless of whether or the extent to which a 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 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 and accurate 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



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required pursuant to this Section 3.5(b)(i) shall be provided as discussed in Appendix III and 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 Notify Buyer’s on-duty Scheduling Coordinator, orally or through an automated notification system in accordance with PG&E’s Outage Reporting Protocols (and within the time periods required therein), of every Outage of a Unit or imposition of an Instructed Operation, whether or not the Unit is scheduled for operation. 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 or release from or change in Instructed Operation 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 Transmission Provider may require to be reported by Seller or by Buyer, in its capacity as Buyer or as the Units’ SC. Each such Notice from Seller to Buyer shall be made by providing Notice in accordance with the PG&E Outage Reporting Protocols to the Hour-Ahead Trading Desk. During the Services Term, Buyer is responsible for providing to the Transmission Provider 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 the Transmission Provider 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. Buyer shall schedule the delivery of Products in accordance with the Operational Limitations, Instructed Operations and in accordance with Section 3.6 of this Agreement (Standards of Care) and Transmission Provider operational protocols and provide Notice of such schedule to Seller (“Buyer’s Schedule”). 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 as required to comply with an Instructed Operation.

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(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 as it may be adjusted from time to time, 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), or (B) operation or dispatch is prevented by an Excused Event. During the Services Term, Seller shall not dispatch and operate Units other than pursuant to Buyer's direction except as specifically contemplated herein.

(c) Deviation Charges.

(i) Seller shall neither benefit from nor have any obligation or liability with respect to Instructed Operations from Buyer's Schedule, or, to the extent that Seller's deliveries are consistent with Buyer's Schedule, adjusted for ambient conditions, any uninstructed deviations from Buyer's Schedule.

(ii) Seller shall be liable to Buyer for deviation charges under the following circumstances: (A) If a dispatched Unit experiences a Forced Outage, Seller shall reimburse Buyer for any real time deviation charges, and other charges incurred by Buyer, net of the day-ahead price attributable to the remainder of the hour in which Buyer received notice of the Forced Outage and the next two hours of the outage (Buyer shall be liable for any deviation charges incurred beyond the first three hours of the outage), and (B) if Seller delivers less than Buyer's Schedule, Seller shall reimburse Buyer for the amount of real time uninstructed deviation charges attributable to such underdelivery. If in any month Seller's deviations result in any negative deviation charges (such that the Units are credited amounts as a result of the deviation), such negative deviation charges will be netted against any positive deviation charges owed by Seller during the same month; provided, however, that if the net sum of deviation charges owed by Seller for any month results in a negative number, Seller's liability for deviation charges during such month shall be deemed to be \$0 and Buyer will not owe Seller any payment for such negative deviation charges.

(iii) Seller shall not be responsible for deviation charges resulting from AGC instructions so long as and to the extent that Seller's operation of the Units is consistent with the AGC instructions.

**3.6 Standards of Care**

(a) General Operations. Each Party shall comply with all applicable requirements of Law, the Transmission Provider, NERC and WECC relating to the Facility and the Site (including those related to ownership and/or operation of the Facility or the Site). For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Governmental Approvals and all emissions credits required for operation of the Units in compliance with Law.

(b) Transmission Provider 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 Transmission Provider and the applicable pipeline or LDC, (ii) WECC scheduling practices and (iii) Prudent Electrical Practices.

(c) Reliability Standard. Each Party agrees to abide by all (i) NERC, WECC and Transmission Provider 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, installed on Seller's side of the Gas Delivery Point and Seller's side of the Electrical Delivery Point, shall be operated, maintained and tested by and/or on behalf of Seller in accordance with Prudent Electrical Practices, in the case of the electric metering equipment, and 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 Transmission Provider, testing shall be conducted in accordance with the procedures and the standards generally applied by such utility or the Transmission Provider (as applicable).

**3.8 Metering**.

(a) Metering Requirement and Data. All Products from the Units must be delivered through a single Electric Revenue Meter and that meter must be dedicated exclusively to the Units. All Energy must be measured by the Units' Electric Revenue Meter to be eligible for payment under this Agreement. To support invoice settlement purposes, Seller shall provide Buyer with access to all real-time meters, billing meters and back-up meters (*i.e.*, all metering). Seller shall authorize Buyer to view the on-line meter data from the Electric Revenue Meter. 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. In addition, Seller hereby agrees to provide all meter and submeter data to Buyer as set forth in Section 3.8(f). Seller consents to Buyer obtaining from the Transmission Provider the Electric Revenue Meter data, and from the interconnecting Gas pipeline all Gas Meter data, applicable to the Units 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 Transmission Provider makes any adjustment to any Electric Revenue 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

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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) days 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 Provision and Testing. Seller shall provide and cause the maintenance, operation and replacement (as needed) of a meter to be used as the Electric Revenue Meter and back-up meters, in accordance with the Transmission Provider's 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 Gas Delivery Point, 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 Electric Revenue Meter shall be locked or sealed only by, and the lock or seal shall be broken only by, the interconnecting utility or Transmission Provider, 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 Transmission Provider 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 submeters shall be the same as for a comparable utility-owned meter. Buyer will have the right to have a representative present during such tests.

(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 Transmission Provider 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 Transmission Provider or the interconnecting Gas pipeline, 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 earlier 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

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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. Seller shall install and maintain a secure communication link in order to provide Buyer with access to the following data, and shall provide Buyer with such data, on a real-time and historical basis:

- Gas flow at each Gas Meter;
- Gas flow to each Unit;
- Electrical output of each electrical generator;
- Auxiliary power consumption, by Unit and Facility; and
- Net plant electrical output at each Electric Revenue Meter.

Seller shall also provide to Buyer, in a form reasonably acceptable to Buyer, the following: (i) read-only access to measurements collected by the supervisory control and data acquisition (“SCADA”) system for the Facility commencing on the Initial Energy Delivery Date, and (ii) read-only access to the Facility’s Scheduling and Logging for the ISO of California (“SLIC”) client application commencing on the Initial Delivery Date.

Seller shall maintain at least a minimum of 120 days historical data for all data required pursuant to this Section 3.8(e), which shall be available on a minimum time interval of one minute basis or an hourly average basis. Seller shall provide such data to Buyer within five Business Days of Buyer’s request.

**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 Units 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 the Units’ 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 in accordance with PG&E’s Outage Reporting Protocols and the requirements of Section 3.10(e) as follows:

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(i) for the next calendar year, by no later than September 1 of each year immediately preceding and 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 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.

(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 the Units' 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.

During the Services Term:

(i) There shall be no Scheduled Maintenance during hours ending 700 through 2200, Monday through Sunday, of the Summer Months and December and January, absent written pre-approval of Buyer;

(ii) Scheduled Maintenance Outages for any Unit, whether full or partial Scheduled Maintenance Outages, may not exceed 700 hours total in any consecutive 12 month period; provided that Scheduled Maintenance Outages of up to 1,500 hours total may be permitted within a consecutive 12 month period when Major Maintenance overhauls are required; and provided further, that the annual allowance for Scheduled Maintenance Outages provided in this Section

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3.10(e)(ii) shall be reduced in accordance with clause (ii) of the definition of Excused Hours, if applicable.

(iii) Seller may schedule no more than one Major Maintenance overhaul for a Unit.

(f) Schedule Changes. In the event that the Seller reasonably concludes that a Unit 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 delays 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 Electrical Practices. Only with Buyer's written consent and at Buyer's sole discretion, shall such change to the schedule be deemed to be a Scheduled Maintenance Outage.

(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 Notice to Buyer in accordance with PG&E's Outage Reporting Protocols 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 the Units' 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 Sections 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 this Section 3.10(b) through (f), shall be treated as Forced Outages and the affected Unit(s) will be deemed to be

unavailable during such periods for purposes of determining Availability. Reductions to the Capacity Payment due to reduced Availability may apply.

### **3.11 Force Majeure.**

(a) Effect of Force Majeure. Except as provided in Section 5.1(a)(vi) or (x), 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 foregoing, (i) a failure to make payments accrued prior to the Force Majeure Event when due shall not be excused; and (ii) the unavailability of the Capacity of the Units due to Force Majeure will 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. Notwithstanding clause (ii) of the prior sentence, to the extent the Units are unavailable as the result of an Instructed Operation or Excused Event, the Units shall be deemed to have been available for purposes of determining Availability and the Availability Adjustment. 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 two (2) Business Days of the commencement of an occurrence that is a Force Majeure Event, the Party desiring to invoke the 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 with Notice in the form of a letter identifying the occurrence as a Force Majeure Event and 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 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 and for any purposes reasonably connected with this Agreement, including verification of the Units' availability or unavailability.

**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. 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 24 hours. 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 general accordance with ASME Performance Test Code 46 for Overall Plant Performance, ASME Performance Test Code 22 for simple cycle Gas Turbine facilities and ASME Performance Test Code 17 for Reciprocating Internal Combustion Engine facilities and in accordance with the following procedures ("Test Procedures"):

(i) The Capacity Test shall consist of three (3) one-hour test periods. If doing so is commercially reasonable, and if the Parties agree to do so, a Capacity Test may be performed during scheduled dispatch of the Units; provided that, Seller shall pay all costs of such testing above the costs associated with Buyer's dispatch of the Unit(s).

(ii) The Units shall be operated simultaneously and individually. 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 measured by the Electric Revenue Meter at the Electrical Delivery Point.

(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). The determination of the Tested Capacity shall be done by Seller. The Capacity Test results shall be delivered to Buyer no later than 48 hours after the completion of the Capacity Test.

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

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

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(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.”

(viii) Capacity Testing shall not be conducted during a Scheduled Maintenance Outage.

(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 and Seasonal Capacity Tests shall be used to determine whether each Unit performs at the Design Capacity and to confirm and/or adjust (as appropriate) the Monthly Contract Capacity of each Unit as follows.

(ii) If the Tested Capacity of a Unit during a Non-Summer Month adjusted to ISO Conditions is less than 94% of the Design Capacity or if the Tested Capacity of the Units during a Summer Month is less than 92% of Design Capacity, then, subject to Section 3.13(d)(iii), the Monthly Contract Capacity shall equal the Contract Capacity 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 and the Design Capacity. If the Tested Capacity of a Unit during a Non-Summer Month is 94% or more of the Design Capacity or the Tested Capacity of the Unit during a Summer Month is 92% of Design Capacity (as applicable), then, subject to Section 3.13(d)(iii), the Monthly Contract Capacity shall be equal to the Contract Capacity set forth in Appendix II as of the Execution Date. Notwithstanding the foregoing sentence, but also subject to Section 3.13(d)(iii), if the Tested Capacity of the Unit exceeds the Design Capacity, then the Monthly Contract Capacity shall be equal to the Contract Capacity as set forth in Appendix II as of the Execution Date adjusted

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upward by a percentage equal to the lesser of (i) the positive percentage difference between the Tested Capacity and the Design Capacity and (ii) 2%. An example of the calculation of the capacity adjustments is provided in Appendix XIV.

(iii) An adjustment to the Monthly Contract Capacity 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. Notwithstanding any other provision of this Section 3.13(d), in any month in which the Monthly Contract Capacity of any Unit(s) as established pursuant to Section 3.13(d)(i), (ii), (iv) or (v) is less than the RA Capacity of such Unit(s), the Monthly Contract Capacity shall equal the RA Capacity.

(iv) In the event that (1) as a result of a Seasonal Capacity Test the Monthly Contract Capacities are adjusted downward pursuant to Section 3.13(d)(ii), or the Actual Tested Heat Rate at Peak Load exceeds the Guaranteed Heat Rate Point at Peak Load by more than 4%, or (2) upon the completion of Scheduled Maintenance, Seller may request an additional Capacity Test ("Seller's Capacity Test") to be performed. A Seller's Capacity Test must commence no later than ten (10) Business Days after completion of the Seasonal Capacity Test showing the low test results, the completion of the Scheduled Maintenance, or the completion of the remedial maintenance or repairs, which shall be performed in accordance with Section 3.10(e) or (f), as applicable, and shall be performed in accordance with the Test Procedures, except that (A) Seller shall provide Buyer with Notice of its request to test and the proposed starting and end times of the Seller's Capacity Test no later than three Business Day 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 Units 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 (and such other Transmission Provider, if any, as applicable) 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(e), 3.3(f) and 3.5(c) 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 (iii) 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

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be performed in accordance with the Test Procedures and upon no less than 24 hours 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 Units 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 Capacity in the same manner as the Tested Capacity determined through a Seasonal Capacity Test as provided in Section 3.13(d)(ii) and (iii) 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 lesser of the Tested Capacity as determined by Seller or the RA Capacity, 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:

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Summer Months: 92.0% 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 the Unit, measured as a percentage, is determined as follows:

$$\text{Availability}_m = \text{TPE}_m / [\text{MCC}_m * (\text{MNTHHRS}_m - \text{MAINTHRS}_m)]$$

Where:

TPE<sub>m</sub> is the total amount of Energy (measured in MWh) that each Unit could have produced for the month to which the calculation applies if the Unit had been scheduled at its full Monthly Contract Capacity (“MCC”) for such month (measured in MW) for every hour in which the Unit was available to operate for Buyer less the Energy which is not produced due to MAINTHRS<sub>m</sub> and UNAVAILHRS<sub>m</sub> (as defined below). To the extent the Unit was unavailable to Buyer due to Instructed Operations or Excused Events, the Unit shall be deemed to have been available for purposes of determining TPE<sub>m</sub> and therefore no deduction is made for such hours.

TPE<sub>m</sub> can be expressed algebraically as follows:

$$\text{TPE}_m = \text{MCC}_m * (\text{MNTHHRS}_m - \text{MAINTHRS}_m - \text{UNAVAILHRS}_m)$$

MCC<sub>m</sub> is the Monthly Contract Capacity of the Unit, measured in MW.

MNTHHRS<sub>m</sub> is the total amount of hours for the month.

MAINTHRS<sub>m</sub> is the total amount of hours that the Unit was unavailable due to Scheduled Maintenance Outages or Force Majeure declared by Seller 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 Seller at the end of the applicable month. A Scheduled Maintenance Outage or Force Majeure (declared by Seller) that results in partial Outage of the Unit will count as an equivalent percentage of the applicable hour(s) for this calculation. For example, if the 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 the 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

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Outages exceed the number of hours per year of Scheduled Maintenance Outages permitted pursuant to Section 3.10(e)(ii); (iii) Force Majeure declared by Seller, 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 the Unit's availability and capability to operate (as required pursuant to Section 3.5); or (v) failure of the Unit to deliver Energy or Other Products in accordance with Scheduled Operations. Hours in which the 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 the Unit's unavailability (which may be less than 100%), such that TPE<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, in whole or in part (*e.g.*, including in a Scheduled Availability Notice or pursuant to PG&E's Outage Reporting Protocols), for any hour, the Units shall be deemed unavailable for that hour (to the extent of such unavailability) 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 TPE<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 TPE<sub>m</sub>.

Availability will be calculated separately for each Unit each month and the average availability of each Unit during each month shall be the "Availability" for the Unit for such month.

A sample calculation of "Availability" is set forth in Appendix XV.

(c) Non-Availability Discount.

(i) During each month of the Services Term in which the Availability of the Units 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 92 then AA=100%;  
if Availability is 92% or less, but no less than 60%, then  
AA = 100% - [(92% - Availability) \* 2]; and  
if Availability is less than 60% then AA=0

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For Non-Summer Months:

If Availability is greater than 94%, then AA=100%;

if Availability is 94% or less, but no less than 60%, then

AA = 100% - [(94% - Availability) \* 2]; and

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

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

In addition to the above, in the event that the Units fail to meet the standards established by the CAISO for the provision of Ancillary Services (*e.g.*, Section 8.2 of the CAISO Tariff, or such additional, replacement or substitute standards as may be applicable from time to time), the Seller shall be liable for an amount equal to the charges assessed on Buyer due to such failure.

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

#### **4.2 Heat Rate**

(a) Guaranteed Heat Rate. Seller shall guarantee each Unit's Heat Rate over the following range of dispatchable operational levels at the mean Site elevation:

- at Peak Load;
- at 100% of Base Load on the Unit(s);
- at 75% of Base Load on the Unit(s);
- at 50% of Base Load on the Unit(s); and if applicable;
- at 25% of Base Load; and
- at Minimum Load on the Unit(s).

For purposes of scheduling the output of the plant, Seller shall provide the Guaranteed Heat Rate Curve from minimum load to Peak Load based on the Guaranteed Heat Rate Points found in Appendix II. and the best fit mathematical curve fit equations for each curve or curve segment, at the CAISO Conditions. The curve fit equations will be used for determination of all Guaranteed Heat Rates, with graphical format provided for information purposes only.

(b) Heat Rate Degradation Adjustment. On an annual basis, preferably in conjunction with the annual Capacity Test, a heat rate test will be conducted to measure heat rate performance against the Guaranteed Heat Rate. The test will be conducted at the output levels in Section 4.2(a).

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(c) Based on the test results, the Unit Guaranteed Heat Rate curve will be adjusted to reflect any heat rate degradation, thereby establishing a new “Guaranteed Heat Rate”, provided, however, that in no event will the Guaranteed Heat Rate be reduced by more than 1% in any year. An example of this calculation is contained in Appendix XVI.

**4.3 Product Compensation.**

(a) Compensation Rates.

Each of the compensation rates to be paid by Buyer to Seller for Product delivered under this Agreement as set forth below shall be populated with the values as selected by Buyer in accordance with Appendix XIV.

The Compensation Rates are as follows:

(i) The Capacity Payment Rate (“CPR”) in each Contract Year shall be as follows:

<b>Moss 6</b>	
<b>Contract Year</b>	<b>CPR (\$/MW-year)</b>
Redacted	

<b>Moss 7</b>	
<b>Contract Year</b>	<b>CPR (\$/MW-year)</b>
Redacted	

(ii) The Variable O&M Rate (“VOMR”) shall be as follows:

<b>Moss 6</b>	
<b>Contract Year</b>	<b>VOMR (\$/MWh)</b>
Redacted	

<b>Moss 7</b>	
<b>Contract Year</b>	<b>VOMR (\$/MWh)</b>
Redacted	



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(iii) Losses. Seller shall not be responsible for transmission losses at or after the Delivery Point.

(b) Product Payment Obligations.

Redacted

**4.4 Start-Up Payment.** Redacted

Redacted

Redacted

**4.5 Start-Up Factor Discount.** The Buyer requires reliable operation. Therefore, a “Start-Up Factor Discount” shall be payable by Seller to Buyer and determined as follows. A “Failed Start” shall be deemed to occur for each Scheduled Start-Up of a Unit that is not a Successful Scheduled Start-Up. If Seller accrues more than five Failed Starts in any Contract Year, then for each subsequent Failed Start in that calendar year, Seller shall pay Buyer an amount equal to the Failed Start Rate multiplied by the Monthly Contract Capacity (in MWs) for the calendar month in which the Failed Start occurred; provided that, if the Seller notifies Buyer that the Unit that experienced a Failed Start is available for operation commencing in an hour no later than the second hour following the hour in which the Failed Start occurred, and if the Buyer calls upon that Unit during the day in which the Failed Start occurred (following the Failed Start) and the Unit has a Successful Scheduled Start-Up, then the amount due to Buyer from Seller for the Failed Start immediately proceeding such Successful Scheduled Start-Up shall be reduced by 50%. The sum of the amounts due for each Failed Start shall be the Start-Up Factor Discount. Buyer shall invoice Seller for the Start-Up Factor Discount following the end of each Contract Year, if applicable, 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) on the Monthly Payment Date beginning with the month in which the invoice is rendered. 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 provided in Appendix XVIII.

## ARTICLE V. EVENTS OF DEFAULT; REMEDIES

### 5.1 Events of Default.

(a) The Seller will be deemed a Defaulting Party upon the occurrence of any of the following (each a “Seller’s Event of Default”):

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

(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

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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) Reserved.

(iv) Seller fails to comply with Resource Adequacy Requirement provisions of this Agreement.

(v) During the Services Term, the Units' Availability averages less than 70% over a rolling 12 month period; provided that, if a Force Majeure event damages the steam turbine, the generator, or the step-up or step-down transformer, and if Seller has ordered a replacement part within ten (10) business days of the Force Majeure event, Seller shall have a period of 18 months in which to achieve 70% Availability over a rolling 12 month period;

(vi) During the Services Term, the Units' 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 12 month period;

(vii) Reserved;

(viii) Reserved;

(ix) 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, cumulatively, is less than 80% of their Design Capacity, unless Seller is able to demonstrate a Tested Capacity for all of the Units (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.

(x) The Tested Capacity of a Unit adjusted to ISO Conditions is less than 60% of the applicable Design Capacity for such Unit due to an event of Force Majeure and the Tested Capacity of all of the Units, cumulatively, is less than 80% of their Design Capacity, unless Seller is able to demonstrate a Tested Capacity for all of the Units (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.

(xi) Subject to Seller's right to perform a Seller's Capacity Test pursuant to Section 3.13(d)(iv), the Tested Capacity of the Units adjusted to ISO Conditions is less than 95% of the Tested Capacity as determined in the last Capacity Test in the previous Contract Year (adjusted to ISO Conditions).

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(xii) The Actual Tested Heat Rate of a Unit at Peak Load is 5% greater than the Guaranteed Heat Rate Point at Peak Load, unless Seller is able to cure the deviation and demonstrate within the following 30 consecutive days that the Actual Tested Heat Rate of such Unit at Peak Load is no more than 5% greater than the Guaranteed Heat Rate Point at Peak Load.

(xiii) Reserved;

(xiv) Reserved;

(xv) Acquisition, transfer or ownership of control of any Unit or the Seller in violation of Section 10.4.

(b) A Party will be deemed a Defaulting Party upon the occurrence of 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 (10) Business Days after Notice thereof is received by the Party failing to make such payment.

(ii) A Party fails to perform any of its material obligations under this Agreement not otherwise addressed in this Section 5.1, and such default (which is not otherwise specified to be an Event of Default hereunder and except for those defaults for which a specific remedy is otherwise set forth in this Agreement) continues for thirty (30) days after Notice thereof is received, specifying the failure; 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, not to exceed one hundred twenty (120) days.

(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 sixty (60) days.

(v) A Party fails to post, maintain, substitute, renew, replenish or supplement its Collateral Requirement on the terms and in the amount as required pursuant to this Agreement when due.

(vi) Any Governmental Approval necessary for a Party to be able to perform all of the transactions contemplated by the Agreement expires or is revoked or suspended and is not renewed or reinstated within a reasonable period of time following the expiration, revocation or suspension thereof, by reason of the action or inaction of such Party and such 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, within thirty (30) days after the written Notice from the other Party that any material representation or warranty made in this Agreement is false, misleading or erroneous in any material respect.

**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 as specified below (“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 to the extent otherwise permitted under this Agreement. 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, expressed in U.S. dollars, which the Non-Defaulting Party incurs as a result of the liquidation of the transaction and which shall never be less than zero (“Settlement Amount”). 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.

**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; provided that the Termination Payment shall be the sole remedy for damage due to termination of this Agreement (but shall not preclude recovery by a Party for other damages sustained as a result of an Event of Default).

**5.4 Waiver.** The Non-Defaulting Party shall be deemed to have waived its rights to declare an Early Termination Date and to demand remedies under Section 5.2, if (a) the Non-Defaulting Party fails to provide Notice of an Early Termination Date within one hundred eighty (180) days of the date on which the Event of Default 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 remedies will not be deemed waived if the Defaulting Party has consented to an extension of time or the Non-Defaulting Party has provided Notice of the breach and the

Defaulting Party has represented that it is seeking to cure. A Party may not withhold payments or suspend performance under Section 5.2 for a period of more than twenty (20) Business Days unless an Early Termination Date has been declared, and Notice thereof given, in accordance with Section 5.2.

## 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 Payment, Gas Distribution Reimbursement, Additional Test Costs, Governmental Charges Payment, and Greenhouse Gas (“GHG”) Taxes, if any, less Third Party Payments. On or before the 15th calendar day of each month of the Contract Term, following the 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, Gas Distribution Reimbursement (if Buyer is the LDC payment agent for Seller), Additional Gas Payments, Balancing Payments, Deviation Charges, including those CAISO charges which have been charged to Buyer and not previously invoiced to Seller for which Seller is responsible for paying to Buyer pursuant to this Agreement, 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 (10) days after delivery of the owed Party’s invoice or the twentieth 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

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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, the Non-Defaulting Party, as calculation agent, shall determine the amount of the Termination Payment, and either (a) if the Defaulting Party is the owing Party, provide the Defaulting Party an invoice within ten (10) Business Days of the Early Termination Date, which shall be due no later than ten (10) Business Days after receipt; or (b) if the Non-Defaulting Party is the owing Party, Non-Defaulting Party does not need to pay the Termination Payment.

**ARTICLE VII. LIMITATIONS**

**7.1 Limitation of Remedies, Liability and Damages.** THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY KIND, INCLUDING WITH RESPECT TO ANY UNIT, PRODUCT OR SERVICE PROVIDED BY EITHER PARTY HEREUNDER, 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 LIQUIDATED DAMAGES EXPRESSLY HEREIN PROVIDED, NOR SHALL IT BE CONSTRUED TO LIMIT RECOVERY BY AN INDEMNITEE UNDER ANY INDEMNITY PROVISION IN RESPECT

OF A THIRD PARTY CLAIM. 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.

(i) Reserved.

(ii) Within five (5) calendar days of the Effective Date, Buyer or Seller, as determined pursuant to Article 8.2(d) shall be required to deliver to the other Party, and maintain with the other Party, Collateral in an amount equal to the Collateral Requirement as determined for such Party, if any, as of the most recent Date of Determination in accordance with this Section 8.2(d). Buyer will provide Notice weekly to Seller of the Collateral Requirement amount to be posted by Buyer or Seller, as applicable, in accordance with Section 8.2. Within three Business Days of such Notice (the "Posting Deadline"), the Posting Party shall post Collateral in satisfaction of the Collateral Requirement with the other Party and shall maintain such Collateral until the next Posting Deadline, as of which time the Secured Party shall return such Collateral previously posted that is in excess of the Posting Party's then-current Collateral Requirement (except as provided pursuant to Section 8.1(a)(iii)). Collateral that is drawn upon by a Secured Party shall not relieve the Posting Party of the obligation to post in full, as of the next Posting Deadline, any and all Collateral required in satisfaction of its then-current Collateral Requirement, if any.

(iii) End of Services Term. At the end of the Services Term, each Defaulting Party that has Collateral posted with the other Party in satisfaction of any requirement under this Agreement shall maintain such Collateral in full until such time as the Termination Payment, if any, has been paid in full. If at the end of the Services Term no Termination Payment is due, or in the event that an Early Termination Date occurs and the only Party that has Collateral posted as of the Early Termination Date is not a Defaulting Party, then neither Party shall have any further obligation pursuant to this Agreement to post Collateral.



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(iv) Collateral required under this Agreement shall not be deemed a limitation of damages.

(b) Use and Return of Collateral.

(i) 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. All Collateral drawn by a Secured Party shall be applied toward satisfaction of the obligations of the Posting Party to the Secured Party under this Agreement.

(ii) Except as provided in Section 8.1(a)(ii), within ten (10) Business Days of each date on which a Posting Party's obligation to post Collateral under this Agreement expires, the Secured Party shall return to the Posting Party any and all Collateral that, in combination with any other Collateral then posted with the Secured Party by the Posting Party, exceeds the Posting Party's then current posting obligation, provided that if an Event of Default has occurred or been declared against the Posting Party, then the Secured Party's obligation to return the Posting Party's undrawn security shall be deferred until ten (10) Business Days after the date on which the Secured Party, as the Non-Defaulting Party, has collected damages or received a Termination Payment from the Defaulting Party pursuant to Section 5.2 or waived its rights to declare an Early Termination Date and to demand remedies under Section 5.2, as provided in Section 5.4.

**8.2 Determination of Collateral Requirements.**

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

(i) If on the relevant Date of Determination all of Seller's Credit Ratings are at or above BBB- and 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) Reserved.

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

(iv) If after the relevant Date of Determination an Adverse Credit Event occurs with respect to Seller then the Seller's Collateral Threshold Amount

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shall be zero; provided that if, following an Adverse Credit Event affecting Seller, the conditions of subsection 8.2(a)(i) are subsequently satisfied, the Seller's Collateral Threshold Amount shall automatically increase from zero to the applicable Seller's Collateral Threshold Amount.

(v) 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; provided, however, in the event the Buyer, as the Non-Defaulting Party, waives its right to declare an Early Termination Date and to demand remedies under Section 5.2, as provided in Section 5.4, then three Business Days following the date on which such waiver is deemed to occur and upon request of Seller, the Seller's Collateral Threshold shall increase from zero to the Seller's Collateral Threshold Amount as determined pursuant to subsection 8.2(a)(i).

<u>Seller's Collateral Threshold Amount</u> (in Millions of \$s)	<u>Credit Ratings S&amp;P</u>	<u>Credit Ratings Moody's</u>
25	AA- and above	Aa3 and above
18	A-/A/A+	A1/A2/A3
15	BBB+	Baa1
10	BBB	Baa2
5	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) or (iv), as applicable:

(i) If on the relevant Date of Determination all of Buyer's Credit Ratings are at or above BBB- and 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 after the Date of Determination an Adverse Credit Event occurs with respect to Buyer, then effective as of the third Business Day following the Adverse Credit Event, Buyer's Collateral Threshold Amount shall be zero; provided that if, subsequent to an Adverse Credit Event affecting Buyer, the conditions of subsection 8.2(b)(i) are subsequently satisfied, the Buyer's

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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).

(iv) 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; provided, however, if the Seller, as the Non-Defaulting Party, waives its right to declare an Early Termination Date and to demand remedies under Section 5.2, as provided in Section 5.4, then three Business Days following the date on which such waiver is deemed to occur and upon request of Buyer, the Buyer's Collateral Threshold shall increase from zero to the Buyer's Collateral Threshold Amount as determined pursuant to subsection 8.2(b)(i).

<b>Buyer's Collateral Threshold Amount (in Millions of \$s)</b>	<b>S&amp;P Rating</b>	<b>Moody's Rating</b>
50	AA and above	Aa3 and above
35	A-/A/A+	A1/A2/A3
30	BBB+	Baa1
20	BBB	Baa2
10	BBB-	Baa3
0	Below BBB-	Below Baa3

(c) Calculation of MIV.

(i) General. 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 the remainder of the Services Term as set forth in Appendix VI. Buyer shall be the calculation agent and will provide Notice to Seller of the Collateral Requirement amount to be posted by Buyer or Seller, as applicable. 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 remainder of the Services Term. 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) The "Collateral Requirement" for Seller during the Contract Term is the amount calculated which is equal to (x) plus (z) less (y), but no less than zero, where:

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

(z) is the Independent Amount of \$20,000,000

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

(ii) The “Collateral Requirement,” for Buyer during the Services Term is the amount calculated which is equal to (x) less (y), but no less than zero, 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) Cash Collateral

(i) 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 a Qualified Institution in accordance with a Deposit Account Agreement (“DAA”), substantially in the form attached hereto as Appendix VIII. The Secured Party may draw against the cash collateral for the reasons set forth in Section 8.1(b), under the conditions set forth in the Deposit Account Agreement.

(ii) If a Secured Party is holding Collateral in the form of cash which is not held under a Deposit Account Agreement at any time during the Contract Term, and provided no Event of Default has occurred and is occurring and the Posting Party is not delinquent on any obligation to the Secured Party under this Agreement, the Secured Party shall pay interest on Collateral in the form of cash on the third Business Day of the calendar year following the calendar year used in the most recent Interest Calculation (or upon the date on which the Collateral is returned to the Posting Party, if earlier). Interest shall be accrued on a monthly basis and compounded at the end of each calendar month from the date the cash is fully deposited through the date one day prior to its return, or conversion to another form of Collateral at the Interest Rate (“Interest Calculation”). The Interest Rate shall be calculated based on a 360-day year. The Secured Party may draw against the cash collateral for the reasons set forth in Section 8.1(b).

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(iii) If a Party has provided a Letter of Credit pursuant to any of the applicable provisions in this Article VIII, 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, or shall replace such Letter of Credit with cash in an amount equal to the face amount of the Letter of Credit, to be held in a DAA pursuant to Section 8.1(a). 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 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, in accordance with Section 8.3(a)(ii). 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 a 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.

(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 (subject to the Posting Party satisfying its other obligations under this Agreement, including any further requirements to post Collateral under this Agreement).

**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 Products 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, 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 Products 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 Greenhouse Gas.**

(a) Notwithstanding Sections 9.1 and 9.2, Buyer shall reimburse Seller and be responsible for all taxes, charges, fees or other costs of compliance resulting from any Laws, rules or regulations by a Government Authority with jurisdiction over Seller and/or the Unit(s) governing emissions of Carbon Dioxide attributable to the operation of the Unit(s) during the Services Term, including AB 32 (Global Warming Solutions Act of 2006) enacted under California Health and Safety Code 38500 et. seq. (“Carbon Dioxide Cost”); provided, however, that Seller shall pay for any Carbon Dioxide Cost associated with a Unit to the extent that such Unit exceeds its Guaranteed Heat Rate. Seller will pay and be responsible for all taxes, charges, fees or other costs of compliance resulting from any Laws, rules or regulations by a Government Authority with jurisdiction over Seller and/or the Unit(s) governing emissions of any other greenhouse gas, including carbon monoxide (CO), nitrous oxide (NO<sub>2</sub>), methane (CH<sub>4</sub>), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF<sub>6</sub>).

(b) Buyer shall reimburse Seller for all Carbon Dioxide Costs within forty-five (45) days of Buyer’s receipt from Seller of documentation reasonably establishing: (i) that Seller is actually liable for the Carbon Dioxide Cost; (ii) the specific amount of the Carbon Dioxide Cost; (iii) that the Carbon Dioxide Cost was imposed upon Seller by an authorized Governmental Authority with jurisdiction over Seller and/or the Unit(s) as described above in this Section 9.3(a); (iv) that Seller has paid the Government Authority identified under (iii) the full amount of the Carbon Dioxide Cost for which Seller seeks reimbursement from Buyer under this Section 9.3; and (vi) that Seller took all reasonable steps to mitigate the cost or amount of

such Carbon Dioxide Cost; provided, the reasonable steps shall not be deemed to require Seller to make capital improvements to the Unit(s) in excess of \$10,000 per Contract Year after reimbursement from any Third Party (“Seller’s Carbon Dioxide Capital Improvements”). If the Parties determine that capital improvements in excess of the Seller’s Carbon Dioxide Capital Improvements are warranted in order to meet the objectives of this Section 9.3, the Parties shall negotiate in good faith the necessary or desirable amendments to this Agreement to allocate the costs of such capital investments in an equitable manner and reflect the total number of Contract Years remaining in the Service Term relative to the estimated useful life of the Carbon Dioxide Capital Improvements.

(c) In the event that Buyer reimburses Seller pursuant to this Section 9.3, and Seller, or any of Seller’s Affiliates, receives any credits, allowances or similar item of value (“Credit”) with respect to its Carbon Dioxide emissions related to the operation of the Unit(s) and giving rise to the Carbon Dioxide Cost, Seller shall transfer or cause the transfer of such Carbon Dioxide Credit to Buyer promptly upon receipt by Seller or Seller’s Affiliate (to the extent possible under Law).

(d) Buyer may elect, upon sufficient notice to Seller, to directly discharge the Carbon Dioxide Cost, therefore nullifying the need for a reimbursement as described in this Section 9.3, by paying the Carbon Dioxide Cost, providing Carbon Dioxide Credits or otherwise satisfying the Carbon Dioxide Cost obligation in a manner acceptable to the relevant Government Authority, and in such case Seller shall cooperate with Buyer as necessary in order to facilitate the same.

(e) Nothing contained in this Section 9.3 removes from Seller the obligation to comply with any Carbon Dioxide related compliance requirements, including but not limited to reporting, registering, tracking, allocating for or accounting for Carbon Dioxide emissions, nor does anything contained in this Section 9.3 alleviate from Seller the costs incurred to meet Carbon Dioxide compliance requirements nor costs incurred in the normal course of business.

(f) In addition to the foregoing, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to Carbon Dioxide emissions attributable to the generation of Energy procured by Buyer, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such Carbon Dioxide emissions. Should that be the case, Seller agrees to, promptly following Buyer’s written request, take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to the generation of Energy from the Unit(s) reasonably necessary to permit Buyer to comply with such requirements.

#### **9.4 Cooling Water Event.**

If at any time during the Term Seller is unable to deliver all or any portion of the Product or encounters any limitations on the operation of either Unit or the generating facility (including through permit requirements) exclusively resulting from the implementation of

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Section 316 (b) of the Clean Water Act or appeal of the Facility's wastewater discharge (NPDES) permit in *Voices of the Wetlands v. California State Water Resources Control Board*, No. S160211 (Cal. Sup. Ct. Mar. 19, 2008) (petition for review granted), that prohibits or restricts Seller's ability to utilize once-through cooling in the operation of any Unit (a "Cooling Water Event"), then Seller may, at its option, upon notice to Buyer, ("Cooling Water Event Termination Notice") designate a termination date no earlier than sixty (60) days from the date of such Cooling Water Event Termination Notice ("Cooling Water Early Termination Date") and terminate this Agreement; provided that, no such notice or termination may be made prior to the date that revised 316(b) or NPDES permit restrictions go into effect. Upon such termination, neither Party shall owe any type of early termination payment, fee or charge.

If during the Term Seller is required to make capital improvements to a Unit or the Facility or to pay a fee for the continued utilization of once-through cooling as a consequence of changes in any statute, regulation and/or order of a Governmental Authority, Seller shall pay for such improvements or pay such fee up to a maximum payment of \$5,000,000 per year. If the annual cost of such change exceeds \$5,000,000 in any year, Buyer shall have the option, in its sole discretion, to pay one half of such costs between \$5,000,000 and \$15,000,000 or to terminate this Agreement. If the annual cost of such change exceeds \$15,000,000 for any year, either Party may terminate this Agreement upon thirty (30) days notice to the other Party without any other payment or liability between the Parties, including the payment of any type of early termination payment, fee or charge.

**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) in the case of Buyer, it has all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

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



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

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

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

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

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

(ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the date of this Agreement);

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement; and

(xi) 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.

(b) General Covenants. Each Party covenants that throughout the Contract

Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and qualified to conduct business in the State of California and in all jurisdictions where ownership of its properties or its operations require such qualifications, except where the failure to do so would not have a material adverse effect on its financial

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condition, its ability to own its properties or transact its business, or to carry out the transactions contemplated hereby;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all Governmental Approvals necessary for it to legally perform its obligations under this Agreement;

(iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it; and

(iv) it shall maintain its status as a “forward contract merchant” within the meaning of the United States Bankruptcy Code (for so long as such term has the same definition as in effect as of the date of this Agreement).

(c) Covenants of Seller.

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

(ii) Seller covenants to and for the benefit of Buyer that throughout the Services Term:

- (a) 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; provided, however, that this covenant does not apply to, and Seller makes no covenant regarding, any mechanic’s liens placed on the Products by a subcontractor when Seller has made payment in full to the general contractor that owes money to the subcontractor placing the lien;
- (b) the Unit(s) shall at all times during the Contract Term be free and clear of all liens, security interests, claims and encumbrances or any interest thereto or therein by any Person except for purposes of project financing or as otherwise agreed by Buyer as evidenced by its written consent;
- (c) As of the Initial Delivery Date, it will control all the rights to all Green Attributes from the Project, and during the Contract Term it will not transfer, sell, or otherwise dispose

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of the rights to any Green Attributes associated with the Units to any person other than Buyer and will transfer all Green Attributes associated with the Units to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person (without any charge other than as set forth in Section 4.3);

- (d) it will take no action or permit any Person (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Units in order to satisfy its Resource Adequacy Requirements;
- (e) 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;
- (f) To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h);

(d) Representations and Warranties of Buyer. Buyer represents and warrants 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 Indemnifiable Losses, 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 Products 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 actions or inactions, (v) Third Party Claims arising from Seller's breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility; (vi) 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 (vii) resulting from Seller's violation of any applicable Law, or Transmission Provider, 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 Buyer, Seller,

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or others, excepting only such Indemnifiable Losses, to the extent caused by the 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 Indemnifiable Losses, 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 resulting from Buyer’s actions or inactions; (iii) Third Party Claims arising from Buyer’s breach of this Agreement; or (iv) resulting from Buyer’s violation of any applicable Law, or Transmission Provider, 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 Buyer, Seller, or others, excepting only such Indemnifiable Losses, to the extent caused by the 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

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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

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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**. The right of Seller to assign this Agreement or to transfer control of the Units (directly or indirectly) to another person, whether or not affiliated, shall be subject to Buyer's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller. The right of Buyer to assign this Agreement to another person, whether or not affiliated, shall be subject to Seller's consent, not to be unreasonably withheld upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Buyer. Assignment of this Agreement and liens upon the Units for purposes of project financing shall be permitted; and Buyer will execute such additional consents as reasonably required by Seller in connection with such assignment; provided that Buyer shall not be required to consent to any additional terms or conditions, including extension of the cure periods or additional remedies for lenders; and provided further, Seller shall be responsible for Buyer's reasonable costs associated with review, negotiation, execution and delivery of such documents, including attorney's fees. Seller will agree that the Units and the Products will be free of liens other than permitted liens contemplated in the preceding sentence, as agreed to by the Parties.

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**10.5 Governing Law.** THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. THE PARTIES AGREE THAT EXCLUSIVE JURISDICTION AND VENUE FOR ANY ACTION COMMENCED HEREUNDER SHALL LIE IN THE STATE AND FEDERAL COURTS IN SAN FRANCISCO, CALIFORNIA.

**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 and 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 Affiliates and the Party's and its Affiliate's employees, lenders, counsel, accountants, advisors, 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

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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 Transmission Provider 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); (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 and (ii) prevent or limit such disclosure. 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. Further, notwithstanding any other provision of this Section 10.7, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose the following, which shall not be considered to be Confidential Information: Party names, resource/fuel/technology type, Contract Term, Services Term, Site, Contract Capacity, Initial Delivery Date, and Electrical Delivery Point. 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, 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.
  - (ii) Employers’ Liability insurance shall not be less than \$1,000,000 for injury or death occurring as a result of each accident.



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(b) Commercial General Liability.

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

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

(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 the Seller (Insurance Services Office (ISO) Form CG2010 1185, or equivalent form). In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "PG&E, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"
- (b) be endorsed (blanket or otherwise) 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 each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

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(d) Aircraft Liability.

(i) If the scope of Work involves aircraft, coverage for bodily injury, property damage, including injury sustained by any passenger, applying to all aircraft owned, furnished or used by the Seller in the performance of this Agreement shall be maintained. Work that involves chemical spraying shall include coverage for pesticide and herbicide application.

(ii) The limit shall not be less than \$5,000,000 single limit for bodily injury and property damage including passenger liability.

(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 Work performed by or for the Seller;
- (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) all rights of subrogation against PG&E shall be waived with respect to all physical damage to any aircraft used during the performance of this Agreement.

(e) Watercraft Liability.

(i) If the scope of Work involves watercraft, Marine protection and indemnity or other liability coverage including coverage for injury sustained by any passenger, applying to all watercraft used in the performance of this Agreement.

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

(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 by or for the Seller;
- (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.

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(f) Self-Insurance.

(i) Buyer and Seller acknowledge and agree that, notwithstanding anything to the contrary, Seller will self-insure all claims up to \$1,000,000.

(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) Reviews of such insurance may be conducted by Buyer on an annual basis.

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

(vi) Notwithstanding anything to the contrary, Buyer and Seller acknowledge and agree that Seller will satisfy the requirements of this Section 10.8 by obtaining either claims-based or occurrence-based insurance policies.

(h) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall 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.

**10.9 Records and Audit.**

(a) Records and Audit. Buyer represents that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Seller shall provide access to financial records and personnel required by Buyer to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

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(i) Seller's financial statements and notes to financial statements and financial schedules underlying the financial statements, all within forty-five (45) days after the end of each fiscal quarter; and

(ii) Access to records and personnel, so that PG&E's independent auditor can conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002); provided, however, that PG&E shall have no right to audit Seller's internal controls unless Seller's auditors have found a material weakness that may materially impact the financials of Seller. In the event that PG&E's independent auditor requires Seller to remediate control weaknesses identified during its audit, which weaknesses may materially impact the financials of the Seller, Seller and PG&E will in good faith agree on a plan to remediate such deficiencies.

Any information provided to Buyer pursuant to this Section 10.9 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with (1) internal or external parties or (2) regulatory, administrative or legal entities or authorities.

(b) 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.

(c) 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.

**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 or e-mail will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by fax or e-mail 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. EFFECTIVE DATE; AND INITIAL DELIVERY DATE**

**11.1 Effective Date.**

The Effective Date shall be the Initial Delivery Date of January 1, 2011. The Seller represents and warrants to the Buyer as of the Initial Delivery Date:

(i) The Facility includes the equipment and characteristics as described in Appendix II, which can reasonably be expected to enable Seller to satisfy the obligations of the Seller herein.

(ii) 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 are 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, Transmission Provider, WECC and any other organization charged with reliability responsibilities or Governmental Authority.

(iii) Any and all Transmission Upgrades required to enable the grid to accept delivery of the Maximum Contract Capacity (in addition to any other output of the Facility) at all times during each month, are constructed and placed into service.

(iv) The Fuel Handling Facilities, including the Gas Interconnection Facilities as necessary to deliver Gas to and at the Gas Delivery Point in quantities 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 quantities of Fuel as the Fuel Handling Facilities are required to deliver to the Facility), are constructed and placed into service

(v) All Governmental Approvals required for the lawful operation and maintenance of the Facility, inclusive of the Electrical Interconnection Facilities and Fuel Handling Facilities, including all those related to environmental matters, as necessary to permit each Unit to operate according to the specifications described in Appendix II have been received and are in full force and effect and Seller possesses emission credits necessary for such operation of the Units.

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

(vii) The Units are Commercially Operable on the Initial Delivery Date.

(viii) Reserved.

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(ix) No default has occurred and remains uncured as of the Initial Delivery Date.

(x) Reserved.

(xi) Seller has executed a CAISO Participating Generator Agreement (or a successor or similar form of agreement providing for interconnected operation with the CAISO), which is in full force and effect.

**ARTICLE XII. DISPUTE RESOLUTION**

**12.1 Intent of the Parties.** In the event of any dispute arising out of this Agreement, the Parties agree to attempt to resolve such matter by each appointing a senior level executive (“Executive”) with the authority to settle the dispute. The Executives shall diligently attempt in a commercially reasonable manner to resolve the matter over a period of not less than thirty (30) calendar days from the date a Party sends written notice to the other Party of the intent to resolve a dispute between the Executives. If any such dispute is not settled during such time period, then either Party shall have the right to initiate any action in law or in equity in accordance with Section 10.5; provided that, any legal action must be taken in the courts located in the City of San Francisco, California.

**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 or e-mail. A Notice sent by facsimile transmission or e-mail 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:  
(except as indicated otherwise below)  
Dynegy Moss Landing, LLC  
Street: 1000 Louisiana St, Suite 5800  
City: Houston, Texas 77002  
Attn: Contract Administration  
Phone: (713) 767-6281  
Facsimile: (713) 767-5931  
Duns: 102099413  
Federal Tax ID Number: 770486186

All Notices to Buyer  
  
Pacific Gas and Electric Company  
  
City: San Francisco, CA Zip: 94105  
Attn: Contract Administration  
Phone: (415) 973-0070  
Facsimile: (415) 973-9176  
Duns: 556650034  
Federal Tax ID Number: 94-0742640

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Invoices:  
Attn: John Taylor  
Phone: (713) 767 0223  
Facsimile: (713) 507 3679

Scheduling and Dispatch:  
Attn: Real Time Desk  
Phone: (713) 507 6502  
Facsimile:

Payments:  
Attn: John Taylor  
Phone: (713) 767 0223  
Facsimile: (713) 507 3679

Wire Transfer:  
BNK: Bank of New York  
ABA: 021-000-018  
ACCT: GLA 111565

Credit and Collections:  
Attn: Chris Robinson  
Phone: (713) 767 0312  
Facsimile:

Legal:  
Attn: Angela Koenn  
Phone: (713) 767 8510  
Facsimile:

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

Attn: \_\_\_\_\_  
Phone:  
Facsimile:

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:  
ABA:  
ACCT:

Credit and Collections:  
Attn: Manager, Credit Risk  
Phone: (415) 973-9099  
Facsimile: (415) 973-7301

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

Attn: \_\_\_\_\_  
Phone:  
Facsimile:

Seller: Dynegy Moss Landing, LLC

By:

Name:

Title:

Buyer: Pacific Gas and Electric Company

By:

Name:

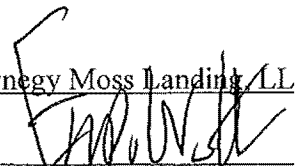
Title:

PACIFIC GAS AND ELECTRIC COMPANY  
POWER PURCHASE AND SALE AGREEMENT

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

Seller: Dynegy Moss Landing, LLC  
By: 

Buyer: Pacific Gas and Electric Company  
By: ~y.

Date: .. ~

Vice President, Energy Supply Management  
Date: 11/20/09





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**APPENDIX I - GENERAL DEFINITIONS**

“Actual Tested Heat Rate” shall have the meaning set forth in Section.

“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).

“Adverse Credit Event” means with respect to Seller or Buyer, as applicable, that one or more of its Credit Ratings have been downgraded to a level below BBB- or Baa3; or with respect to Seller or Buyer, 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, through one or more intermediaries, 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 deemed to be ancillary services by the CAISO and/or FERC as of the Effective Date or a future date during the Contract Term.

“Authorized Representative” has the meaning set forth in Section 1.3.

“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).

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

“Base Load” means, when used in relation to a Unit, that the Unit 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.

“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), the Parties acknowledge that the Parties have no rights against each other or obligations to each other under this Agreement with

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respect to any relationship between the Parties in which PG&E is acting in its capacity as an owner or provider of electrical interconnection or transmission service or as a 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.

“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 Interconnection Point” means, for Unit(s) interconnected directly to the CAISO Grid or to a Participating Transmission Owner, the Electrical Delivery Point, and for Unit(s) interconnected with a Transmission Provider other than the CAISO or a Participating Transmission Owner, the point at which the Products from the Unit(s) are delivered to the CAISO Grid.

“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 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 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.

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“Carbon Dioxide” means emission into the atmosphere of carbon dioxide (CO<sub>2</sub>).

“Carbon Dioxide Cost” has the meaning set forth in Section 9.3(a).

“CEC” means the California Energy Commission.

“Cold Start-Up” means a Start-Up that occurs more than 72 hours after a Shut-Down.

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

“Collateral” shall mean cash via wire transfer in immediately available funds or Letter of Credit.

“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 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 98% 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.

“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.

“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 the Initial Delivery Date. In the event of an Early Termination Date, the final Contract Year may be a period of less than twelve (12) consecutive months, and shall be the period commencing on the anniversary of the Initial Delivery Date last preceding the Early Termination Date through and including the Early Termination 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.

“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.

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“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(a) and (b).

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

“Delivery Date Security” means the aggregate of the Application Security and the Contract Approval Security.

“Deposit Account Agreement” or “DAA” 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 of the Execution Date, as measured at the Electrical Delivery Point, at ISO Conditions, which is set forth in Appendix II.

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

“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 the date set forth in Article 11.1.

“Electrical Delivery Point” has the meaning set forth in Section 3.4(a).

“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 electric systems of the Transmission Provider and PG&E (or other transmission systems directly or indirectly interconnected to PG&E and/or the Transmission Provider) and PG&E’s customers from faults occurring at the Units, and (b) the Units from faults occurring on the electric systems of PG&E or the Transmission Provider, or on other directly or indirectly interconnected transmission systems.

“Electric Revenue Meter” means the measurement device(s) used by the interconnecting Transmission Provider to measure deliveries of any and all Products for purposes of billing.

“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

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determined by PG&E in its sole discretion, or any condition so defined and declared by the Transmission Provider.

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

“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 hours set forth in Schedule E-1.

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

“Executive” has the meaning set forth in Section 12.1(a).

“Facility” means the generation facility described in Appendix II, consisting of one or more Units committed to Buyer and the Electrical Interconnection Facilities and Fuel Handling Facilities including other units, that generate, consume or store energy in any form,; 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.

“Failed Start” has the meaning set forth in Section 4.5.

“Failed Start Rate” means \$300 per MW in the first Contract Year, and thereafter shall be \$300 per MW adjusted by the GDP at the start of each successive Contract Year.

“FERC” means the Federal Energy Regulatory Commission.

“Fired Hour” as applied to a Unit, is an hour in which the Unit was scheduled by Buyer to run from the time Start-Up is completed until Shut-Down is initiated.

“Force Majeure” shall mean any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome, including but not limited to: (1) acts of God, including but not limited to landslide,

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lightning, earthquake, storm, hurricane, flood, drought, tornado, or other natural disasters and weather related events affecting an entire region which caused failure of performance; (2) fire or explosions; (3) sabotage, riot, acts of terrorism, war and acts of public enemy; or (4) restraint by court order or other governmental authority. Force Majeure shall not include (i) a failure of performance of any Third Party, including any party providing electric transmission service or natural gas transportation, except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above, (ii) failure to timely apply for or obtain Permits, or (iii) breakage or malfunction of equipment, (except to the extent that such failure was caused by an event that would otherwise satisfy the definition of a Force Majeure event as defined above). A Party shall not be considered to be in default in the performance of its obligations under this Agreement to the extent that the failure or delay of its performance is due to an event of Force Majeure; and the non-affected Party shall be excused from its corresponding performance obligations to the extent due to the affected Party's failure or delay of performance. Notwithstanding the forgoing, (i) a failure to make payments accrued prior to the event of Force Majeure when due shall not be excused; and (ii) subject to Section 3.11(a), the unavailability of the capacity of the Units due to Force Majeure shall be deemed to be unavailability for purposes of determining Availability and the Non-Availability Discount.

“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” means natural gas.

“Fuel Handling Facilities” means all equipment and facilities necessary in connection with the delivery, receipt, handling, processing, metering and disposal of Fuel or Fuel by products, including the Gas Interconnection Facilities.

“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 benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner; provided that, in Appendix VI, “Gains” has the meaning set forth therein.

“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 outlet 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 highest 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” for the applicable date of

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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 lowest 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” 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 downstream flange of the Gas Meter Set (owned by Seller) and from the outlet 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 purpose of serving the Unit) 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 piping and fittings of the Gas transporter.

“GDP” means the amount equal to the quotient of the Gross Domestic Product Implicit Price Deflator, or GDP Deflator, as published by the United States Department of Commerce, Bureau of Economic Analysis (“Deflator”) that is two quarters prior to the most recent anniversary of the Initial Delivery Date, and the Deflator for the quarter that is two quarters prior to the Initial Delivery Date. If the base year of the Deflator is reset, the Parties shall adjust the formula appropriately. Should such index be discontinued, an index specified by the appropriate government agency, if any, shall be used. If no replacement index is specified, a new index that most accurately reflects charges for the applicable cost component shall be substituted by agreement of the Parties’ authorized representatives. If no agreement regarding a replacement index is reached in a timely manner, the dispute shall be resolved in accordance with Article 12 of this Agreement.

“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.

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

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

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

“Guaranteed Heat Rate Curve” means the heat rate curve identified as such and provided in Appendix II.

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

“Guaranteed Heat Rate Points” means the heat rate points identified as such and provided in Appendix II.

“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



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("PCBs"), and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

"Heat Rate" means the efficiency of a Unit's ability to convert fuel into power.

"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 16 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(c).

"Indemnitor" has the meaning set forth in Section 10.2(c).

"Independent Amount" means \$20,000,000 with respect to Seller and \$0 with respect to Buyer.

"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, or (iii) a methodology agreed to by the Parties' Authorized Representatives.

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“Initial Capacity Test” is a test of the Units’ 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 and Compensation payable by Buyer to Seller begins to accrue, which shall occur as specified in Section 11.3(a).

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

“Instructed Operations” means (i) an Operational Order, (ii) a mandatory direction of the Transmission Provider, (iii) AGC instructions issued by CAISO, or (iv) as required pursuant to the Seller’s CAISO Participating Generator Agreement (explicitly incorporating Section 5 of the CAISO Tariff as in effect as of the Execution Date or any revision thereof) to meet Emergencies and reliability needs including voltage support.

“Interest Calculation” has the meaning set forth in Section 8.3(a)(ii).

“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 30 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.

“Letters of Credit” shall mean one or more irrevocable, standby letters of credit in the form of Appendix V or reasonably acceptable to the Secured Party issued by (i) a U.S. commercial bank 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, (ii) a foreign financial institution 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, provided such foreign financial institution has a U.S. branch, or other U.S. presence acceptable to the Buyer, in its reasonable discretion, (iii) a U.S. affiliate of a foreign financial institution, provided such foreign financial institution acts as the “confirming bank” and has 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), resulting from termination of this Agreement, determined in a commercially reasonable manner; provided that, in Appendix VI, “Losses” has the meaning set forth therein.

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“LDC” means local distribution company, a distributor of Gas for consumption, or if a Facility purchases Gas directly from a pipeline, such pipeline.

“Major Maintenance” is defined as any hours or starts based scheduled maintenance on the major equipment and systems.

“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 the greatest Contract Capacity committed to Buyer by Seller from the Units for any month during the Service Term.

“Monthly Contract Capacity” or “MCC” means the maximum amount of Capacity from the Units that Seller has committed to sell to Buyer during such month. Prior to the Initial Delivery Date, the Monthly Contract Capacity for the Units 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 the Units shall be established pursuant to Section 3.123(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.

“MRTU” means Market Redesign and Technology Upgrade, as such term is used by the CAISO to describe new market structures and rules expected to become effective in 2008, or a successor program.

“MW” means megawatts.

“NERC” means the North American Electric Reliability Corporation.

“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.

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

“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, ramp rate, the

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limitation on the number of Scheduled Start-Ups per Contract Year and the minimum operating limits for the Units.

“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.

“Other Products” shall mean, for each Unit, (1) all Ancillary Services that a Unit is capable of producing; (2) rights associated with Resource Adequacy Requirements; (3) all thermal and/or mechanical energy produced by the Units; 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 the Units to operate at 100% of its Monthly Contract Capacity due to a Forced Outage, Scheduled Maintenance Outage or Force Majeure of any Unit, including any derating or inability to produce a Product (other than as disclosed in Appendix II as an Operational Limitation).

“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.

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

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

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

“PG&E’s Outage Reporting Protocols” means the instructions and procedures to be established by PG&E from time to time for reporting Outages of the Unit(s). PG&E’s Outage Reporting Protocols as in effect as of the Execution Date are attached hereto as Appendix III and may be revised unilaterally by PG&E from time to time with reasonable advance notice to Seller.

“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 Deadline” has the meaning set forth in Section 8.1(a)(ii).

“Posting Party” means a Party that is obligated to post, or posts, Collateral under this Agreement.

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

“Project” means the Facility and all rights, obligations and assets associated with ownership and operation of the Facility.

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

“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 “A2” by Moody’s, if such entity is rated by both S&P and Moody’s or (b) “A” by S&P or “A2” by Moody’s, if such entity is rated by either S&P or Moody’s but not both, and (ii) having total assets of at least \$10,000,000,000 and a capital and surplus of at least \$1,000,000,000.

“RA Capacity” means Capacity that is available to Buyer to satisfy its Resource Adequacy Requirement.

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

“Reductions” has the meaning set forth in Section 3.4(e).

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

“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.

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

“Resource Adequacy Requirement” or “RAR” means a standard established and administered by the CPUC and/or the CAISO or a successor control area operator, whereby 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).

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“Scheduled Energy” means Energy scheduled for delivery pursuant to Buyer’s Schedule as adjusted for any derates per SLIC entries or as dispatched by AGC or the CAISO, if Seller complies with the applicable instructions.

“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 the Units’ operations, (iii) causes the available Capacity for the Units 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 (including 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 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” means a Party for whose benefit Collateral has been posted by the other Party.

“Seller’s Carbon Dioxide Capital Improvement” has the meaning set forth in Section 9.3(b).

“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(c).

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

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

“Settlement Amount” has the meaning set forth in Section 5.2.

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

“Site” means the real property on which the Facility is located, as identified in Appendix II.

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

“Start-Up” means the action of bringing a Unit from non-operation to operation at Buyer’s Schedule, and the Unit operates at steady state mode for a minimum of one hour. “Start-Up” includes a Hot Start-Up, Warm Start-Up or Cold Start-Up.

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

“Start-Up Payment” has the meaning set forth in section 4.4.

“Start-Up Rate” means the amount per MW payable by Buyer to Seller for a Successful Scheduled Start-Up, by type of Scheduled Start-Up, as set forth in Section 4.4.

“Successful Scheduled Start-Up” means a Start-Up which meets the requirements of a Successful Start-Up and a Scheduled Start-Up.

“Successful Start-Up” means that the Unit has completed Start-Up no later than one (1) hour 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 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.

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“Transmission Provider” means the CAISO or such other electric utility or transmission operator to which the Unit(s) interconnect.

“Transmission Upgrades” are any additions and/or reinforcements to an electric transmission system that were required as a result of the interconnection of the Units to that transmission system or an interconnected transmission system and/or that 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 output from a steam turbine as more particularly described in Appendix II from which Seller has agreed to provide Products to Buyer pursuant to this Agreement.

“Units” means the Units, as more particularly described in Appendix II, and all appurtenant facilities and equipment.

“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 more than 16 hours and less than 72 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: Dynegy Moss Landing LLC

Facility Site name: Moss Landing Power Plant

Facility physical address: Highway 1 & Dolan Road, Moss Landing. CA, 95039

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

Number of Units at the Facility committed to Buyer: 2 (with associated facilities, as described below)

UNIT(S) DESCRIPTION

Units (for each unit committed to Buyer):

Unit name: Unit 6 & Unit 7

Technology type: Steam Turbine / Generators with supercritical gas fired boilers

Specific Unit description: Both units consist of GE steam turbine generators supplied by B&W gas fired supercritical pressure reheat boilers. Boilers are equipped with low NOx burners and selective catalytic reduction. Condensers utilized sea water in a once through cooling cycle.

Design capacity: Refer to Capacity table showing Design Capacity and Monthly Contract Capacity for each month listed in the table at the end of this Appendix II.

Maximum Contract Capacity: Unit 6: 754 MW. Unit 7: 755 MW

Interconnection. The Electrical Delivery Point for the Units is described as follows:

Distribution Area:

Congestion Zone:

Demand Zone: NP-15

Delivery Point: PG&E 500 kv switchyard at PG&E's Moss Landing Switching Center

Delivery Point Address: 6 Unit Node: MOSSLND6\_7\_B2. 7 Unit Node: MOSSLND7\_7\_B2.

Additional Information:

Operational Limitations

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**Starts**

The terms “Start-Up”, “Cold Start-Up”, “Warm Start-Up”, and “Hot Start-Up” are defined terms with the meaning set forth in this Agreement.

**Starts Fuel Use: (Applies to either Unit 6 or 7)**

Cold Start-Up – 10,394 MMbtu

Warm Start-Up – 10,394 MMbtu

Hot Start-Up– 10,394 MMbtu

Start-Up Time: (Applies to either Unit 6 or 7)

*[For the purpose of filling out this Appendix, Start-up time is the amount of time needed to bring a Unit from non-operation to operation at Buyer’s Schedule.]*

Cold Start-Up – 1440 minutes

Warm Start-Up – 960 minutes

Hot Start-Up – 960 minutes

**Start Limitations (Applies to either Unit 6 or 7)**

If both units are shutdown then only one can be started at a time. Once initial unit is at minimum load or higher, the second unit may be started.

Each unit is limited to a single start per day.

**Ramp Rates (Applies to either Unit 6 or 7)**

Under AGC

Low Range 200-400 MW’s, 30 mw/min (One Boiler Feed Pump Operation)

High Range 330-730 MW’s, 30 mw/min (Two Boiler Feed Pump Operation)

The maximum ramp rate is 30 MW/minute.

Under Local Control

Range 52-160 MW’s, 5 mw/min

Range 190-730 MW’s, 30 mw/min

Range 730-754(5) MW’s, 5 mw/min

The maximum ramp rate is 30 MW/minute.

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Both Units have a forbidden range between 160-190 MW's (transfer range from Flash Tank to VTP)

**Minimum Times (Applies to either Unit 6 or 7)**

The minimum uptime after a start is 24 hours.

The minimum downtime after a shutdown is 24 hours.

Ancillary Services (Applies to either Unit 6 or 7)

Ancillary Services, at ISO conditions, normal efficiency mode:

Regulation ranges are 200-400 MW's and 330-730 MW's.

Spinning reserve is 5 mw/min in load range of 52-160 MW's and 30 mw/min from 190-730 MW range

**Minimum Load of Each Unit (at ISO Conditions): (Applies to either Unit 6 or 7)**

52 MWs

**Emissions Restrictions (Applies to either Unit 6 or 7)**

The Units must be operated in a manner that permits their compliance with both the boiler air permit, issued by the Monterey Bay Unified Air Pollution Control District and the NPDES permit issued by the California Regional Water Quality Control Board. Seller will obtain the requisite permits.

The permit shall allow for sufficient operational flexibility to meet the terms of this agreement. Air permit requires compliance with start up and shutdown CO and NO<sub>x</sub> limits as well as hourly operating limits. Emissions control equipment installed on both Units 6 & 7, when in normal operation, ensures compliance with these permit conditions.

In addition there are quarterly station mass emissions limits that will be controlled by restricting operation of other site units, if necessary.

NPDES permit limits temperature rise of the condenser cooling water. Historical operation of Units 6 & 7 have shown that occasional condenser cleaning (weekly cleaning and quarterly blowing of condenser tube) will ensure the units can operate within these limits.

Other Restrictions:

**Capacity Table (Applies to both Unit 6 & 7)**

Note: Units are not negatively impacted, to a point of reducing Net Output, by Temperature, Humidity or Barometric Pressure. The year round Net Output of each unit will be 754 MW's and 755 MW's, for Units 6 & 7, respectively.

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	Dry Bulb Temperature °F	Relative Humidity %	Barometric Pressure* psia	Plant Net Output MWs
ISO Conditions	59	60		<b>See Comment above</b>

Guaranteed Output and Heat Rate

The guaranteed outputs and heat rates will not change throughout the year based on weather conditions. Therefore a single heat rate curve will be used for each unit, year round. Initial Guaranteed Output and Heat Rate values for each unit are shown below with more details provided in Appendix XVI.

Unit 6 Equation:

**Heat Rate Coefficients:**

**A = .00075**  
**B = 8.0952**  
**C = 400**

Unit 7 Equation

**Heat Rate Coefficients:**

**A = .0011**  
**B = 7.602**  
**C = 490**

**Avg. Heat Input = (Ax<sup>2</sup> + Bx +C)/x (See Heat Rate Table below)**  
**Where x = Net MW's**

Guaranteed Unit Output (NetMW.s)	ML Unit 6 Guaranteed Heat Rate (Btu/kWh)		ML Unit 7 Guaranteed Heat Rate (Btu/kWh)	
52	15,827	Minimum	17,082	Minimum
190	10,343	25%	10,390	25%
380	9,433	50%	9,309	50%
570	9,224	75%	9,089	75%
754 (6); 755 (7)	9,191	Peak/Max	9,080	Peak/Max

Output and Heat Rate Degradation

Note: Heat rate degradation will be computed by the performance of annual heat rate tests, with the degradation limited to no more than the lesser of the test values or 1%. See Appendix XVI for an example of this.

### 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 Shut-Downs and Start-Ups as follows:

- Call for permission to parallel before any Start-Up at the appropriate Area Control Centers (see **Attachment B** at the end of this Appendix)
- 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.
2. If internet is unavailable, 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.*)

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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 email 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) 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 Real-Time 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.

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**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. Real-Time curtailments, trips and any other schedule changes must be immediately conveyed to the PG&E Hour-Ahead Trading Desk via phone call.
  - c.

Day-Ahead Trading Desk	Hour-Ahead Trading Desk	Outage Coordinator
Tel: 415-973-6222	Tel: 415-973-7900	Tel: 415-973-2038
<a href="mailto:daenergy@pge.com">daenergy@pge.com</a>	<a href="mailto:rtenergy@pge.com">rtenergy@pge.com</a>	<a href="mailto:PGOutageCoordination@pge.com">PGOutageCoordination@pge.com</a>

**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*	

\* Note: The 25<sup>th</sup> hour applies to the day Daylight Savings Time (DST) ends.

**APPENDIX IV - FIXED PAYMENT ALLOCATIONS BY MONTH**

Redacted



**APPENDIX V - Form of Letter Of Credit**  
[Dynergy Moss Landing, LLC as posting party]

**ISSUING BANK LETTERHEAD  
ADDRESS**

Issuing Bank: [insert name  
Insert address]

Date: [insert date]

Irrevocable Standby Letter of Credit Number: [insert number]

Beneficiary: [insert name  
Insert address]

Account Party: [insert name  
Insert address]

At the request and for the account of [insert name of Account Party] (the "Account Party"), we, [insert Issuing Bank name], hereby issue our irrevocable standby letter of credit ("Letter of Credit"), Number [insert number] in your favor available at sight and payable at sight in the amount of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] (hereinafter, as reduced from time to time in accordance with the provisions hereof, the ("Stated Amount")), effective immediately and expiring at our office at the address indicated above with our close of business at 5:00 PM [insert City name] time on [insert date] ("Expiration Date") unless terminated earlier in accordance with the provisions hereof.

Funds under this Letter of Credit will be made available to you by payment against presentation of the following documents:

1. Your drawing request marked "drawn under [insert Issuing Bank name], Letter of Credit Number [insert number], dated [insert date]";

AND

2. A Beneficiary Certificate signed by an authorized representative of the [insert name of Beneficiary] stating either:

(i) "This Letter of Credit will expire in 30 calendar days or less and [insert name of Account Party] has not provided alternate security acceptable to [insert name of Beneficiary] and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount of Collateral that [insert name of Account Party] is required to post to [insert name of Beneficiary] under the terms of Power Purchase and Sale Agreement dated [insert date] and any amendments thereof (the "Agreement") by and between Dynergy Moss Landing, LLC. and Pacific Gas and Electric Company.";

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OR

(ii) “An Event of Default by [insert name of Account Party] has occurred and is continuing under the terms of the Power Purchase and Sale Agreement dated [insert date] and any amendments thereof (the “Agreement”) by and between Dynegy Moss Landing, LLC and Pacific Gas and Electric Company, and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount that is due and owing [insert name of Beneficiary] under the Agreement.”;

OR

(iii) “[insert name of Issuing Bank]’s senior unsecured debt rating or the corporate/issuer rating is downgraded below A from Standard & Poor’s or A2 from Moody’s Investors Service and [insert name of Account Party] has not provided alternate Collateral acceptable to [insert name of Beneficiary] within 5 Business Days of such downgrade; and the amount being drawn does not exceed the amount of Collateral that [insert name of Account Party] **is required to post to [insert name of Beneficiary]** under the terms of the Power Purchase and Sale Agreement dated [insert date] and any amendments thereof by and between Dynegy Moss Landing, LLC and Pacific Gas and Electric Company.”.

Special Conditions:

1. Partial drawing(s) are permitted.
2. This Letter of Credit shall terminate upon the earlier of:
  - (i) the making by you of the final drawing available to be made hereunder;
  - (ii) the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and
  - (iii) the Expiration Date.
3. All banking charges associated with this Letter of Credit are for the account of the Account Party.
4. This Letter of Credit is not transferable.
5. Each drawing request honored by us shall reduce the Stated Amount by the amount honored.

We hereby engage with you that drawing requests 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 at 5:00pm [insert City] time at our counters located at [insert address] on or before the Expiration Date, subject to Rule 3.14 of the International Standby Practices, ICC Publication No. 590 (“ISP98”), except that the last day for presentation of this Letter of Credit in the event that Rule 3.14 applies shall be 15 calendar days after our office re-opens for business.

Except as otherwise stated herein, this Letter of Credit is subject to the ISP98 and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York.

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If you have any questions regarding this Letter of Credit, please call [insert Telephone No.] mentioning this Letter of Credit Number quoted above.

By: \_\_\_\_\_  
Authorized Signature

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

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

By: \_\_\_\_\_  
Authorized Signature

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

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

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**Form of Letter Of Credit**

[Pacific Gas and Electric Company as the posting party]

**ISSUING BANK LETTERHEAD  
ADDRESS**

Issuing Bank: [insert name  
Insert address]

Date: [insert date]

Irrevocable Standby Letter of Credit Number: [insert number]

Beneficiary: [insert name  
Insert address]

Account Party: [insert name  
Insert address]

At the request and for the account of [insert name of Account Party] (the "Account Party"), we, [insert Issuing Bank name], hereby issue our irrevocable standby letter of credit ("Letter of Credit"), Number [insert number] in your favor available at sight and payable at sight in the amount of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] (hereinafter, as reduced from time to time in accordance with the provisions hereof, the ("Stated Amount")), effective immediately and expiring at our office at the address indicated above with our close of business at 5:00 PM [insert City name] time on [insert date] ("Expiry Date") unless terminated earlier in accordance with the provisions hereof.

Funds under this Letter of Credit will be made available to you by payment against presentation of the following documents:

1. Your drawing request marked "drawn under [insert Issuing Bank name], Letter of Credit Number [insert number], dated [insert date]";

AND

2. A Beneficiary Certificate signed by an authorized representative of the [insert name of Beneficiary] stating either:

(i) "This Letter of Credit will expire in 30 calendar days or less and [insert name of Account Party] has not provided alternate security acceptable to [insert name of Beneficiary] and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount of Collateral that [insert name of Account Party] is required to post to [insert name of Beneficiary] under the terms of the Power Purchase and Sale Agreement dated [insert date] and any amendments

PACIFIC GAS AND ELECTRIC COMPANY  
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thereof (the "Agreement") by and between Dynegy Moss Landing, LLC and Pacific Gas and Electric Company.”;

OR

(ii) “An Event of Default by [insert name of Account Party] has occurred and is continuing under the terms of the Power Purchase and Sale Agreement dated [insert date] and any amendments thereof (the "Agreement") by and between Dynegy Moss Landing, LLC and Pacific Gas and Electric Company, and the amount being drawn of United States Dollars [spell out the amount followed by (US\$xxxxxxxx.xx)] does not exceed the amount that is due and owing [insert name of Beneficiary] under the Agreement.”;

OR

(iii) “[insert name of Issuing Bank]’s senior unsecured debt rating or the corporate/issuer rating is downgraded below A from Standard & Poor’s or A2 from Moody’s Investors Service and [insert name of Account Party] has not provided alternate Collateral acceptable to [insert name of Beneficiary] within 5 Business Days of such downgrade; and the amount being drawn does not exceed the amount of Collateral that [insert name of Account Party] is required to post to [insert name of Beneficiary] under the terms of the Power Purchase and Sale Agreement dated [insert date] and any amendments thereof by and between Dynegy Moss Landing, LLC and Pacific Gas and Electric Company.”.

Special Conditions:

1. Partial drawing(s) are permitted.
2. This Letter of Credit shall terminate upon the earlier of:
  - (i) the making by you of the final drawing available to be made hereunder;
  - (ii) the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and
  - (iii) the Expiry Date.
3. All banking charges associated with this Letter of Credit are for the account of the Account Party.
4. This Letter of Credit is not transferable.
5. Each drawing request honored by us shall reduce the Stated Amount by the amount honored.

We hereby engage with you that drawing requests 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 at 5:00pm [insert City] time at our counters located at [insert address] on or before the Expiry Date or in the event of Force Majeure, as defined under Article 36 of the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (“UCP”), interrupting our business, within fifteen (15) calendar days after resumption of our business, whichever is later.

Except as otherwise stated herein, this Letter of Credit is subject to the UCP and, with respect to matters not so covered, this Letter of Credit is subject to and governed by the laws of the State of New York.

PACIFIC GAS AND ELECTRIC COMPANY  
POWER PURCHASE AND SALE AGREEMENT

If you have any questions regarding this Letter of Credit, please call [insert Telephone No.] mentioning this Letter of Credit Number quoted above.

By: \_\_\_\_\_  
Authorized Signature

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

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

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 at the appropriate Gas Index.

$VOMR$ , - Variable O&M Rate (measured in \$/MWh) for year of current month set forth in Section 4.3(a) of the Agreement for month  $i$  and adjusted by the forecasted index if applicable and shall include, if applicable, the Fired Hour Charge (FCH) adjusted to a \$/MWh basis.

$HR$  – the Guaranteed Heat Rate Point at 100% 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 of (i) next or thirty-six (36) Months[Gains or Losses(i)] , or (ii) if fewer than twelve (12) Months remain in the Services Term, the sum of the Gains or Losses(i) for all remaining Months in the Services Term.

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 – [RESERVED]**



**Appendix VIII - Form Of Deposit Account Agreement**

**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 \_\_\_\_\_; Account Name: \_\_\_\_\_. Additional amounts may be deposited into this account from time to time.
2. Pursuant and subject to the terms of the Power Purchase and 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 or its successors and assigns 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 as further detailed in Schedule 3(a) attached hereto. 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.

Bank may invest the amount in the Deposit Account into institutional money market funds indicated on Schedule 3(b) only or into a demand deposit account at Bank paying Bank's current rate of interest thereon. The Bank will be instructed from time to time in writing by Posting Party as to the exact fund or funds for such investment.

Bank shall have the power to sell or liquidate the foregoing investments whenever Bank shall be required to release any portion of the Deposit Account pursuant to the terms hereof. Bank shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the Deposit Account. Any earnings received on such investment and reinvestment shall become part of the Deposit Account. Neither Bank, its parent, nor any of its affiliates assumes any duty or liability for monitoring the investment rating.

5. 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.

6. In performing its duties hereunder, Bank shall not be liable to any Party for consequential damages, including, without limitation, 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.
7. All notices and instructions entitled or required to be given under this Agreement shall be received prior to 1:00 pm on any business day in the State of New York and 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:

8. 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.
9. 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.
10. 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.

11. 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.
12. 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].
13. This Agreement is governed by the laws of the State of New York.
14. The initial term of this Agreement is through \_\_\_\_\_ . 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.
15. 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. 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: \_\_\_\_\_

FEE SCHEDULE



**Appendix IX**  
**[Reserved]**

**PACIFIC GAS AND ELECTRIC COMPANY**  
**FORM OF CONTRACT - POWER PURCHASE AND SALE AGREEMENT**

**Appendix X - Reserved**

**Appendix XI - Reserved**

## Appendix XII - Example of Section 3.3(f)

### Illustrative Example of Section 3.3(f) - Actual Gas >1% higher than Expected Gas

$$= (Ax^2 + Bx + C)/x \quad x = MW$$

MWs	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn	Moss 6
Redacted									

**Illustrative Example of Section 3.3(f) - Actual Gas >1% lower than Expected Gas**

$$=(Ax^2 + Bx + C)/x \quad x = MW$$

MWs	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn	Moss 6
Redacted									

**Illustrative Example of Section 3.3(f) - Actual Gas within 1% of Expected Gas**

$= (Ax^2 + Bx + C)/x$        $x = \text{MW}$

MWs	Guaranteed Heat Rate	Actual Heat Rate	Schedule	Guaranteed Heat Rate	Expected Fuel Burn	Actual Production	Actual Heat Rate	Actual Fuel Burn	Moss 6
Redacted									

## Appendix XIII - Section 3.5(c)

Billing Component	Formula	Case 1	Case 2	Case 3
CAISO Expected Energy (MWh)	Redacted			
Metered Energy (MWh)				
Uninstructed Deviation Quantity (MWh)				
Deviations due to Forced Outage (MWh)				
Imbalance Price at Pnode (\$/MWh)				
CAISO Credit(+) / Charge(-)				
Net Impact to Seller				

Note: The Net Impact is the sum of all intervals. If the Net amount is a charge to buyer from CAISO, it is passed on to Seller.

Actual other charges that may be assessed by CAISO not shown here.

Case 1: Simple imbalance example - charge to Seller for underdelivery

Case 2: Simple imbalance example - payment to Seller for overdelivery

Case 3: Forced Outage - deviations are charged to Seller during the first three hours of a forced outage

**Appendix XIV - Example of Section 3.13(d)(ii)**

**Illustrative Example of Section 3.13(d)(ii)**

ISO  
Peak July  
Adjusted MCC following initial and/or seasonal capacity tests  
Summer  
Winter  
Summer  
Winter  
Summer  
Winter

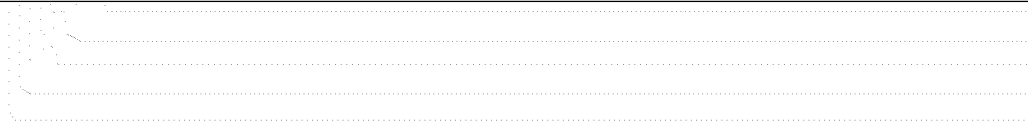
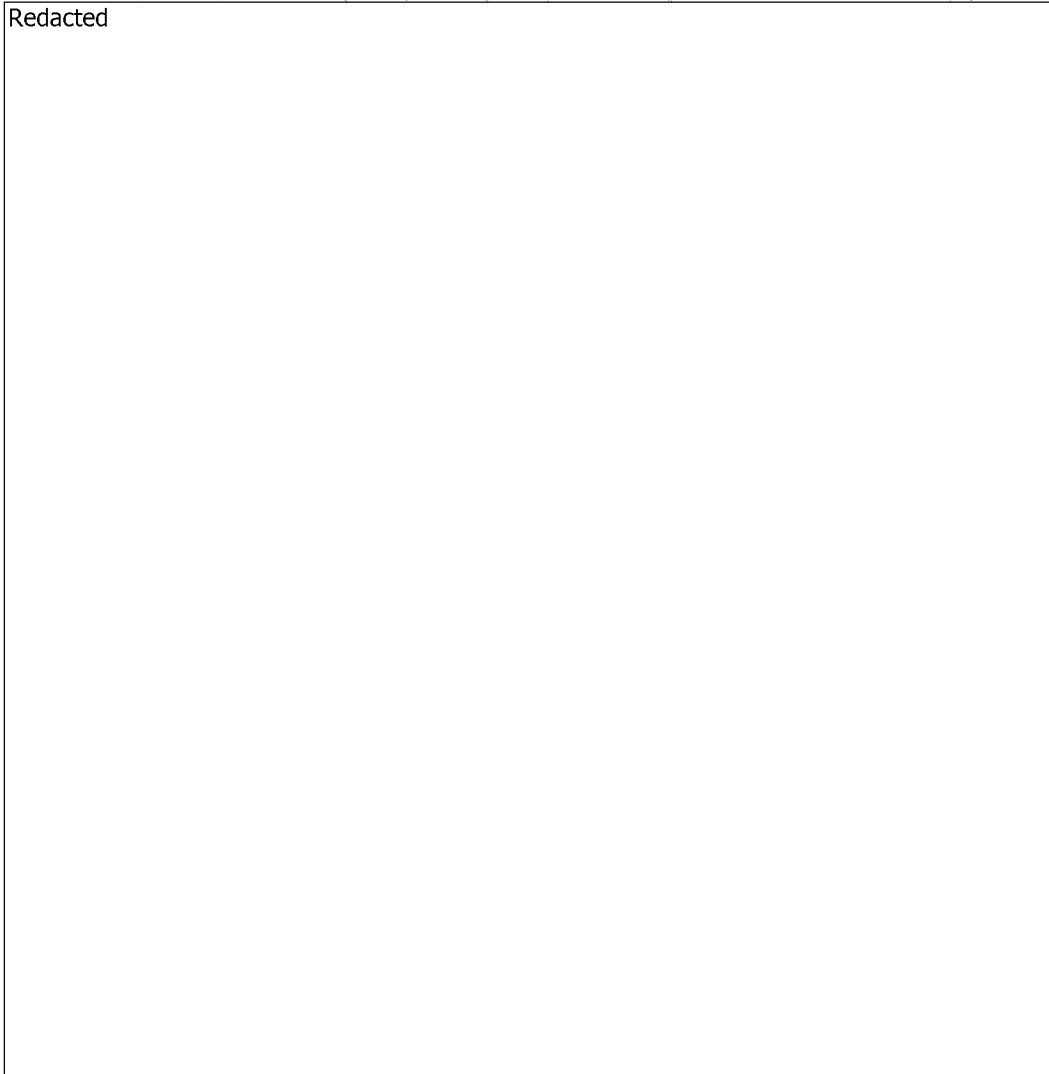
If ISO test is between 98% and 100% of Guarantee, there is no adjustment to non-summer MCC  
If Peak July test is between 98% and 100% of Guarantee, there is no adjustment to summer MCC



**APPENDIX XV - 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)**

Redacted



**APPENDIX XVI - EXAMPLE OF SECTION 4.2**

4.2(a) Guaranteed Heat Rate:

Examples of equations and table

Unit 6 Equation:

Unit 7 Equation

Heat Rate Coefficients:

Heat Rate Coefficients:

$$A = .00075$$

$$A = .0011$$

$$B = 8.0952$$

$$B = 7.602$$

$$C = 400$$

$$C = 490$$

Redacted

Redacted

Redacted

4.2(b) Heat Rate Degradation Adjustment:

Example calculations for Annual Heat Rate Degradation Adjustment

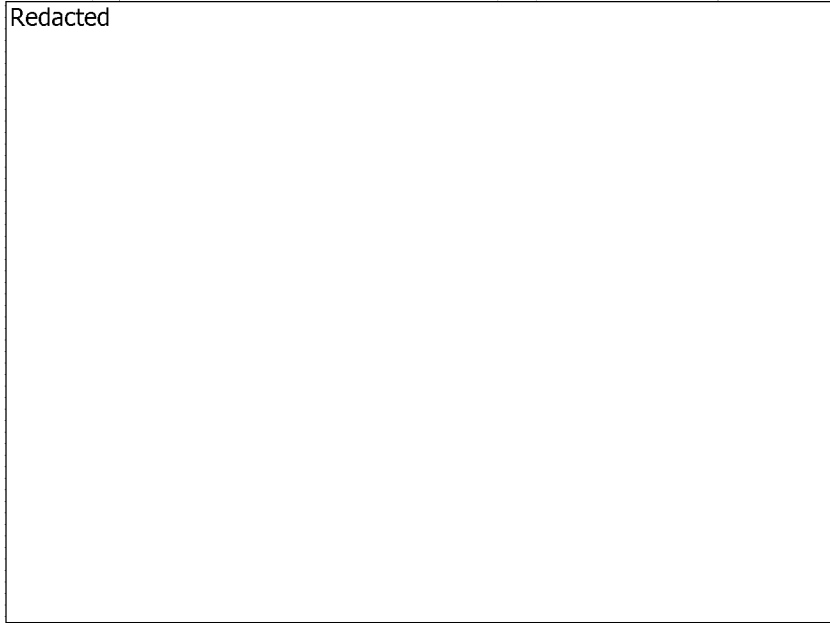
Unit Output NetMW's	Guaranteed HR	Example "A" Test (<1%)	Example "A" New Guaranteed HR	Example "B" Test (>1%)	Example "B" New Guaranteed HR (Capped @1%)
52	15,827	15874	15,874	16032	15,985
60	14,807	14851	14,851	14999	14,955
70	13,862	13904	13,904	14042	14,001
80	13,155	13195	13,195	13326	13,287
90	12,607	12645	12,645	12771	12,733
100	12,170	12207	12,207	12328	12,292
110	11,814	11850	11,850	11968	11,932
120	11,519	11553	11,553	11668	11,634
130	11,270	11303	11,303	11416	11,382
140	11,057	11091	11,091	11201	11,168
150	10,874	10907	10,907	11016	10,983
160	10,715	10747	10,747	10854	10,822
170	10,576	10607	10,607	10713	10,681
180	10,452	10484	10,484	10588	10,557
190	10,343	10374	10,374	10477	10,446
200	10,245	10276	10,276	10378	10,348
210	10,157	10188	10,188	10290	10,259
220	10,078	10109	10,109	10209	10,179
230	10,007	10037	10,037	10137	10,107
240	9,942	9972	9,972	10071	10,041
250	9,883	9912	9,912	10011	9,982
260	9,829	9858	9,858	9956	9,927
270	9,779	9809	9,809	9906	9,877
280	9,734	9763	9,763	9860	9,831
290	9,692	9721	9,721	9818	9,789
300	9,654	9682	9,682	9779	9,750
310	9,618	9647	9,647	9743	9,714
320	9,585	9614	9,614	9710	9,681
330	9,555	9583	9,583	9679	9,650
340	9,527	9555	9,555	9651	9,622
350	9,501	9529	9,529	9624	9,596
360	9,476	9505	9,505	9600	9,571

370	9,454	9482	9,482	9577	9,548
380	9,433	9461	9,461	9555	9,527
390	9,413	9442	9,442	9536	9,507
400	9,395	9423	9,423	9517	9,489
410	9,378	9406	9,406	9500	9,472
420	9,363	9391	9,391	9484	9,456
430	9,348	9376	9,376	9469	9,441
440	9,334	9362	9,362	9456	9,428
450	9,322	9350	9,350	9443	9,415
460	9,310	9338	9,338	9431	9,403
470	9,299	9327	9,327	9420	9,392
480	9,289	9316	9,316	9409	9,381
490	9,279	9307	9,307	9400	9,372
500	9,270	9298	9,298	9391	9,363
510	9,262	9290	9,290	9382	9,355
520	9,254	9282	9,282	9375	9,347
530	9,247	9275	9,275	9368	9,340
540	9,241	9269	9,269	9361	9,333
550	9,235	9263	9,263	9355	9,327
560	9,229	9257	9,257	9349	9,322
570	9,224	9252	9,252	9344	9,317
580	9,220	9248	9,248	9340	9,312
590	9,216	9243	9,243	9335	9,308
600	9,212	9240	9,240	9332	9,304
610	9,208	9236	9,236	9328	9,301
620	9,205	9233	9,233	9325	9,297
630	9,203	9230	9,230	9322	9,295
640	9,200	9228	9,228	9320	9,292
650	9,198	9226	9,226	9318	9,290
660	9,196	9224	9,224	9316	9,288
670	9,195	9222	9,222	9314	9,287
680	9,193	9221	9,221	9313	9,285
690	9,192	9220	9,220	9312	9,284
700	9,192	9219	9,219	9311	9,284
710	9,191	9219	9,219	9311	9,283
720	9,191	9218	9,218	9310	9,283
730	9,191	9218	9,218	9310	9,283
740	9,191	9218	9,218	9310	9,283
750	9,191	9219	9,219	9311	9,283

**APPENDIX XVII - EXAMPLE OF SECTION 4.3(B)(I)**

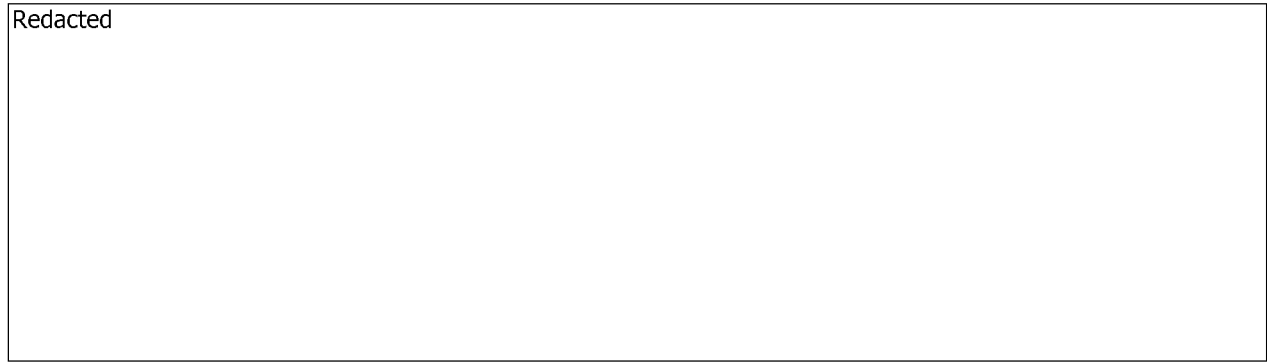
**Illustrative Example of Section 4.3 (b)(i)**

Redacted



**APPENDIX XVIII - EXAMPLE OF SECTIONS 4.5**

Redacted



**APPENDIX XIX - RESERVED**