netted out to a single liquidated amount (the "Termination Payment"). If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment (as calculated by the Non-Defaulting Party).

5.6 Cure by Financial Institutions.

(a) Seller covenants and agrees to provide each financial institution that provides financing or refinancing of the Units to Seller (each, a "Financial Institution") a copy of any notice of any default it receives from Buyer, immediately upon receipt of any such notice from Buyer. Any financing agreement entered into between Seller and a Financial Institution shall provide that Seller shall provide such Financial Institution with a copy of any notice provided by Buyer to Seller of any default.

(b) In connection with any financing or refinancing of the Units by Seller, upon the joint written request of Seller and of any Financial Institution providing such financing or refinancing, Buyer shall execute and deliver to each such Financial Institution a consent that is in form and substance mutually agreed upon by Buyer and such Financial Institution. The consent shall include provisions addressing the following matters:

(i) permitting the Financial Institutions to (i) cure, on behalf of Seller, any and all curable Event(s) of Default by Seller and (ii) assume this Agreement, including all of Seller's rights and obligations arising under the Agreement; provided, that any Financial Institution seeking to assume this Agreement (i) is acceptable to Buyer in its reasonable discretion, (ii) represents to Buyer in writing that it is financially capable of assuming all of the Seller's obligations under the Agreement, (iii) delivers to Buyer such financial information as reasonably requested by Buyer, and (iv) satisfies the "Assignment" criteria set forth in Section 10.5 of this Agreement;

(ii) requiring such Financial Institution to include in its agreements with Seller a provision requiring that Seller give written notice to such Financial Institution of any notice of an Event of Default received by Seller upon Seller's receipt of such notice from Buyer, and providing that Buyer give written notice of the Event of Default to the Financial Institution within the cure period provided to Seller, if any; provided, that failure of Buyer to give such notice shall not waive Buyer's right to take any action under this Agreement and will not subject Buyer to any damages or liability for failure to provide notice;

(iii) requiring Seller and each Financial Institution to provide an address where written notice should be delivered;

(iv) providing each Financial Institution the same cure period, if any, applicable to Seller, which Financial Institution's cure period shall begin upon Buyer's delivery of notice of an Event of Default to Seller such that the cure period for Seller and the Financial Institution is coterminous; provided, however, that if Buyer and Seller have each failed to deliver a notice of an Event of Default to Buyer with respect to an Event of Default, then subject to Section 5.6(b)(ii), such Financial Institution shall have not less than that number of days equal to twenty-five percent (25%) of the number of days provided to Seller in this Agreement to cure such Event of Default, and if such number of days is less than one, then such Financial Institution shall have only one (1) Business Day to cure such Event of Default;

(v) requiring, in order for a Financial Institution to cure an Event of Default on behalf of Seller, that the Financial Institution send a written notice to Buyer within the time period set forth below, indicating the Financial Institution's intention to cure. Any such notice shall be received by Buyer prior to the later of (i) five (5) Business Days after the date that Buyer or Seller delivers notice to Financial Institutions of the Event of Default or (ii) five Business Days prior to the end of any cure period provided to Seller. Notwithstanding the foregoing, if the cure period for Seller is less than five (5) Business Days but greater than two (2) days, then the Financial Institution must notify Buyer of such Financial Institution's intention to cure not less than one (1) Business Day prior to the required cure date; and provided, further, if the cure period is less than two days, the Financial Institution shall provide notice of cure simultaneously with providing such cure.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing and Payment; Remedies. On or before the tenth (10th) calendar day of each month, Seller shall provide to Buyer (i) records of metered data, including Revenue Meter records and transaction data sufficient to document and verify the generation of Product by the Project for all hours during the preceding month, and/or preceding months with respect to adjustments for Imbalance Energy pursuant to Section 4.7 and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with Section 4.4, as adjusted for Performance Adjustments (as provided for in Section 4.6) and adjustments for Imbalance Energy pursuant to Section 4.7

(which may include preceding months). Buyer shall pay the undisputed amount of such invoices on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) calendar days after receipt of the invoice. If either the invoice date or 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 due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.2 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. Subject to Section 3.7, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) calendar days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR contract. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

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

PROVIDED 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. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 (INDEMNITY), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Seller's Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet.

(a) Financial Information. Option A: If requested by Seller, Buyer shall deliver (i) within 120 days following the end of each fiscal year, a copy of Buyer's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Buyer's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Seller, Buyer shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an

Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Promptly following demand by Seller, but in no event later than (i) 120 days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (ii) 60 days after the end of each of PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period and prepared in accordance with generally accepted accounting principles; provided however, that Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the U.S. Securities and Exchange Commission ("SEC") EDGAR information retrieval system; further provided, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

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

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

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

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Seller's Guarantor and Party A has provided a Guarantee from the Guarantor as Delivery Term Security under this Agreement, then Party B may require Seller to deliver a Letter of Credit or cash to Party B in an amount equal to the amount of Delivery Term Security set forth on the Cover Sheet. In the event Seller shall fail to provide such Letter of Credit or cash to Party B within five (5) Business Days of receipt of Party B's request for such security, then Party B shall have the right to declare an Event of Default.

If specified on the Cover Sheet, Buyer shall deliver to Seller, prior to or concurrently with the execution and delivery of this Agreement a form of guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Seller.

8.2 Buyer's Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet and shall only apply if marked as "Applicable" on the Cover Sheet.

(a) Financial Information. Option A: If requested by Buyer, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Buyer, Seller shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Buyer may request from Seller the information specified in the Cover Sheet.

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

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

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Sections 5.2 and 5.3 by Buyer as if the Transaction had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Seller to Buyer, whether or not such amounts are due, for performance already provided pursuant to the Transaction.

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

If specified on the Cover Sheet, Seller shall deliver to Buyer, prior to or concurrently with the execution and delivery of this Agreement a form of guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Buyer.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers Project Development Security or Delivery Term Security, as applicable, hereunder, Seller hereby grants to Buyer (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Project Development Security or Delivery Term Security, as applicable, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Project Development Security or Delivery Term Security, as applicable then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

If the Parties elect as being applicable on the Cover Sheet, the following new Section 8.4 shall be added to the Agreement:

8.4 Project Development Security; Performance Assurance.

(a) Project Development Security; Performance Assurance. To secure its obligations under this Agreement, satisfying any credit terms pursuant to the terms of Section 8.2, to the extent marked applicable, Seller agrees to deliver to Buyer (the "Secured Party") within thirty (30) days of the date on which all of the conditions precedent set forth in Article Eleven are either satisfied or waived, and Seller shall maintain in full force and effect (i) until the Construction Start Date, Project Development Security in the amount and in the form set forth on the Cover Sheet, (ii) from the Construction Start Date until the Commercial Operation Date, Project Development Security in the amount and in the form set forth on the Cover Sheet, and (iii) from the Commercial Operation Date until the end of the Term, the Delivery Term Security in the amount and in the form set forth on the Cover Sheet. Any such Performance Assurance shall not be deemed a limitation of damages.

(b) Use of Project Development Security. Buyer shall be entitled to draw upon the Project Development Security for Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Project Development Security. If after the Commercial Operation Date no damages are owed to Buyer under this Agreement, then Seller shall no longer be required to maintain the Project Development Security; and the Project Development Security, including amounts held by Buyer as Daily Delay Damages due to a delayed Construction Start Date, shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security; provided however, that with Buyer's consent, Seller may elect to apply the Project Development Security toward the Delivery Term Security, if any, provided pursuant to this Section 8.4.

(d) Calculation of Delivery Term Security. The amount of the Delivery Term Security required of Seller by this Section 8.4 shall initially be the amount set forth on the Cover Sheet, subject to adjustment as set forth in Section 3.1(f).

(e) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Project Development Security or Delivery Term Security as applicable, at the Interest Rate. On or before each Interest Payment Date, Buyer shall transfer the Interest Amount due to Seller for such security in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet.

8.5 Letter of Credit.

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement. In the event the issuer of such Letter of Credit (x) fails to maintain a Credit Rating of at least an A2 by Moody's and at least an A by S&P, (y) indicates its intent not to renew such Letter of Credit, or (z) fails to honor Buyer's properly documented request to draw on an outstanding Letter of Credit by such issuer, Seller shall (A) provide a substitute Letter of Credit that is issued by a qualified bank acceptable to Buyer, other than the bank failing to honor the outstanding Letter of Credit, or (B) post cash in each case in an amount equal to the outstanding Letter of Credit within five (5) Business Days after Buyer receives notice of such refusal ("Cure"), as applicable. If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or 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 Seller shall have failed to meet the creditworthiness/collateral requirements of Article Eight.

(b) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

(c) Seller shall be permitted to substitute a guaranty, in a form acceptable to Buyer, held by Buyer as Delivery Term Security, for cash or Letter of Credit, upon satisfaction of all of the following conditions: the Guarantor must (a) be incorporated in a jurisdiction of the United States; (b) have a Credit Rating that is not less than either BBB by S&P or Baa2 by Moody's; and (c) meet such other credit requirements set forth by Buyer to evidence the Guarantor's ability to support the Performance Assurance Amount. Buyer shall return such cash or Letter of Credit in its possession within ten (10) Business Days of Buyer's receipt and acceptance of such Guaranty. Seller shall notify Buyer immediately of a downgrade in Guarantor's Credit Rating below the requirements set forth above. In the event that the Guarantor ceases to meet the criteria set forth above as determined by Buyer in its sole discretion, then, within five (5) Business Days of notice from Buyer, Seller shall post Delivery Term Security in the form of cash or a Letter of Credit.

ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any governmental authority ("Governmental Charges") on or with respect to the Product or the Transaction arising prior to the Delivery Point, including but not limited to, ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. PG&E shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Agreement.

(a) Seller Termination Right. If "Seller Termination Right" is specified as being "Applicable" on the Cover Sheet then the following provisions in this Section 10.1(a) shall apply.

(i) If Seller's Bid Price exceeds the Market Price Referent, Seller may seek a PGC Funding Award from the California Energy Commission, or its successor agency ("CEC"), for an amount (in $ per MWh) equal to the positive difference derived by subtracting (a) the Market Price Referent (in $ per MWh) from (b) the Bid Price (in $ per MWh) ("PGC Fund Amount"). To the extent that Seller seeks such PGC Fund Award, Seller shall use best

efforts to comply with all funding criteria and obtain the PGC Fund Amount and Buyer shall reasonably support Seller's efforts. If Seller does not obtain a PGC Funding Confirmation or PGC Funding Award by 11:59 p.m. Pacific Standard Time on the 120th day from the date on which Buyer files this Agreement for CPUC Approval ("Funding Termination Deadline"), then Seller may unilaterally terminate this Transaction prior to the Funding Termination Deadline effective as of the date on which Buyer receives Seller's written notice of termination. If Seller exercises this termination right, neither Buyer nor Seller shall be subject to liability of any kind.

(ii) At any time prior to the Funding Termination Deadline, if applicable, Seller shall send to Buyer within ten (10) days of (I) obtaining a PGC Funding Confirmation or PGC Funding Award, written notice of such confirmation or award and a copy of the final funding award agreement entered into by the California Energy Commission, or its successor agency ("CEC") and Seller, if the funding award agreement has been granted at that time, or (II) receiving written notice from the CEC denying Seller's application for the requested PGC Fund Amount, a copy of such notice and a written statement from Seller, in which Seller shall (1) waive its termination rights under this Section 10.1(a) or (2) notify Buyer that the Transaction is terminated, pursuant to the terms of this Agreement. If Seller has the right to terminate this Transaction, but fails to send written notice of termination by the Funding Termination Deadline, then Seller's termination right per this subsection 10.1(a) shall be deemed waived in its entirety.

(b) PGC Funding Termination Event. If "PGC Funding Termination Event" is specified as being "Applicable" on the Cover Sheet then the following provisions in this Section 10.1(b) shall apply:

(i) PGC Funding Revocation. If at any time after Seller obtains a PGC Funding Confirmation or PGC Funding Award, (A) the PGC Funding Confirmation or PGC Funding Award is revoked in whole or in part by the CEC for reasons not caused by Seller's action or inaction, (B) such revocation occurs prior to the issuance of a PGC Funding Award or during the term of the PGC Funding Award, and (C) Seller has not received a financial benefit in the form of tax credits or any other source of public funding or credit directly related to the Product sold under this Agreement, which benefit would offset the loss incurred from the revocation of the PGC Funding Confirmation or PGC Funding Award, then Seller shall have the right to terminate this Transaction, subject to Buyer's Right of First Refusal Option. If Seller exercises this termination right neither Buyer nor Seller shall be subject to liability arising from such termination.

Not more than ten (10) days from Seller's receipt of written notification regarding revocation of the PGC Funding Confirmation or PGC Funding Award in whole or part, Seller shall notify Buyer in writing of the revocation of the PGC Funding Confirmation or PGC Funding Award, certify it has not received an offsetting financial benefit per clause (C) above, and certify that such revocation is not due to Seller's action or inaction. Seller shall also

provide Buyer with a copy of such CEC notification ("Revocation Notice"). Seller shall specify in its Revocation Notice what percentage of lost PGC funding it is willing to accept to continue to perform under this Transaction (not exceeding 100%).

(ii) Right of First Refusal Option.

(A) Option. Buyer, in its sole discretion, shall have the right, but not the obligation, to pay to Seller the percentage of lost PGC funding specified in its Revocation Notice ("Lost PGC Funds") and Seller shall continue performing under the Transaction for the remaining term of the Transaction (the "Option"). Buyer shall have 30 days from its receipt of the Revocation Notice to exercise the Option ("Exercise Period"), subject to Option Approval, as defined below.

(B) Exercise of Option. If Buyer chooses to exercise the Option, Buyer shall send written notice to Seller stating that Buyer is exercising the Option, conditioned upon Buyer's receipt of Option Approval, as defined below, within 180 days of date on which Buyer received the Revocation Notice. The effectiveness of the Option exercise shall be subject to Buyer's receipt of a final, non-appealable order issued by the CPUC, satisfactory to Buyer, approving Buyer's exercise of the Option and recovery of costs associated with the payment of the percentage of lost PGC Funding ("Option Approval"). The date on which Buyer provides written notice of its Option exercise to Seller shall be the "Exercise Date." Buyer shall file an advice filing or application seeking the Option Approval within 30 days of the Exercise Date.

(C) Payment. Prior to Buyer's receipt of Option Approval, Buyer shall pay Seller the Lost PGC Funds, which would have been due to Seller on a monthly basis for the period between the Exercise Date and the next invoice following the date on which the Option Approval is issued. Upon receipt of Option Approval Buyer shall continue paying Seller's Lost PGC Funds on a monthly basis until the expiration of the term of Seller's PGC Funding Award, or Reinstatement of Seller's PGC funding, whichever comes first.

(D) Seller's Termination Right. Seller may terminate the Transaction in accordance with subsection (b)(i) above upon the occurrence of any of the following events: (I) Buyer provides written notice to Seller rejecting the exercise of the Option, (II) the Option expires without being exercised, (III) Buyer fails to seek Option Approval within 30 days of the Exercise Date, or (IV) Buyer fails to obtain Option Approval within 180 days of Buyer's receipt of the Revocation Notice. If Seller then terminates the Transaction, such termination shall be effective 30 days from the date on which Seller notifies Buyer of such termination. Both Parties shall continue to

perform under this Transaction until the effectiveness of any such termination by Seller.

(iii) Reinstatement of PGC Funding. If the PGC Funding Award is reinstated in its entirety, including retroactive payments for lost PGC Funds, at anytime before (A) Seller's termination of this Transaction or (B) Buyer's exercise of the Option, then Seller shall no longer be permitted to terminate this Transaction, pursuant to this Section 10.1(b)(i), and both Parties shall continue to perform under this Transaction. If the PGC Funding Award is reinstated in whole or in part at anytime after Buyer has exercised the Option, then Buyer shall be relieved of all further obligations to pay any of Seller's lost PGC Funds, which will be covered by the reinstated PGC Funding Award. If PGC Funding Award is reinstated in whole or in part on a retroactive basis after Buyer has exercised the Option, then Buyer shall have the right to offset against payments due to Seller that portion of such award amount equivalent to the lost PGC Funds paid by Buyer to Seller between the period in which the PGC Funds were revoked and reinstated. Seller shall notify Buyer in writing of any such reinstatement of PGC Funds within 10 days of receiving notice of such reinstatement from the CEC, CPUC, or other regulatory agency responsible for the PGC Funds program, which notice shall include a copy of such notice.

(c) INTENTIONALLY OMITTED

(d) Term. The term of this Agreement shall commence upon the satisfaction of the Conditions Precedent set forth in Article Eleven of this Agreement and shall remain in effect until the conclusion of the Delivery Term or unless terminated sooner pursuant to Section 5.2, Section 10.1(a)-(b) or Section 11.2 of this Agreement (the "Term"); provided however, that this Agreement shall remain in effect until (i) the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due for the Products delivered prior to the end of the Term, the Settlement Amount, indemnification payments or other damages (whether directly or indirectly such as through set-off or netting) and (ii) the undrawn portion of the Project Development Security or Performance Assurance, as applicable is released and/or returned as applicable (if any is due).

10.2 Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

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

(b) except for (A) CPUC Approval, in the case of Buyer, and (B) all permits necessary to install, operate and maintain the Project in the case of Seller, it has all regulatory authorizations necessary for it to perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement is 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;

(d) 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.

(e) 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;

(f) 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;

(g) 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;

(h) 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; and

(i) 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 all Products referred to in the Transaction to which it is a Party.

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

10.4 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under the Transaction to and at the Delivery Point, (ii) Seller's operation and/or maintenance of the Project, or (iii) Seller's actions or inactions with respect to this Agreement, including without limitation 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 of economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its agents, employees, directors, or officers.

Seller shall further indemnify Buyer for all penalties assessed against Buyer 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 the Product, unless such failure is caused by Force Majeure, or Buyer's breach or default under this Agreement.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under the Transaction after the Delivery Point, including without limitation 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 of economic loss of property belonging to Buyer, Seller, or others, excepting only such loss, claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

(c) 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.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its financing providers and the financing provider(s) shall assume the payment and performance obligations provided under this Agreement with respect to the transferring Party provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than Scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business

hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This 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. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. 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 term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity rights shall survive the termination of this Agreement for twelve (12) months. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together constitute but one and the same instrument. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either party, the other party will confirm facsimile or PDF signatures by signing an original document. This Agreement shall be binding on each Party's successors and permitted assigns. The standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "just and reasonable" standard of review rather than the "public interest" standard of review. 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.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy or Scheduled Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Confidentiality. Neither Party shall disclose the non-public terms or conditions of this Agreement or any Transaction hereunder to a third party, other than (i) the Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision (D) 02-08-071 and made applicable to this Agreement by D.04-06-015, subject to a confidentiality agreement, (iii) to the CPUC under seal for purposes of review, (iv) disclosure of terms specified in and pursuant to Section 10.12 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); or (vi) in order to comply with any applicable regulation, rule, or order of the CPUC, CEC, or the Federal Energy Regulatory Commission. In connection with requests made pursuant to clause (v) of this Section 10.10 ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to 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 (ii) liable to the other Party for monetary or other damages incurred in connection with the disclosure 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.

10.11 RPS Confidentiality. Notwithstanding Section 10.10 of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of the Agreement, either Party shall be permitted to disclose the following terms with respect to such Transaction: Party names, resource type, delivery term, project location, and project capacity. If Option B is checked on the Cover Sheet, then neither Party shall disclose Party name or Project location, pursuant to this Section 10.11, until six (6) months after such CPUC Approval.

10.12 Insurance. Throughout the term of this Agreement, Seller shall obtain and maintain in force as hereinafter provided commercial general liability insurance, including contractual liability coverage, with respect to the Project specified in the Section 3.1(g). PG&E reserves the right to request coverages of the type and amounts that are required by lenders for similarly financed projects. Reviews of such insurance may be conducted by PG&E on an annual basis. Seller is also responsible for its agents and contractors' maintaining sufficient limits of the appropriate insurance coverage. The insurance carrier or carriers and form of policy shall be subject to review and approval by Buyer.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance or self-insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, where Seller's licensee 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.

(b) Commercial General Liability.

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

(ii) The limit shall not be less than $10,000,000 each occurrence for bodily injury, property damage and personal injury.

(c) Seller shall (i) prior to the date the Commercial Operation Date furnish a certificate of insurance to Buyer, which certificate shall provide that such insurance shall not be terminated nor expire except on thirty (30) calendar days' prior written Notice to Buyer, (ii) maintain such insurance in effect for so long as Seller's Project is operated in parallel with the Transmission Owner's electric system, (iii) furnish an endorsement specifying that Seller's insurance is primary and that any insurance or self-insurance maintained by Buyer shall not contribute with it and (iv) furnish to Buyer an additional insured endorsement with respect to such insurance in substantially the following form:

> 'In consideration of the premium charged, PG&E, its director, officers, agents, and employees are named as additional insured with respect to all liabilities arising out of Seller's use and ownership of Seller's Project.'
>
> 'The inclusion of more than one insured under this policy shall not operate to impair the rights of one insured against another insured and the coverages afforded by this policy will apply as though separate policies had been issued to each insured. The inclusion of more than one insured will not, however, operate to increase the limit of the carrier's liability. PG&E will not, by reason of its inclusion under this policy, incur liability to the insurance carrier for payment of premium for this policy.'
>
> 'Any other insurance carried by PG&E which may be applicable shall be deemed excess insurance and Seller's insurance primary for all purposes despite any conflicting provisions in Seller's policy to the contrary.'

10.13 Prevailing Wage. To the extent applicable, Seller shall comply with the prevailing wage requirements of Public Utilities Code section 399.14, subdivision (h).

10.14 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and Security and Exchange Commission rules require PG&E to evaluate if PG&E must consolidate Seller's financial information. Buyer will require access to financial records and personnel 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:

(a) Complete financial statements and notes to financial statements; and

(b) Financial schedules underlying the financial statements, all within fifteen (15) days after the end of each fiscal quarter.

Any information provided to Buyer pursuant to this Section 10.14 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar 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 internal or external parties.

10.15 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

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

(iii) it shall perform its obligations under this Agreement and the Transaction 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, rule, regulation, order or the like 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).

(b) Qualification of Project as ERR. Seller, and, if applicable, its successors, covenants that throughout the Delivery Term of each Transaction entered into under this Agreement: (a) the Project will qualify and will be certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16 as of the date of this Agreement; and (b) the Project's output delivered to Buyer will qualify under the requirements of the California Renewables Portfolio Standard in effect as of the date of this Agreement.

(c) Climate Action Registry. Seller shall register the Project with the California Climate Action Registry (CCAR) as may be required by the California Public Utilities Commission pursuant to Decision 06-02-032 and any subsequent order, but in any event, no later than the Commercial Operation Date.

ARTICLE ELEVEN: CONDITIONS PRECEDENT

11.1 Conditions Precedent. The term of this Agreement shall not commence until the occurrence of **all** of the following:

(a) This Agreement has been duly executed by the authorized representatives of each of Buyer and Seller;

(b) CPUC Approval has been obtained; and

(c) Buyer receives a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates.

11.2 Failure to Meet All Conditions Precedent. If each Condition Precedent is not satisfied on or before 180 days from the date on which Buyer files this Agreement for CPUC

Approval, then either Party may terminate this Agreement and the Transaction(s) effective upon receipt of Notice by the other Party.

ARTICLE TWELVE: DISPUTE RESOLUTION

12. 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 the Transaction. Accordingly, it is agreed as follows:

12.1 Negotiation.

(a) The Parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement by prompt negotiations between each Party's Contract Manager, as identified on the Cover Sheet hereof or such other person designated in writing as a representative of the Party ("Manager"). Either Manager may request a meeting (in person or telephonically) to initiate negotiations to be held within ten (10) Business Days of the other Party's receipt of such request, at a mutually agreed time and place. If the matter is not resolved within 15 Business Days of their first meeting ("Initial Negotiation End Date"), the Managers shall refer the matter to the designated senior officers of their respective companies, who shall have authority to settle the dispute ("Executive(s)"). Within five (5) Business Days of the Initial Negotiation End Date ("Referral Date"), each Party shall provide one another written notice confirming the referral and identifying the name and title of the Executive who will represent the Party.

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

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

(d) If the matter is not resolved within 45 calendar days of the Referral Date, or if the Party receiving the written request to meet, pursuant to subpart (a) above, refuses or will not meet within 10 Business Days, either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.2.

(e) If a dispute exists with respect to the Termination Payment, and such dispute cannot be resolved by good faith negotiation of the Parties within 10 Business Days of the Non-Defaulting Party's receipt of the detailed basis for the explanation of the dispute, pursuant to Section 5.5 of this Agreement, then either Party may refer the matter to Arbitration, pursuant to Section 12.3 of this Agreement.

12.2 Mediation. If the dispute (other than a dispute regarding the Termination Payment) cannot be so resolved by negotiation as set forth in Section 12.1 above, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association ("AAA"). As the first step the Parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. 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 ("Arbitration"). Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field. 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.

12.3 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such 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.

(a) To the extent that the dispute concerns the calculation of the Termination Payment (but not whether there has been an Event of Default giving rise to the right to require the payment of such Termination Payment), each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages pursuant to Section 5.2 of this Agreement.

(c) 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.

(d) 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.

EXHIBIT A

LETTER OF CREDIT

ISSUING BANK LETTERHEAD ADDRESS

Date: _____

Irrevocable Standby Letter of Credit Number:_____

Beneficiary: Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attn: Credit Risk Management Unit

Applicant: _____
[insert Applicant's address]_____
_____

Account Party: _____
[insert Account Party's address]___
_____

[Advising Bank, if applicable]
[Confirming Bank, if applicable]

Amount: USD [Amount]
US Dollars [Spell out amount in words]

We hereby issue our Irrevocable Standby Letter of Credit ("Letter of Credit") at this office in your favor at the request of the Applicant and for the account of the Account Party. Payments under this Letter of Credit are payable at sight against the following documents:

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

AND

2. Beneficiary's signed statement certifying:

"Pursuant to the terms of that certain Power Purchase and Sale Agreement dated _____ (Agreement") by and between Account Party and Beneficiary, Beneficiary is entitled to draw on this Letter of Credit for amounts owed by Account Party under the Agreement."

OR

"This Letter of Credit will expire in thirty (30) calendar days or less and Account Party has not provided alternate security acceptable to Pacific Gas and Electric Company."

This Letter of Credit expires at our counters located at [INSERT ADDRESS] on [INSERT DATE], ("Expiration Date") but the Expiration Date shall be automatically extended without amendment for a period of one year and on each successive Expiration Date, unless at least sixty (60) days before the then current Expiration Date, we notify you by registered mail or courier that we elect not to renew this Letter of Credit for such additional period.

Special Conditions:

1. Partial drawing(s) are permitted.

2. All banking charges associated with this Letter of Credit are for the account of the Applicant.

3. This Letter of Credit is not transferable.

4. This Letter of Credit shall terminate upon the earlier of:

   a. the making by you of the final drawing available to be made hereunder;

   b. the surrender of this original Letter of Credit accompanied by your letter acknowledging termination of this Letter of Credit; and

   c. the Expiration Date.

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

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

By: _____
Authorized Signature
Name: _____
Title: _____

EXHIBIT B

INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER

In accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("Agreement") by and between Pacific Gas and Electric Company ("Buyer") and HFI BioPower Project LLC ("Seller"), this letter serves to document the further agreement of Buyer and Seller that (i) the conditions precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product, as specified in the Agreement, as of this _____ day of _____, _____. This letter shall confirm the Initial Energy Delivery Date, as defined in the Agreement, as the date referenced in the preceding sentence.

IN WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the date of last signature provided below:

By: HFI BioPower Project LLC

Name:
Title:

Date: _____

By: Pacific Gas and Electric Company

Name:
Title:

Date: _____

EXHIBIT C

MILESTONES SCHEDULE

Milestone	Date for Completion
Guaranteed Construction Start Date	6/30/07
Receive Generator at Facility	12/31/07
Synchronize Generator to Grid	5/31/08
Guaranteed Commercial Operation Date	6/30/08

Within 30 days after CPUC Approval, Seller will provide to Buyer a complete Project schedule.

EXHIBIT D

PROJECT DESCRIPTION INCLUDING DESCRIPTION OF SITE

[to be completed by Seller]

HFI BIOPOWER PROJECT

The term "Site" as defined in the Agreement means the following parcel description upon which the facility is located:

Prior to the Guaranteed Construction Start Date Seller shall deliver to Buyer a revised Exhibit D that includes the (i) legal description of the site where the Project is located, and (ii) the information set forth below with respect to a description of the Unit(s) and the Project.

The Unit(s) utilized as generation assets as part of the Project are described below:

Name: _____
Location: _____
Substation Name: (point of interconnection with the ISO Controlled Grid) ("Substation") _____
Current ISO Zone in which Substation resides: _____
Turbine and Configuration: _____

Interconnection:

The Power Plant will be connected as follows: LaPine Station (BPA)

The HFI BioPower Project is a biomass projected located in LaPine, Oregon, 30 miles south of Bend. The project is located in the center of an area encompassing approximately 3,000,000 acres of public and private lands that require fuel reduction to reduce wildfire risk and improve the health of the forests and rangelands. This project expects to be one of the first projects developed under the federal Healthy Forests Initiative biomass bill.

It is anticipated that the HFI BioPower project will supply this PPA up to 40 MW, as such amount may be adjusted as provided in the Agreement, of baseload biomass power with delivery to the PG&E system via the BPA transmission system.

The project expects to utilize a two (2) 24 MW fluidized bed biomass power plant, with a potential additional power plant of similar size coming online subsequently if Seller determines that sufficient fuel supply and community support exists.

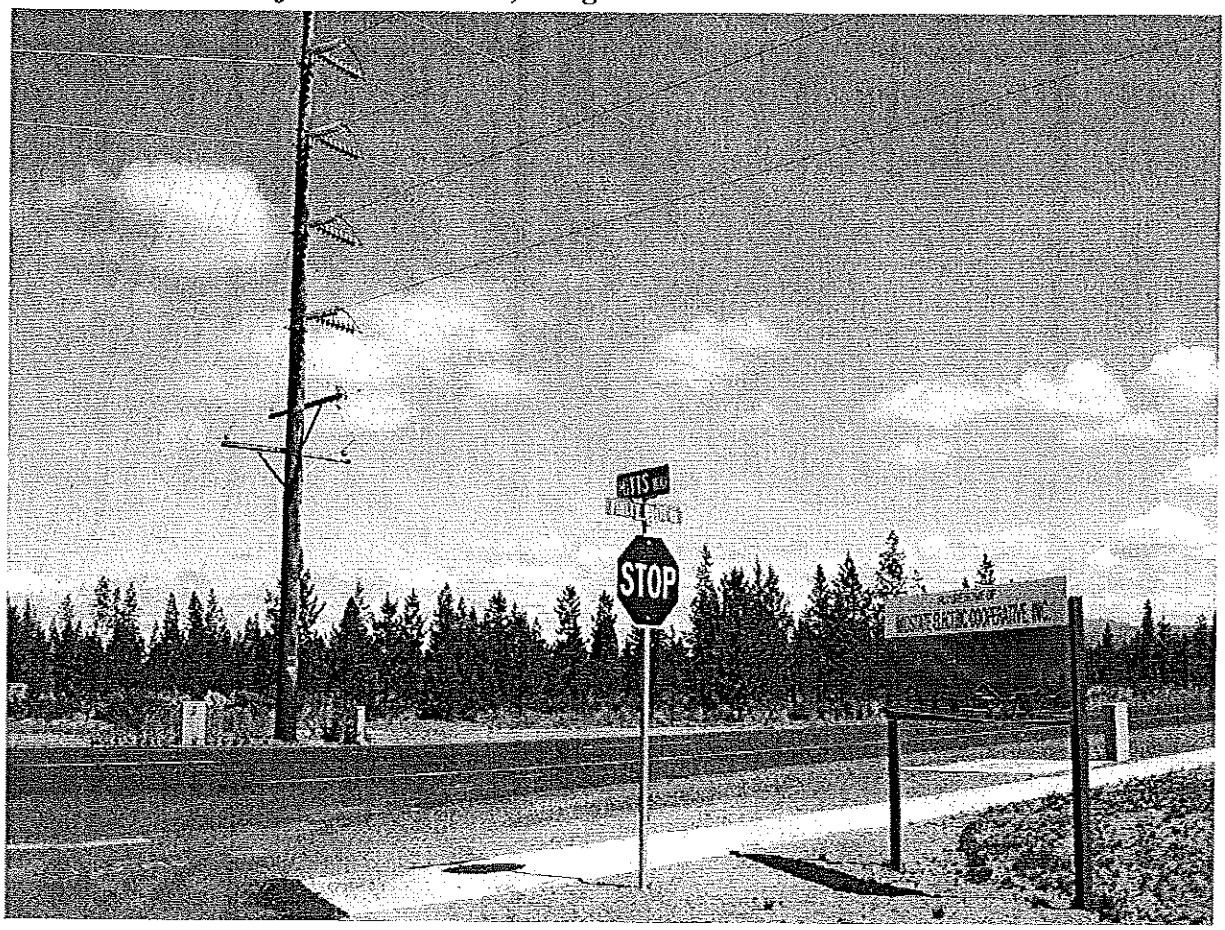
Power Plant Assets include, but are not limited to, the following:

- Fuel Collection System and handling system
- Fluidized bed boiler
- Steam turbine/generator
- Back-side cooling and condenser systems
- Baghouse emission control systems
- Associated electrical equipment to interconnect the facility to the BPA transmission system

All other intangible assets that are part of or associated with any of the assets described in this Exhibit D.

Seller will provide further details by the Guaranteed Construction Start Date.

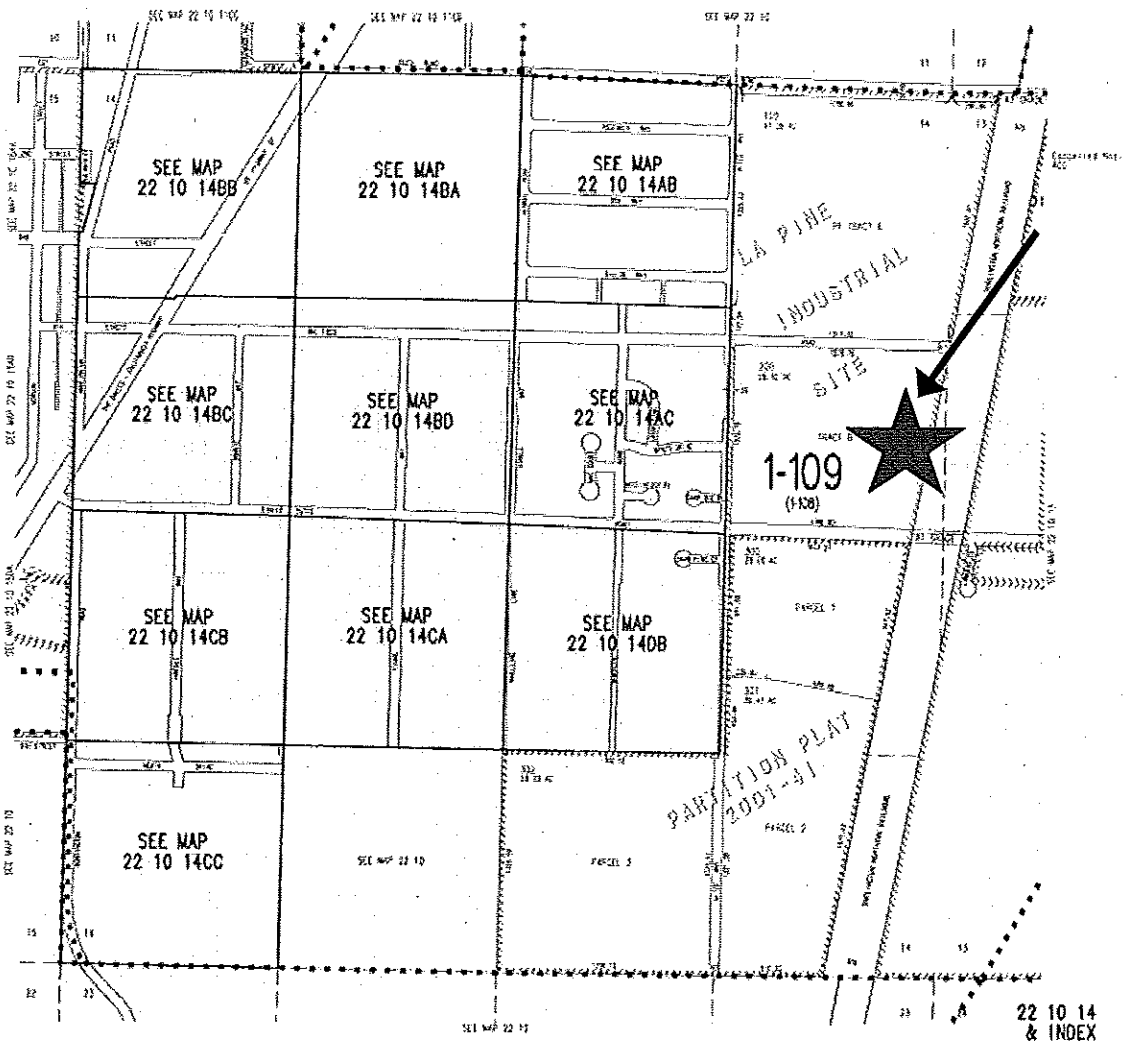
HFI BioPower Project Site: LaPine, Oregon



The HFI BioPower Project has executed a purchase option for this 28 acre industrial site across the street from MidState Electric Coop Inc.

SECTION 14 T.22S. R.10E. W.M.
DESCHUTES COUNTY

22 10 14
& INDEX



22 10 14
& INDEX

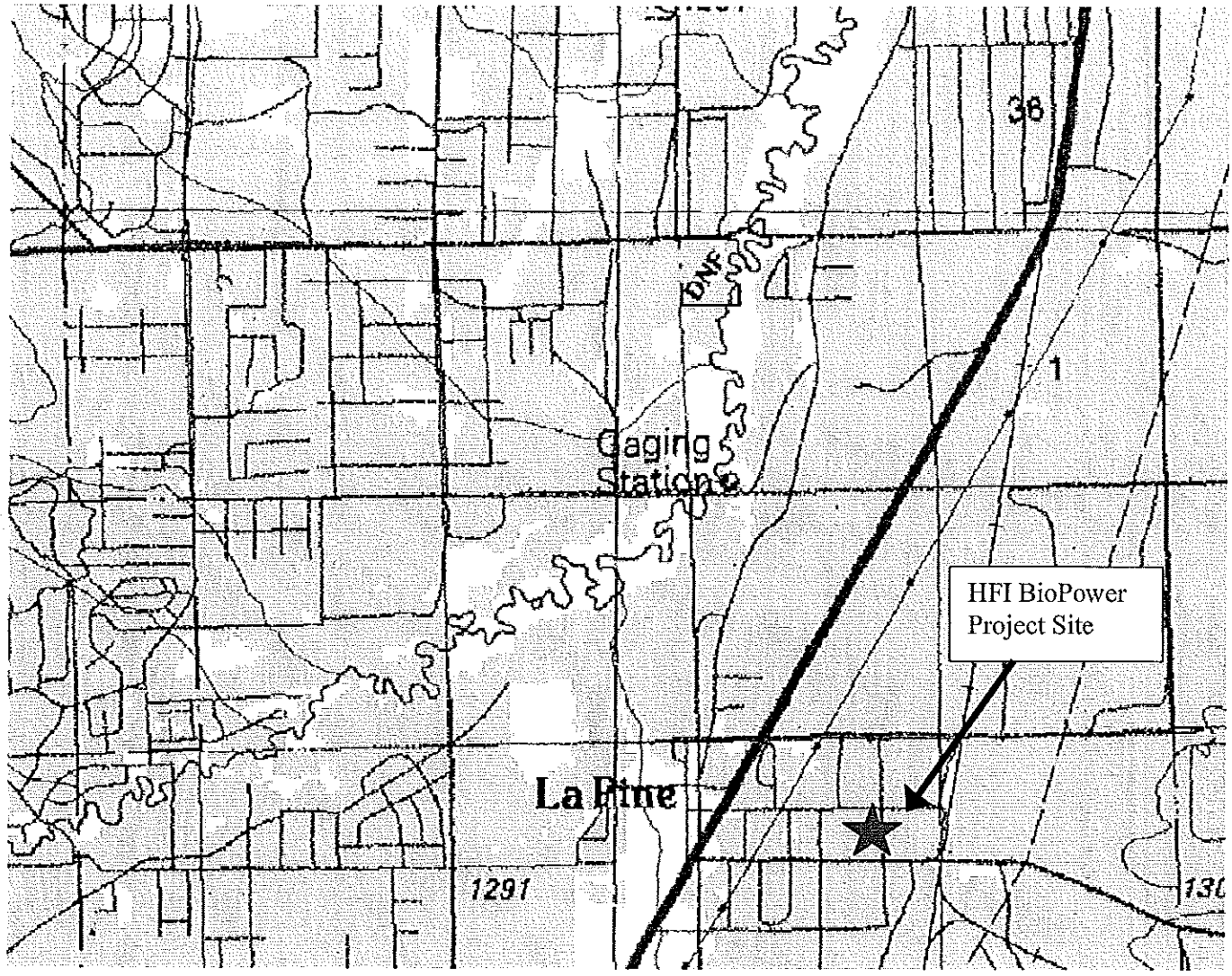

36
1
Gaging
Station
HFI BioPower
Project Site
La Pine
1291

EXHIBIT E

FORM OF CERTIFICATION

This Certification is delivered by HFI BioPower Project LLC ("Seller") to Pacific Gas and Electric Company ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

1. The contract between Seller and the EPC Contractor for construction of the Project (the "Contract") has been executed by each of Seller and the EPC Contractor;

2. All conditions to performance of the Contract have been satisfied;

3. The Notice to Proceed has been delivered by Seller to the EPC Contractor; and

4. There are no delays or waiting periods set forth in the Contract or in the Notice to Proceed that permit the EPC Contractor to delay performance of the Contract.

IN WITNESS WHEREOF, Seller has caused this Certification to be duly executed by its authorized representative as of the date of last signature provided below:

By: HFI BioPower Project LLC

Name:
Title:

Date: _____

APPENDIX I

COMMERCIAL OPERATION CERTIFICATION PROCEDURE

AND PROCEDURE FOR SUBSEQUENT CAPACITY TESTING

Initial and Subsequent Capacity Test Principles

A. Test Procedures and Protocols; Commercial Operation Certification Procedures. The following outlines the principles that will form the commercial basis for the detailed criteria, protocols, schedule and conditions to be agreed to by Buyer and Seller for the initial capacity demonstration test and any subsequent tests (each, a "Capacity Test"), as required by this Agreement. Seller shall be responsible for and bear the costs of any Capacity Test, whether requested by Buyer or by Seller:

1. The principle for the Capacity Test performance criteria will be generation and delivery of the Declared Contract Capacity over the specified duration of the Capacity Test.

2. For the Baseload product the Capacity Test will require the Unit(s) to demonstrate a test capacity which results in a Net Rated Output Capacity equal to or greater than the specified requirements of Section 3.1(j)(i). To calculate the test capacity, the total number of kilowatt-hours (kwh) generated during the test period shall be divided by the total number of consecutive hours in the test period. The test period shall not be less than one hundred and twenty (120) consecutive hours. The Net Rated Output Capacity shall be the sum of the total Delivered Energy for five (5) days divided by 120 hours (24 hours x 5 days).

3. Buyer shall have the right to attend, and be present at all times during, any Capacity Test, including any Re-Test (as defined below).

4. Seller shall deliver to Buyer a written report of the Capacity Test results within fifteen (15) days of completion of the Capacity Test. The Net Rated Output Capacity resulting from the Capacity Test shall be effective beginning the first day of the month immediately following the date that the written report is required to be delivered by Seller, and shall continue in effect until the date that the Net Rated Output Capacity changes as a result of any subsequent Capacity Test permitted pursuant to this Agreement; provided, that (i) with respect to a Capacity Test that establishes the Commercial Operation Date, the Net Rated Output Capacity shall be effective on the Commercial Operation Date, and (ii) with respect to a Capacity Test that results in a Net Rated Output Capacity that is less than ninety percent (90%) of the Declared Contract Capacity, the Net Rated Output Capacity shall be effective on the date that Seller receives the results of such Capacity Test.

5. Seller shall have the right to perform as many Capacity Tests as it deems necessary to establish Commercial Operation prior to expiration of the Project Cure Period. In order to establish Commercial Operation, Seller shall deliver to

Buyer the written Capacity Test report set forth above before expiration of the Project Cure Period. Notwithstanding anything to the contrary in this Agreement, Seller shall not have the right to re-test after expiration of the Project Cure Period in order to establish Commercial Operation.

B. Buyer's Right to Request Capacity Test. If Seller does not meet any of its performance requirements as set forth in Section 4.5 for any two TOD Periods in any rolling six (6) month period, Buyer shall have the right to request a Capacity Test to determine the Net Rated Output Capacity by scheduling Deliveries from the facility for five (5) consecutive days as set forth above. Buyer shall provide Seller thirty (30) days' notice prior to any Capacity Test requested by Buyer. Seller shall (i) begin to perform any Capacity Test requested by Buyer by the thirtieth (30th) day of such notice period and (ii) pay all costs associated with any such Capacity Test.

C. Retesting by Seller If Net Rated Output Capacity Is Less than 90% of Declared Contract Capacity. If the Net Rated Output Capacity as a result of any Capacity Test requested by Buyer as set forth above is less than ninety percent (90%) of the Declared Contract Capacity (a "Failed Test"), Seller shall submit to Buyer, within ten (10) Business Days of such failed Capacity Test, a RAP, which shall provide a detailed description of Seller's course of action and plan to achieve, at a minimum, ninety percent (90%) of the then applicable Declared Contract Capacity. If there is a Failed Test, Seller shall have the right, but not the obligation, to elect to perform one or more retests (each, a "Re-Test"), using identical protocol and criteria as the original Capacity Test, within ninety (90) days of the date that Seller was required to submit its Failed Test results to Buyer. Seller shall bear all costs for any Re-Test. Seller's failure to make such election and complete a Re-Test within such ninety (90) day period shall constitute an unconditional waiver of Seller's right to Re-Test, and shall be deemed a failure of the Re-Test. In addition, Seller's failure to deliver to Buyer within such ninety (90) day period a new Capacity Test report demonstrating that the Net Rated Output Capacity is at least ninety percent (90%) of the Declared Contract Capacity shall constitute an Event of Default.

APPENDIX II

FORM OF MONTHLY CONSTRUCTION PROGRESS REPORT

Monthly Progress Report
of
[_____]
("Seller")

provided to
Pacific Gas & Electric Company
("Buyer")

[Date]

1.0 Instructions.

Any capitalized terms used in this report which are not defined herein shall have the means ascribed to them in the Power Purchase and Sale Agreement by and between _____ ("Seller") and Pacific Gas & Electric Company dated _____, 200__ (the "Agreement").

Seller shall review the status of each significant Milestone of the construction schedule (the "Schedule") for the Project and related project and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

(i) any material matter or issue arising in connection with a Governmental Approval, or compliance therewith, with respect to which there is an actual or threatened dispute over the interpretation of a law or regulation, actual or threatened opposition to the granting of a necessary Governmental Approval, any organized public opposition, any action or expenditure required for compliance or obtaining approval that Seller is unwilling to take or make, or in each case which could reasonably be expected to materially threaten or prevent financing of the Project or related project, attaining any Milestone, or obtaining any contemplated agreements with other parties which are necessary for attaining any Milestone or which otherwise reasonably could be expected to materially threaten Seller's ability to attain any Milestone.

(ii) Any development or event in the financial markets or the independent power industry, any change in taxation or accounting standards or practices or in Seller's business or prospects which reasonably could be expected to materially threaten financing of the Project or related project, attainment of any Milestone or materially threaten any contemplated agreements with other parties which are necessary for attaining any Milestone or could otherwise reasonably be expected to materially threaten Seller's ability to attain any Milestone;

(iii) A change in, or discovery by Seller of, any legal or regulatory requirement which would reasonably be expected to materially threaten Seller's ability to attain any Milestone;

(iv) Any material change in the Seller's schedule for initiating or completing any material aspect of Project;

(v) The status of any matter or issue identified as outstanding in any prior Monthly Construction Progress Report and any material change in the Seller's proposed actions to remedy or overcome such matter or issue.

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

2.0 Executive Summary.

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

Please provide a brief summary of the Major [1] activities to be performed for each of the following aspects of the Project during the current calendar month:

2.1.1 Design

2.1.2 Property Acquisition

2.1.3 Engineering

2.1.3 Major Equipment procurement

2.1.4 Construction and Interconnection

2.1.5 Milestone report

2.1.6 Permitting (See Section 3.0 below)

2.1.7 Startup Testing and Commissioning

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

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

2.2.1 Design

2.2.2 Property Acquisition

2.2.3 Engineering

2.2.3 Major Equipment procurement

2.2.4 Construction and Interconnection

2.2.5 Milestone report

2.2.6 Permitting

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1 For Purposes of this report, "Major" shall mean any activity, event, or occurrence which may have a material adverse effect on the construction of the Project or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse effect includes, but is not limited to, Seller's inability to achieve a Milestone date.

2.2.7 Startup Testing and Commissioning

3.0 Permitting.

The following describes each of the Major Governmental Approvals required for the construction of the Project and the status thereof:

3.1 State and/or Federal Governmental Approvals.

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

DESCRIPTION	**ARTICLE THIRTEEN:** STATUS

3.2 Local and/or county Governmental Approvals.

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Seller (or the EPC Contractor (including its subcontractors)) and the status of each.

ARTICLE FOURTEEN: DESCRIPTION	**ARTICLE FIFTEEN:** STATUS

3.3. Permitting activities that occurred during the previous calendar month.

Please list all permitting activities that occurred during the previous calendar month.

3.4 Permitting activities occurring during the current calendar month.

Please list all permitting activities that are expected to occur during the current calendar month.

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Monthly Progress Report copies of any notices related to permitting activities received from EPC Contractor (including its subcontractors) during the previous calendar month.

4.0 Design Activities.

4.1 Table of design schedule to be followed by Seller and its subcontractors.

The following table lists the design schedule to be followed by Seller and the EPC Contractor (including its subcontractors).

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

4.2 Design activities to be performed during the current calendar month.

Please explain in detail the design activities that are expected to be performed during the current calendar month.

4.3. Table of design activities completed during the previous calendar month.

Please explain in detail the design activities that were completed during the previous calendar month.

5.0 Property Acquisition Activities.

5.1 Table of property acquisition schedule to be followed by Seller.

The following table lists the property acquisition schedule to be followed by Seller.

ACTIVITY	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

5.2 Property Acquisition activities to be performed during the current calendar month.

Please explain in detail the property acquisition activities that are expected to be performed during the current calendar month.

5.3. Table of property acquisition activities completed during the previous calendar month.

Please explain in detail the property acquisition activities that were completed during the previous calendar month.

6.0 Engineering Activities.

6.1 Table of engineering schedule to be followed by Seller and the EPC Contractor (including its subcontractors).

The following table lists the engineering schedule to be followed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

6.2 Engineering activities to be performed during the current calendar month.

Please explain in detail the engineering activities that are expected to be performed during the current calendar month.

6.3. Engineering activities completed during the previous calendar month.

Please explain in detail the engineering activities that were completed during the previous calendar month.

6.4. Three-month look-ahead engineering schedule.

Please provide a three-month look ahead engineering schedule.

7.0 Major Equipment Procurement.

7.1 Table of major equipment to be procured by Seller or the EPC Contractor (including its subcontractors).

The following table lists major equipment to be procured by Seller or EPC Contractor (including its subcontractors):

EQUIPMENT DESCRIPTION	MANUFACTURER	MODEL	CONTRACTED DELIVERY DATE	ACTUAL DELIVERY DATE	PROJECTED INSTALLATION DATE	ACTUAL INSTALLATION DATE

7.2 Major Equipment procurement activities to be performed during the current calendar month.

Please explain in detail the major equipment procurement activities that are expected to be performed during the current calendar month.

7.3 Major Equipment procurement activities completed during the previous calendar month.

Please explain in detail the major equipment procurement activities that were completed during the previous calendar month.

8.0 Construction and Interconnection Activities.

8.1 Table of construction and interconnection activities to be performed by Seller or EPC Contractor (including its subcontractors).

The following tables lists construction and interconnection activities to be performed by Seller and its subcontractors:

ACTIVITY	EPC CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

8.2 Construction interconnection activities to be performed during the current calendar month.

Please explain in detail the construction and interconnection activities that are expected to be performed during the current calendar month.

8.3 Construction and interconnection activities completed during the previous calendar month.

Please explain in detail the construction and interconnection activities that are expected to be performed during the previous calendar month.

8.4 EPC Contractor Monthly Construction Progress Report.

Please attach a copy of the Monthly Construction Progress Reports received during the previous calendar month from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor, certified by the EPC Contractor as being true and correct as of the date issued.

8.5 Three-month look-ahead construction and interconnection schedule.

Please provide a three-month look-ahead construction schedule.

9.0 Milestones.

9.1 Milestone schedule.

Please state the status and progress of each Milestone and identify any completed Milestone(s) for the previous calendar month.

9.2 Remedial Action Plan (applicable if Seller fails to achieve Milestone by the Milestone Date).

Please explain in detail each of the following aspects of Seller's Remedial Action Plan, as provided in Section 3.8 of the Agreement:

9.2.1 Missed Milestone

9.2.2 Plans to achieve missed Milestone

9.2.3 Plans to achieve subsequent Milestone

9.2.4 Delays in engineering schedule

Please explain in detail any delays beyond the scheduled Milestone Dates stated in Section 5.1, any impact from the delays on the engineering schedule, and Seller's plans to remedy such impact.

9.2.5 Delays in Major Equipment procurement

Please explain in detail any delays beyond the contracted delivery date and/or the projected installation date stated in Section 6.1, any impact from the delays on Major Equipment procurement schedule, and Seller's plans to remedy such impact.

9.2.6 Delays in construction and interconnection schedule

Please explain in detail any delays beyond the scheduled completion dates stated in Section 7.1, any impact from the delays on the construction and interconnection schedule, and Seller's plans to remedy such impact.

10.0 Safety and Health Reports

10.1 Please list all accidents from the previous calendar month:

10.2 Any work stoppage from the previous calendar month:

10.3 Work stoppage impact on construction of the Project:

I, _____, on behalf of and as an authorized representative of, do hereby certify that any and all information contained in this Seller's Monthly Construction Progress Report is true and accurate, and reflects, to the best of my knowledge, the current status of the construction of the Project as of the date specified below.

By:_____

Name:_____

Title:_____

Date:_____

PLEASE DO NOT ALTER THIS

APPENDIX III

OUTAGE NOTIFICATION FORM
(If Internet and Email are not available, fax to two groups at PG&E)

SEND VIA FAX **DATE:** _____

To Pacific Gas & Electric Company
Attention: Manager Bilateral Settlements FAX NUMBER: (415) 973-2151
Attention: Outage Coordinator FAX NUMBER: (415) 973-5333

PG&E LOG NUMBER: _____

This Outage Notification Form is being submitted pursuant to the terms of that certain Power Purchase Agreement, dated _____, 20[__] ("Agreement") entered into by _____ and Pacific Gas and Electric Company. All capitalized terms not defined herein shall have the meaning provided in the Agreement.

Unit Name: _____

NOTIFICATION OF PLANNED OUTAGE ☐ FORCED OUTAGE ☐ PROLONGED OUTAGE

☐ The Unit will shut down for SCHEDULED OUTAGE from:

_____ to _____

(Date and Time) (Date and Time)

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

(Date and Time) (Date and Time)

☐ The FORCED OUTAGE/DERATE/CHANGE IN AVAILABILITY was confirmed via telephone on _____ with _____

(Date and Time) (Name of PG&E Individual)

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

_____

_____

_____

_____

_____

Outage Notification Form submitted by: _____ Phone #: _____

(Print Name)

Notification Requirements:

This notice shall be delivered in compliance with Section 3.7 of the Agreement, including the timeframes, which shall be the estimated duration of such outage.

The above notification requirements will be strictly enforced by PG&E.

APPENDIX IV

Resource Adequacy

1. The amount of RA Capacity as set forth in this Transaction shall be the Contract Capacity of the Project or a lower amount specified by Buyer in its sole discretion.

2. Covenants:

2.1 Seller and Buyer covenant and agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary so that Buyer is able to use the Contract Capacity for the benefit of Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include but are not limited to the following:

A. Cooperating with and encouraging the regional entity responsible for resource adequacy administration to certify or qualify the Contract Capacity for Resource Adequacy Requirement purposes. This includes following the requirements established by the CPUC in its Resource Adequacy counting protocols, including demonstration of the ability to deliver the Contract Capacity over all hours required for full Resource Adequacy Requirement eligibility, and demonstrating that the Contract Capacity can be delivered to the ISO Controlled Grid.

B. Negotiating in good faith to make necessary amendments, if any, to this Transaction to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC or regional entity or entities responsible for Resource Adequacy administration, and;

C. Using "Good Utility Practice," as defined in the ISO Tariff, with respect to maintenance of the Project.

2.2 Seller represents and warrants to Buyer and covenants that as of the date of this Agreement and throughout the Delivery Term:

A. Seller has and will have ownership of, or a demonstrable exclusive right[1] to control the Project;

B. Buyer has and will have the exclusive right to count the Contract Capacity from Project toward Buyer's Resource Adequacy Requirements;

C. No portion of the Contract Capacity has been or will be committed by Seller to any third party in order to satisfy Resource Adequacy Requirements, or analogous obligations in other markets for any reason;

[1] Such rights for Resource Adequacy could be acquired through bilateral contracting.

D. Seller shall commit the Project to generate, up to the full Contract Capacity, as long as, and the extent to which, the Project is available to generate.

E. Seller shall abide by all applicable ISO rules and procedures approved by the FERC, and Resource Adequacy rules approved by the CPUC.

3. ISO Dispatch Requirements:

3.1 Unless the Project is forced out of service, is undergoing planned maintenance or is affected by an event of Force Majeure that results in a partial or full outage, Seller shall commit the full remaining Contract Capacity to the ISO in compliance with one or more of the following:

A. Seller shall self-Schedule the Contract Capacity for Energy delivery within the ISO Control Area; if Seller schedules less than the full Contract Capacity, the remaining Contract Capacity will be subject to provisions of 3.1B below;

B. Seller shall bid the Contract Capacity [2] into the ISO integrated forward market ("DA IFM") for all hours of the operating day when such a market is established, and to the extent such bids are cleared in such DA IFM, Seller shall provide that portion of the Contract Quantity cleared in the DA IFM to the ISO in accordance with the ISO Tariff. To the extent the Contract Capacity is not cleared in such DA IFM, Seller shall schedule, or submit supplemental energy or Ancillary Services bids regarding the remaining Contract Capacity volumes into the ISO Hour-Ahead Scheduling Process (if such a market is established) and be available when called by the ISO; however, any Unit(s) not committed through the DA IFM or Day-Ahead Residual Unit Commitment[3] and whose start-up time do not permit such Unit(s) to be committed in an Hour-Ahead Scheduling Process will be relieved of its obligations for that operating day. Seller's Project will remain available to ISO through its Day-Ahead Residual Unit Commitment process after each market closes, if such a process is developed.

C. If FERC's Must Offer Obligation is operative, Seller shall make the Project subject to such Must Offer Obligation. In the event of a Waiver Denial Period by the ISO, Seller shall submit supplemental energy or Ancillary Service bids[2] to the ISO from the Project; and/or

D. If FERC's Must Offer Obligation is no longer operative and the ISO has not implemented its MRTU, Seller shall make the Project subject to the same obligations to the ISO and timelines that exist under the current Must Offer Obligation process. Seller shall submit Hour-Ahead (if it exists) schedules and/or supplemental energy or Ancillary Services bids[2] for the Contract Capacity for all hours for which the Project has been committed by the ISO pursuant to the following rights granted by the Parties to the ISO through this Transaction: (1)

---

[2] The intent of referencing the ISO Tariff is that Seller is not constrained on bidding energy or Ancillary Services prices other than what is contained in the ISO Tariff, unless otherwise agreed by Buyer and Seller.
[3] Seller's bid for capacity availability in the RUC process shall be priced at zero.

the ISO shall have the right to commit any type of Project on a Day-Ahead basis; and (2) the ISO shall have the right, on an intra-hour or Hour-Ahead basis, to call on supplemental energy and/or Ancillary Services from only those Unit(s) whose start-up time permits such a call. The ISO and appropriate stakeholders will work together to consider what, if any, successor tariff language is needed after the Must Offer Obligation expires.

4. RA Capacity Delivery Point. The Delivery Point for the Project shall be the Substation for the Project as set forth in Exhibit D.