

September 17, 2003

Confirmation Letter for Unit(s)-Firm Renewable Product

When fully executed, this Confirmation letter (“Confirmation”) confirms the Agreement by Community Renewable Energy Services, Inc. (“Seller”), to provide to Pacific Gas and Electric Company (“PG&E” or “Buyer”), the right to dispatch the Unit(s) identified below for all electrical products as specified herein. Either Seller or Buyer may be referred to as “Party” or, collectively, as “Parties.”

1. Definitions. The following definitions shall be used to interpret this Agreement. Terms that are not defined in Section 1 or elsewhere in this Confirmation shall have the meaning ascribed to them in the Master Agreement.
  - a. “Agreement” means the Master Agreement, Cover Sheet and Exhibits thereto, as modified by this Confirmation.
  - b. “CPUC Approval” means that the CPUC has issued a final order, no longer subject to appeal, without conditions or modifications unacceptable to the Parties, or either of them, that: (1) finds that any procurement pursuant to this Agreement is deemed incremental procurement by PG&E from a renewable resource for purposes of determining PG&E’s compliance with any obligation that it may have pursuant to the Renewable Portfolio Standard, CPUC Decision 03-06-071, or other applicable law to procure an additional one percent (1%) of its annual electricity sales from renewable resources; (2) finds that any procurement pursuant to this Agreement be deemed part of PG&E’s “baseline” quantity of eligible renewable resources for purposes of Section 399.15 of the Public Utilities Code or other applicable law; and (3) approves this Agreement in its entirety, and contains findings that this Agreement and PG&E’s entry into this Agreement are reasonable and prudent for all purposes, including, but not limited to, PG&E’s recovery in rates of all payments made under this Agreement, subject only to CPUC review with respect to the reasonableness of PG&E’s administration of the Agreement. If there is no timely application for rehearing or reconsideration of an acceptable CPUC resolution approving procurement pursuant to this Agreement, that resolution shall be deemed to satisfy this “CPUC Approval”
  - c. “Consumer Price Index,” or “CPI” shall mean the California CPI for All Urban Consumers, published by the California Department of Industrial Relations.
  - d. “Delivery Point” is defined in Section 8, below.
  - e. “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable from the Unit(s), except those required by the local Air District for operation of the facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such (subject to the foregoing)

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>) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include any fuel subsidies, including but not limited to the Agricultural Biomass Grant program administered by the State of California; energy, capacity, reliability or other power attributes from the Unit(s) or production tax credits associated with the construction or operation of the energy projects.

- f. "Force Majeure" means any occurrence beyond the reasonable control of a Party, which causes that Party to be unable to perform, in whole or in part, an obligation under this Agreement, and which was not anticipated as of the date the particular transaction was agreed to, and which could not have been avoided by the exercise of due diligence. Force Majeure includes acts of God and natural catastrophes; actual or threatened civil disturbance, terrorism, war, or riot; strike or other labor dispute; emergencies declared by or forced curtailment required by the ISO or any other authorized successor or regional transmission organization or any state or federal regulator or legislature, physical damage to the gas or transmission system making it impossible to transmit energy or gas;; explosion.

Force Majeure shall not be based on: (i) Buyer's inability economically to use or resell the Product purchased hereunder; (ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement; (iii) Seller's inability to obtain regulatory approvals for the construction, operation, or maintenance of its Unit(s); (iv) Seller's inability to obtain sufficient fuel to operate the Unit(s); (v) Seller's failure to obtain funds from the California Energy Commission to supplement the payments made pursuant to this Agreement; or (vi) a Forced Outage. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

Buyer shall not be required to make any payments for capacity or energy not delivered or provided as a result of Force Majeure during the term of a Force

Majeure. A Force Majeure shall not result in a breach or Event of Default hereunder except as provided in Section 16.e.

- g. "Forced Outage" means an unplanned reduction or suspension of the electrical output from the Unit(s) in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction.
- h. "GMM" means the generation meter multiplier as defined in the ISO tariff.
- i. "ISO" means the California Independent System Operator or any successor entity performing similar functions.
- j. "Master Agreement" means the Edison Electric Institute Master Power Purchase and Sale Agreement, Version 2.1 (modified 4/25/00) as modified by the Cover Sheet and this Confirmation.
- k. "Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance must actually be conducted during the Planned Outage, and in the Seller's sole discretion must be of the type that is both necessary to reliably maintain the Unit(s) and cannot be reasonably conducted during Unit(s) operations.
- l. "Product" means the Contract Capacity and Received Energy from the Unit(s).
- m. "Prolonged Outage" is any period of more than 30 consecutive days during which the Unit(s) is or will be unable, for whatever reason, to provide at least 60% of the Product as scheduled by Buyer.
- n. "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 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.
- o. "Received Energy" means energy delivered from the Unit(s) to Buyer, or substitute power not to exceed three (3) hours pursuant to Section 16.c. of this Agreement, measured in MWh at the ISO revenue meter for the Unit(s), net of the following: (a) any line or transformation losses between the ISO revenue meter

and the Delivery Point and (b) the applicable GMM or any successor method to account for losses or congestion established by the ISO.

- p. "RMR" means Reliability Must Run.
  - q. "Station Use" means energy used to operate the auxiliary equipment of the Unit(s). The auxiliary equipment includes, but is not limited to, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems and sump pumps.
2. Unit(s): The Unit(s) are described in Appendix A. Seller represents and warrants throughout the Term of Agreement that: (a) the Unit(s) qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as defined in Public Utilities Code Section 399.12; and (b) the Unit(s) output delivered to Buyer qualifies under the requirements of the California Renewable Portfolio Standard. All Product must be delivered by the specified ERR.
  3. All output from the Unit(s) must be delivered through a single ISO revenue meter and that meter must be dedicated exclusively to those Unit(s) described herein. All Product purchased under this Confirmation must be measured by the Unit(s) ISO revenue meter to be eligible for payment under this Agreement.
  4. Seller represents and warrants that the output of the Unit(s) up to the Contract Capacity shall be dedicated and delivered solely to Buyer throughout the Term of Agreement, except as set forth in Section 10.d. of this Agreement. Buyer represents and warrants that it shall take or pay for the output scheduled from the Unit(s), up to the amount of the Contract Capacity, throughout the Term of the Agreement, unless excused pursuant to the terms of this Agreement.
  5. Energy Price. Buyer shall be obligated to take or pay for all available output from the Unit(s) up to the Contract Capacity, at a rate of \$30.00 per MWh throughout the Term of Agreement, unless excused pursuant to the terms of this Agreement. In addition, Buyer will pay Seller at a rate of \$30.00 per MWh for up to one (1) MW above the Contract Capacity for all Received Energy delivered by Seller from the Unit(s).
  6. Capacity.
    - a. Contract Capacity: 12.0 MW.
    - b. Contract Capacity Price: Buyer shall pay Seller for Contract Capacity at a rate of \$14.50/kW-month, adjusted for availability by the Availability Factor specified in Section 6.d..
    - c. Beginning after the 3rd anniversary of CPUC Approval, the Capacity Price and Energy Price shall be adjusted each year of the remainder of the Term of Agreement by 75% of the annual percentage change in the Consumer Price Index

("CPI") during the previous year.<sup>1</sup> However each annual change in capacity and energy price shall not exceed 2.75% per year.

- d. Availability Factor: The Availability Factor shall be calculated for each Period as follows:

Received Energy (limited by Contract Capacity) + PG&E Curtailments (pursuant to Section 10.a.)

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Contract Capacity x (Total Hours in Period - any Force Majeure hours in Period)

Where,

PG&E Curtailments are any reductions in deliveries at Buyer's request, and are measured by the positive difference in MWh between: (a) the Allowable Delivery Amount in MW (as used in Section 10.a.) times the number of hours of instructed curtailment by Buyer in the Period and (b) the MWh Seller could have delivered in the same period in the absence of any curtailment instructions from Buyer. The level of MWh the Seller could have delivered is determined by the average operating capacity, up to the Contract Capacity, during four hours of operation before the start of any curtailment requested by Buyer. The Availability Factor can be no greater than 100%.

In calculating the Availability Factor "Period" means the individual months of June, July, August and September, (Period A) and the aggregate of the months of October through May (Period B.)

- e. Capacity Payments:
- i. Period A includes June, July, August and September. Capacity payments for each month in period A shall be adjusted, based on each month's Availability Factor, as follows: for each month in which the Availability Factor is below 92%, the capacity payment shall be decreased by 5% for every 1% the Availability Factor is below 92%. The capacity payment shall be increased 3% for every 1% the Availability Factor is above 95% in any month within Period A.
  - ii. Period B includes the consecutive months of October, November, December, January, February, March, April and May. Buyer shall pay Seller the unreduced Contract Capacity Price if Seller's aggregate Availability Factor for all of Period B is at least 85%. Capacity payments

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<sup>1</sup> The CPI shall be found in [www.dir.ca.gov/DLSR/entireCCPI.pdf](http://www.dir.ca.gov/DLSR/entireCCPI.pdf), or its successor. An illustration of how to calculate the annual change is as follows: The change from 2001 to 2002 – (186.1-181.7)/181.7=2.42%.

shall be reduced by 1.5% for every 1% the Availability Factor is below 85%. During Period B capacity payments will be made monthly, based on each month's individual Availability Factor. However payment for deliveries during the month of May shall be increased or decreased to adjust for the aggregate Availability Factor achieved in Period B. The Contract Capacity payment shall never be increased due to an Availability Factor above 85% in any month of Period B or in Period B in the aggregate.

iii. All Availability Factors and capacity payments shall be calculated with 5 significant digits before rounding. (E.g., 0.98756 or 98.756%.)

iv. Examples of Capacity Payment adjustments:

Example A: For a month in Period A, the Capacity Payment would be adjusted as follows, depending on the Unit(s)' Availability Factor:

Assumed Availability Factor	Change in Capacity Payment
97%	$(97-95)*3 = +6\%$
95%	0%
92%	0%
90%	$(90-92)*5 = -10\%$
87.5%	$(87.5-92)*5 = -22.5\%$

Example B: If the Unit(s) had achieved the following Availability Factors in Period B, capacity payments would be calculated as below:

<u>Month/Total Period (Hours per month)</u>	<u>Assumed Availability Factor</u>	<u>Monthly Adjustment/Total Period True-Up</u>	
		<u>Adjustment Calculation</u>	<u>Capacity Payment (Assuming a Contract Capacity of 10 MW &amp; Capacity Price of 14.50 \$/kw-mo)</u>
October (744)	85	0	$10*1000*14.50*(100\%-0\%) = \$145,000$
November (720)	80	$(80-85)*1.5 = -7.5\%$	$10*1000*14.50*(100\%-7.5\%) = \$134,125$

December (744)	85	0	$10*1000*14.50*(100\%-0\%) = \$145,000$
January (744)	87	$(87-85)*1.5 = 3.0\% \geq 0 = 0\%$	$10*1000*14.50*(100\%-0\%) = \$145,000$
February (672)	85	0	$10*1000*14.50*(100\%-0\%) = \$145,000$
March (744)	88	$(88-85)*1.5 = 4.5 \geq 0 = 0\%$	$10*1000*14.50*(100\%-0\%) = \$145,000$
April (720)	86	$(86-85)*1.5 = 1.5 \geq 0 = 0\%$	$10*1000*14.50*(100\%-0\%) = \$145,000$
May (744)	82	$(82-85)*1.5 = -4.5\%$	$10*1000*14.50*(100\%-4.5\%) = \$138,475$
Total Hours in Period (5832)			
Total Payments in Period	84.76		\$1,142,600
Total Period Amount Due	84.76	$(84.76-85)*1.5 = -0.36\%$	$10*1000*14.50*8*(100\%-0.36\%) = \$1,155,824$
Final Month True-up			$\$1,155,824 - \$1,142,600 = \$13,224$

7. Term of Agreement.

- a. The Term of Agreement shall commence on the first date Seller delivers energy and capacity from the Unit(s) pursuant to this Agreement (the “Initial Energy Delivery Date”) and end upon the termination of the Agreement. The Initial Energy Delivery Date shall not occur until CPUC Approval and Seller’s compliance with the “Security Provided by Seller” provisions of Section 29.1. Buyer and Seller shall schedule the Initial Energy Delivery Date on a mutually agreeable date, no later than 30 days after CPUC Approval, or the expiration date of interim contracts for the Unit(s) entered into by Seller, whichever is later, but no later than 90 days after CPUC Approval.
- b. Term 1. Term 1 shall begin on the Initial Energy Delivery Date and shall continue year-to-year until one of the following events occurs:
  - i. Termination by Buyer During Term 1. During Term 1, PG&E may terminate the Agreement on each anniversary of the Initial Energy Delivery Date; provided that PG&E has given Seller written notice of its intention to terminate the Agreement at least 90 days before the termination date;

- ii. PG&E has sole discretion at any time during Term 1 to elect to extend the Agreement for 5 years. If PG&E makes such an election, Term 2 shall commence on the notification date;
  - iii. Termination by Seller During Term 1. If PG&E does not exercise its option to extend the Agreement pursuant to Section 7.b.ii. within 90 days after attaining an investment-grade credit rating as determined by at least two major ratings agencies (BBB minus by Standard and Poor's and Fitch or Baa3 by Moody's), Seller shall have thirty days from the end of the 90-day period in which it may send PG&E a written notice advising PG&E of its intent to terminate the Agreement. Seller's termination shall become effective 90 days after providing PG&E written notice of its intention to terminate the Agreement.
  - iv. During Term 1, Seller may also terminate the Agreement on each anniversary of the Initial Energy Delivery Date, and any subsequent anniversary date(s) unless PG&E exercises its option to enter Term 2 after PG&E attains an investment grade credit rating (as defined above), provided Seller gives PG&E written notice of its intention to terminate the Agreement at least 90 days before the termination date.
- c. Term 2. Term 2 begins if PG&E exercises its sole discretion to extend the Agreement pursuant to Section 7.b.ii.. Term 2 shall have a term of 5 years from the date PG&E delivers written notice of its election to extend the Agreement.
  - d. Term 3. If PG&E has elected to enter Term 2, PG&E shall have sole discretion to extend the Agreement for an additional 5-year term ("Term 3") by delivering to Seller written notice of its intent to extend the Agreement no later than 90 days before the expiration of Term 2. If PG&E does not exercise its option to enter Term 3, the Agreement shall terminate at the end of Term 2.
  - e. Seller shall have the right to terminate this Agreement if there has been no CPUC Approval 120 days after PG&E has made its written request for CPUC Approval.
8. Delivery Point. NP15. In the event NP15 is redefined such that the point at which the Unit(s) is interconnected to the PG&E transmission system is no longer in NP15, the Delivery Point shall be the zone or node within which the Unit(s) is interconnected to the PG&E transmission system.
9. Seller hereby provides and conveys all Environmental Attributes associated with generation from the Unit(s) to Buyer as included in the delivery of the Product from the Initial Energy Delivery Date throughout the Term of Agreement. Environmental Attributes shall have the meaning set forth in Section 1.e.. Seller represents and warrants that Seller holds the rights to all Environmental Attributes associated with the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).



10. Curtailement of the Unit(s) by Buyer.

- a. The energy deliveries from the Unit(s) may be partially or completely curtailed at the request of the Buyer, beginning on the Initial Energy Delivery Date, for up to 1,500 hours each year. The curtailment outputs, notification times, minimum curtailment times and curtailment ramp rates are described in Appendix B. Buyer shall issue a curtailment order no later than: (a) for day-ahead scheduling, two (2) hours before the Seller's Scheduling Coordinator is required to submit its preferred day-ahead schedule to the ISO; (b) for the intra-day scheduling changes, one (1) hour before the Seller's Scheduling Coordinator is required to submit its preferred hour-ahead schedule to the ISO. Notice shall be oral and confirmed in writing and shall include the amount of allowable delivery measured in MW (the "Allowable Delivery Amount") and the duration of the curtailment period. Buyer's exercise of its curtailment rights under this Confirmation shall be at Buyer's sole discretion. Seller shall receive no payment for energy delivered during a properly-noticed curtailment period to the extent such deliveries exceed the Allowable Delivery Amount.
- b. Buyer will pay for start-ups following a complete curtailment of the Unit(s) requested by Buyer as follows:
  - i. Hot Start: Buyer shall pay \$ 3,170.00 per start. The term "Hot Start" is defined in Appendix B.
  - ii. Cold Start: Buyer shall pay \$ 5,090.00 per start. The term "Cold Start" is defined in Appendix B.
  - iii. Warm Start: Buyer shall pay \$ 4,130.00 per start. The term "Warm Start" is defined in Appendix B.
  - iv. Buyer shall be entitled to a total of 10 starts per year at no cost to Buyer, of which no more than 5 starts per year may be Cold Starts.
- c. Seller waives any claim for and agrees it shall not seek compensation or damages from Buyer for any administrative penalties or fines, economic losses or damage to the Unit(s) resulting from Buyer's exercise of its curtailment rights under this Agreement.
- d. Seller is entitled, during any curtailment, to sell energy from the Unit(s) into the wholesale market. If Seller sells into the wholesale market and as a consequence thereof does not require a start-up for a Unit or Units, Buyer's instructions to resume deliveries after Seller's sales into the wholesale market under section 10.d. shall not constitute a start-up of the Unit(s).

11. Duty of Care. Seller agrees to use Prudent Electrical Practices in the maintenance and operation of the Unit(s).

12. Scheduling with ISO. Seller shall arrange and be responsible for transmission service to the Delivery Point, and shall obtain Schedule Coordination Services necessary to deliver the Product to the Delivery Point. Seller shall be responsible for all ISO costs and charges, including imbalance charges due to deviations from power schedules, regardless of the cause thereof. Seller shall comply with all applicable ISO rules and tariffs.
13. Schedule of Deliveries. Seller shall provide day-ahead delivery schedules to Buyer no later than fourteen (14) hours before the beginning of the preschedule day (i.e., 38 hours in advance of the beginning of the trading day) in accordance with ISO scheduling protocols. Buyer may reduce the 14-hour period whenever it is practicable to do so. Each delivery schedule shall clearly identify, for each hour, Seller's best estimate of all amounts of Product to be delivered and sold to Buyer pursuant to this Agreement. These notices and schedules shall be sent to:

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

Thereafter, Seller shall promptly/immediately notify Buyer of any changes to the day-ahead schedule and provide a revised schedule as soon as possible but, in no event later than one (1) hour before the Buyer's Scheduling Coordinator is required to submit hour-ahead schedules to the ISO. These notices and schedule changes shall be sent to:

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

14. Seller agrees to use its best efforts to obtain and maintain all regulatory approvals needed to operate and maintain the Unit(s) and the ERR status of the Unit(s), so that there is no delay in the commencement of service hereunder and no interruption of deliveries attributable to regulatory action.
15. Seller's Revisions of Contract Capacity. Seller shall have the right to increase or decrease its Contract Capacity once each calendar year after the Initial Energy Delivery Date. However Seller shall not increase its Contract Capacity under this section to a level higher than initially established in Section 6.a. without PG&E's consent. PG&E's decision as to whether to consent to a level higher than established in Section 6.a. shall be at its sole discretion. Any revisions in Contract Capacity under this section shall operate prospectively only.
16. Outages.
  - a. Seller is responsible for securing ISO approvals for Unit(s) outages, including securing changes in its outage schedules when ISO disapproves Seller's schedules

or cancels previously-approved outages. Seller shall communicate any ISO-required changes to PG&E in a timely manner.

- b. **Planned Outages:** Seller shall notify PG&E in writing no later than December 1 of its proposed Planned Outage schedule for the Unit(s) for the following calendar year, subject to PG&E's approval. Seller shall not schedule Planned Outages during the months of January, June through September and December. Seller shall contact PG&E with any requested changes to the Planned Outage schedule if Seller believes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not change its Planned Outage Schedule without PG&E approval. Seller shall not substitute power from any other source for the output of the Unit(s) during a Planned Outage.
- c. **Forced Outages:** Seller shall use commercially reasonable efforts to notify Buyer of any Forced Outage within 10 minutes, and shall provide an estimate of its expected duration of the outage within 1 hour thereafter. Seller shall not substitute power from any other source for the output of the Unit(s) during a Forced Outage, except for the time necessary to alter the Unit(s)' schedule with the ISO. This substitution of power shall not exceed three (3) hours for any Forced Outage
- d. **Prolonged Outages:** Seller shall notify Buyer of a Prolonged Outage as soon as possible under the circumstances, in writing, and provide an estimate of the duration of the outage. Seller shall notify Buyer when the Unit(s) is again capable of meeting its Contract Capacity. Any outage, other than an outage resulting from a Force Majeure event that prevents the Unit(s) from delivering at least 60% of the Contract Capacity for a period of six (6) consecutive months shall, at Buyer's election, constitute an Event of Default. Seller shall not substitute power from any other source for the output of the Unit(s) during a Prolonged Outage.
- e. **Force Majeure:** Within two weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. An outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the Contract Capacity for a period of twelve (12) consecutive months shall, at the election of Buyer, constitute an Event of Default. Seller shall not substitute power from any other source for the output of the Unit(s) during an outage resulting from Force Majeure.
- f. **Notice of Outages:** Notice of outages must be provided to PG&E as follows:
  - (1) [Fresno Operating Center-- ALWAYS notify Control Center of shutdowns and startups as follows:
    - (a) Call for permission to parallel before any start-up at (559) 237-2952 Call Fresno Operating Center] again after your start-up with your parallel time. Call Fresno Operating Center after any

separation to report your separation time.

- (b) Send the completed Outage Notification Form (the current form is attached; PG&E reserves the right to change the form upon written notice to Seller) to Fresno Operating Center by sending facsimile to: (559) 263-7396.
- (2) Energy Procurement Operation and Scheduling Department -- ALWAYS notify appropriate day-ahead or hour-ahead schedulers of outages and schedule changes, and send Outage Notification Form to:
  - (a) Day-Ahead Trading Desk and (b) Hour-Ahead Trading Desk

Tel: 415-973-6222	Tel: 415-973-7900
Fax: 415-973-0400	Fax: 415-972-5340
<a href="mailto:daenergy@pge.com">daenergy@pge.com</a>	<a href="mailto:rtenergy@pge.com">rtenergy@pge.com</a>
- (3) Gas and Electric Supply ("GES") Power Settlements departments -- Send the Outage Notification Form by one of these methods:
  - (a) Internet site: [http://www04/customer\\_services/business/qf](http://www04/customer_services/business/qf). Contact PG&E for access and your password to this web site.
  - (b) Facsimile: (415) 973-2151, Attention: Manager, GES Power Settlements. The time and date must be on the facsimile.
  - (c) Mail: Pacific Gas and Electric Company, Attention: Manager, GES Power Settlements, Mail Code N12F, P.O. Box 770000, San Francisco, CA 94177.
- (4) Notification Form: The [attached] Outage Notification Form shall be used when reporting outages other than Planned Outages or events of Force Majeure. The Outage Notification Form must be completely filled out, including start and stop date and time.
- g. Testing the Unit(s) during an outage: Notify the PG&E Control Center by telephone and the GES Power Settlements Department as provided elsewhere in this Agreement before testing the Unit(s) during an outage. (Write on the original notice if testing will be conducted during an outage.)
- h. After any outage has been scheduled, at any time up to the start of work, PG&E may request that Seller change its outage schedule. Seller shall notify PG&E of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If PG&E agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate PG&E's request. However, unless it is transmitting to Seller an ISO order, PG&E may not change Seller's outage schedule without Seller's approval
- i. Communication with PG&E Operating Center: Seller shall maintain operating communications with the PG&E Control Center at Fresno. The operating

communications 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.

- j. Communications With ISO: Seller shall be responsible for all outage coordination communications with ISO outage coordination personnel and ISO operations management, including submission to ISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide PG&E with copies of all outage plans and clearance requests submitted to ISO, and shall promptly inform PG&E of all clearance approvals and disapprovals and other communications with ISO pertaining to the status of planned or in-progress Unit(s) outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to PG&E. If either Party receives information through ISO or directly from transmission or distribution system owners regarding maintenance that will directly affect the Unit(s), it will provide this information promptly to the other Party.
  - k. The Parties acknowledge the difficulty of measuring the harm to PG&E caused by Seller's failure to comply with the provisions of Section 16. If Seller repeatedly and materially fails to comply with the requirements of Section 16, the arbitrator shall have the power to assess liquidated damages of up to \$50,000.00 against Seller.
17. Seller, at no cost to Buyer, agrees to furnish and install the relays, meters, power circuit breakers, synchronizer and other control and protective apparatus as Buyer, in its sole judgment, determines to be reasonably necessary for proper and safe operation of the Unit(s) in parallel with the PG&E or ISO system.
18. Transmission Outages. The risk of transmission outages is allocated to each Party as follows: Seller is responsible for electric transmission to the Delivery Point and bears all risks and costs associated with such outages; Buyer is responsible for electric transmission from the Delivery Point and bears all risks and costs associated with any outages. The Party providing fuel is responsible for gas transmission to the Unit(s) and bears all risks and costs associated therewith. Except for a failure resulting from a Force Majeure, the failure of gas or electric transmission service shall not excuse performance under this Agreement.
19. Production Tax Credits. Seller shall report to Buyer within 30 days of Seller's receipt of any funds from the federal Production Tax Credit relating to the Unit(s). Buyer shall reduce payments otherwise due Seller on a dollar-for-dollar basis by the amount of any such Tax Credits. Seller shall provide PG&E with copies of any documentation regarding any such Tax Credits from the Internal Revenue Service, Franchise Tax Board, or other agency within 10 business days of Seller's receipt of any such documentation. However, this Section 19 shall be modified or eliminated if the CPUC modifies or

eliminates its August 13, 2003 mandate in Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations (R.01-10-024).

20. Seller agrees to abide by all North American Reliability Council, Western Electricity Coordinating Council ("WECC") and ISO reliability requirements and PG&E's requirements regarding interconnection of the Unit(s). Seller agrees to sign a WECC Reliability Management System ("RMS") Agreement before the Initial Energy Delivery Date and to abide by the RMS Agreement.
21. Billing and Payment, Remedies. On or after the 20th day of each month, Seller shall provide to Buyer (i) records of metered data sufficient to document and verify the generation of Product by the Unit(s) for all hours during the preceding month, including ISO metering and transaction data, and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month. Buyer shall pay the undisputed amount of such invoices on or before ten (10) calendar days after receipt provided the invoice is complete, properly formatted, and sent to the correct address. Buyer shall provide an explanation of any disputed amount at the time of payment.
22. Seller shall indemnify PG&E for all penalties assessed against PG&E by the CPUC pursuant to the Renewable Portfolio Standard, Public Utilities Code Section 399 et. seq., to the extent caused by Seller's failure to deliver its Contract Capacity, unless such failure is caused by a Force Majeure event.
23. RMR Contracts

Seller will assign the proceeds of any RMR contract affecting the Unit(s) to Buyer within 3 days of Initial Energy Delivery Date. Buyer shall retain all revenues from said RMR contract, except for Incremental Administrative Costs, Monthly Surcharge Payments, the ISO Repair Share, and Motoring Charges for Ancillary Services Dispatch, as each is defined in the applicable RMR contract, all of which shall be remitted to Seller. If Seller thereafter enters into any new RMR contract affecting the Unit(s), Seller shall assign the revenues from such RMR contract to Buyer in accordance with its terms. Revenues from such additional RMR contract shall be treated in accordance with the second sentence of this provision. If the ISO and/or Seller wish to negotiate an RMR contract that pertains to assets under this Agreement that are not covered by an RMR contract, Seller shall include PG&E in any such negotiations.
24. Remedy for Default. The Non-Defaulting Party only is entitled to a remedy for default. Except as otherwise set forth in Section 22, above, the Non-Defaulting Party's sole remedy for termination of this Agreement shall be to recover an amount (the "Termination Amount") equal to the Non-Defaulting Party's direct, actual damages for the loss of the economic benefit, if any, of this Transaction for the remaining Term of Agreement. Factors used in determining the loss of economic benefit may include, without limitation, market referent prices for renewable power set by the CPUC, comparable transactions, third-party quotations from leading dealers in energy and gas

contracts, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), the remaining Term of Agreement, value of Environmental Attributes, and current discount rates. The Termination Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party will have the burden of calculating and verifying the Termination Amount. The Non-Defaulting Party shall not have to enter into actual transactions to establish a Termination Amount. If the Parties cannot agree on a Termination Amount, the Termination Amount will be determined pursuant to Section 26 (Dispute Resolution).

25. Operations Records.

- a. Seller shall keep a daily operations log for the Unit(s) which shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the operation of the Unit(s), including but not limited to: real and reactive power production; changes in operating status and protective apparatus operations; and any unusual conditions found during inspections. Changes in setting shall also be logged for Seller's Unit(s) if it is "block-loaded" to a specific kW capacity. Seller's log shall be made available for inspection by PG&E upon reasonable notice, during normal business hours.
- b. Seller shall maintain complete daily operations records applicable to the Unit(s), including but not limited to fuel consumption, cogeneration fuel efficiency, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices. Seller's records shall be made available for inspection by PG&E upon reasonable notice, during normal business hours.
- c. Seller shall report to the designated Control Center daily at an agreed-upon time for the current day's operation, the hourly readings in kW of capacity delivered and the energy in kWh delivered since the last report.
- d. Buyer shall have access to the Unit(s) at any time to inspect the Unit(s) and Operations and Maintenance Records. Buyer may enter Seller's facilities with reasonable notice during business hours to audit, appraise, inspect and/or examine those facilities to confirm and/or verify Seller's performance.

26. Dispute Resolution.

Mindful of the high costs of litigation, not only in dollars but time and energy as well, the Parties intend to and do hereby establish a final and binding out-of-court dispute resolution procedure to be followed in the event any controversy should arise out of or concerning the performance of this Transaction. Accordingly, it is agreed as follows:

- a. Any controversy arising out of or relating to this Agreement, including any claims based on contract, tort, statute, or other authority, shall first be attempted to be resolved informally at a level of management more senior than the individuals who are part of the dispute. If the controversy cannot be so resolved, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association (“AAA”). As the first step the parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA’s commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. If within 60 days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA’s Commercial Arbitration Rules. Either Party may initiate arbitration by filing with AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.
- b. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three per Party and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six hours duration. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- c. To the extent that the dispute concerns the calculation of the Termination Amount (but not whether there has been an Event of Default giving rise to the right to require the payment of such Termination Amount), each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two “last and best” offers submitted, and shall not determine an alternative or compromise remedy.
- d. The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages except as set forth in Section 16.k. of this Agreement.
- e. The arbitrator’s award shall be made within nine months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this



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

- f. Except as may be required by law, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.
27. The effectiveness of this Agreement is subject to CPUC Approval.
28. The following sections of the Master Agreement are deleted in their entirety and are replaced with a statement that they are "Intentionally deleted": 1.13, 1.34-1.44 inclusive, 1.48, 1.50, 1.57 and 10.1.
29. The Master Agreement is further amended as follows.
- a. The phrase "at Buyer's option" in the fifth line of the definition of "Replacement Price" in Section 1.51 is deleted and replaced by the following: "absent a purchase (Buyer shall have no obligation to enter into actual replacement transactions)...."
  - b. The opening phrase of Section 2.4 is modified as follows: "The Parties agree that, whether or not an express election is made on the Cover Sheet, this Section 2.4 shall be applicable to this Master Agreement so that, when...."
  - c. The last two sentences of Section 2.5 are deleted and are replaced by the following: "The Recording, if admissible, shall be evidence of the Parties' agreement with respect to the matters discussed therein, including, without limitation, scheduling and dispatch."
  - d. The proviso at the end of the first sentence in Section 3.1 is deleted.
  - e. The following words are deleted from the first sentence of both Section 4.1 and Section 4.2: "...or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt...."
  - f. Section 5.1 of the Master Agreement is amended as follows:
    - i. Section 5.1(d) shall not apply to PG&E if PG&E is still in bankruptcy when PG&E enters this Agreement; provided that, any subsequent bankruptcy filing by PG&E will be subject to Section 5.1(d).

- ii. Section 5.1 (e) is modified by adding the phrase before the word “hereof” (which word is deleted) “or failure to satisfy the security requirements in Section 29.1. of the Confirmation”.
- iii. Section 5.1 (g) is modified by deleting the phrase "...or becoming capable at such time of being declared...."
- iv. A new Section 5.1 (i) is inserted and provides as follows: “if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s).”
- v. A new Section 5.1 (j) is inserted and provides as follows: “if at any time during the Term of Agreement, any one of the representations and warranties in this Agreement becomes false or inaccurate.
- vi. A new Section 5.1 (k) is inserted and provides as follows: “if at any time during the Term of Agreement, either Party assigns its rights or delegates its duties under this Agreement in violation of Section 10.5 of the Master Agreement.”
- vii. A new Section 5.1 (l) is inserted and provides as follows: “if at any time during the Term of Agreement, the Seller or its assignee does not either: (i) own the Unit(s) (ii) remain the lessee under a Lease of the Unit(s) or (iii) have authority to operate the Unit(s).”
- viii. A new Section 5.1 (m) is inserted and provides as follows: “if at any time during the Term of Agreement, the Unit(s) does not qualify as an ERR as defined in Public Utilities Code Section 399.12, except Seller shall have up to 120 days to cure.
- ix. A new Section 5.1 (n) is inserted and provides as follows: “if at any time during the Term of Agreement Seller fails to provide satisfactory assurances of its ability to perform hereunder within seven business days of demand therefore.
- g. The following words are deleted from the end of the next-to-last sentence of Section 5.3 of the Master Agreement: “...payable by one Party to the other....”
- h. The last sentence of Section 5.4 of the Master Agreement is deleted.
- i. Section 5.6, Option C, of the Master Agreement shall apply and is revised as follows: “The non-Defaulting Party, only, shall be entitled to receive a Termination Payment. If the calculation of a Termination Payment results in an amount that otherwise would be owed to the Defaulting Party, no payment shall be required by the non-Defaulting Party to the Defaulting Party. The remedy provided in this Section shall be without prejudice and in addition to any right of

setoff or other right to which the non-Defaulting Party is otherwise entitled, whether by operation of law, contract, or otherwise).”

- j. A new Section 5.8 is added to the Master Agreement and provides: “5.8 Determination of Market Price. For any provision of this Agreement that permits or requires the determination of market price, including without limitation Sections 1.51 and 5.2, such price may, at the option of the Party whose right it is to use the market price, be determined by reference to market referent prices set by the CPUC, exchange prices, or by the average of market quotations provided by five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for: (a) a like amount (b) of the same Product (c) at the same Delivery Point (d) on the same day and (e) for the remaining Term of Agreement, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the contract value of the remaining term of the Agreement and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant or which are reasonably expected to be available in the market for a replacement contract for the Transaction. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price.”
- k. Option A of Section 8.2(a) of the Master Agreement shall apply, and (1) the words “and Party A’s Guarantor” are added to modify each use of Party A therein, and (2) the final two lines are modified to read: “...so long as Party A and Party A’s Guarantor deliver the statements as soon as they are prepared.” Options B and C are deleted. Section 8.2(c) is deleted.
- l. Section 8.2 (e) of the Master Agreement is deleted in its entirety and replaced with the following provision:

Security Provided By Seller

Within 7 Business Days of CPUC Approval of this Agreement, Seller agrees to provide to PG&E one of the following types of security in the amount of \$441,840.00 to secure performance of its obligations under this Agreement:

- i. Letter of Credit;
- ii. Cash;
- iii. Written guarantee from an affiliate of Seller provided the affiliate

maintains a credit rating by Standard and Poor's, Fitch or Moody's ("Credit Rating") throughout the Term of Agreement of at least BBB – (BBB minus) by Standard and Poor's or Fitch and Baa3 by Moody's. If the affiliate of the Seller receives a split rating from 2 or more of these rating agencies, the lower rating shall apply. If the guarantor's Credit Rating falls below BBB- or Baa3 as determined by any major ratings agency at any time during the Term of Agreement, Seller must provide substitute security acceptable to PG&E within 3 Business Days of the event of downgrade. Failure to provide such substitute security in a form acceptable to PG&E shall constitute an Event of Default; or

iv. Deed of trust on real property or a security interest on personal property. The value of the property must exceed the amount of secured debt by at least 125% of the amount of security required by this Agreement. It shall be in PG&E's sole discretion whether to accept security of the type described in this subsection. If PG&E accepts such security and subsequently the value of said property, less the secured debt, falls below 125% of the amount of security stated above, Seller must provide alternate security in a form acceptable to PG&E within 7 Business Days of notice from PG&E or of any event that affects the value of PG&E's interest. Failure to provide adequate substitute security shall constitute an Event of Default. Seller agrees to provide to PG&E upon execution a copy of any new deed of trust on the real property or new security interest on personal property and any related documents throughout the Term of Agreement.

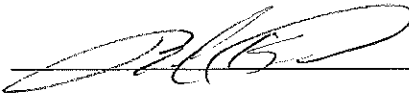
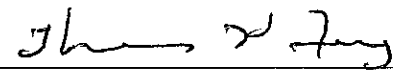
v. Failure to provide security in one of the forms specified in subparagraphs i through iv above, within 7 Business Days of CPUC Approval of the Agreement, or to replenish security that has been used to satisfy an obligation, within 7 Business Days of Buyer's request therefore, shall constitute an Event of Default, the remedy for which shall be the immediate termination of this Agreement and the application of Sections 22 and 24.

- m. Section 10.2(v) of the Master Agreement shall not apply to Buyer.
- n. Section 10.6 of the Master Agreement is modified by deleting the words "NEW YORK" and replacing them with "CALIFORNIA."
- o. Section 10.8 of the Master Agreement is amended by deleting the words "Each Party agrees if it seeks" through the words "is inconsistent with this Agreement."
- p. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.
- q. Section 10.11 of the Master Agreement is deleted in its entirety and is replaced with the following provision, irrespective of the election made by Seller on the Cover Sheet:

Confidentiality: Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel,

accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule or in connection with any court, CPUC, California Energy Commission, Federal Energy Regulatory Commission, or other regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

30. The Master Agreement applies to this Transaction. To the extent that this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall govern the rights and obligations of the Parties hereto.

PACIFIC GAS AND ELECTRIC COMPANY	SELLER
By: 	By: 
Name: <u>Roy Kuga</u>	Name: <u>Thomas H. Fry</u>
Title: <u>Director - Gas &amp; Electric Supply</u>	Title: <u>President</u>
Date: <u>9/18/03</u>	Date: <u>9/18/03</u>