

Signed by Roy 2/23/07

Agreement for the Sale and Purchase of Gas

This Agreement is made by and between Pacific Gas and Electric Company ("Buyer") and Microgy, Inc. ("Seller") (which may be referred to individually as "Party" or collectively as "Parties") for the sale and purchase of natural gas produced by Seller under the terms contained herein ("Agreement").

1. General Definitions

"Additional Gas Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, reporting rights and allowances, howsoever entitled, and whether or not tradable, that are not directly attributable to the generation of electricity using Gas from Seller's Sites, but those that are in addition to those qualifying as an Gas Environmental Attribute as defined, below. For the avoidance of doubt, (i) provided that the terms of Section 3(b) are met, Additional Gas Environmental Attributes include Tradable Carbon Credits (except to the extent that Tradable Carbon Credits constitute "Product" as defined herein); and (ii) any of the foregoing that relate back in any way in calculation of their value to a date prior to the Effective Date may not be counted as an Additional Gas Environmental Attribute.

"Additional Gas Environmental Attributes Option" or "AEA Option" means Buyer's option to buy Additional Gas Environmental Attributes.

"Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, which appointment is not dismissed within ninety (90) days; or (v) is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

“CEC” means the California Energy Commission.

“CEC Approval” means acceptance and/or acknowledgment by the CEC that Gas created as described in this Agreement may be counted, through its use to produce energy, as a Gas Environmental Attribute.

“CPUC” means the California Public Utility Commission.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms, IF SELECTED:

X (1) Approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer’s administration of the Agreement.

(2) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law.

(3) finds that any procurement pursuant to this Agreement constitutes incremental procurement or procurement for baseline replenishment by Buyer from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation to increase its total procurement of eligible renewable energy resources that it may have pursuant to the California Renewables Portfolio Standard, CPUC Decision 03-06-071, or other applicable law.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

“Gas Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the use of Gas and its displacement of conventional fuel sources used to generate electricity. Gas Environmental Attributes include, but are not limited to: (1) any avoided discharge of CO₂, CH₄, and other GHGs that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, and (2) any avoided discharge of pollutants to the air, soil or water such as SO_x, NO_x, CO and other pollutants. Notwithstanding the foregoing, Gas Environmental Attributes shall not include Tradable Carbon Credits.

“Gas” means methane, carbon dioxide and associated non-combustible gases in a gaseous state produced by anaerobic digestion, fermentation, or gasification of organic matter.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on

which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A from S&P or A2 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“Performance Assurance” means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Buyer.

“Product” means, collectively: (1) Gas produced and delivered in accordance with this Agreement; (2) the right to the Gas Environmental Attributes that allow the electricity generated using Gas to count toward the Renewable Portfolio Standard as set forth in Public Utilities Code section 399.15; and (3) the AEA Option.

“Tradable Carbon Credits” means fungible commodities created by certifying the capture and destruction of avoided discharge of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) resulting from operations at the Sites that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere and which are not included in the definition of Gas Environmental Attributes.

“Site” or “Sites” shall mean the facility or facilities described in Exhibit A.

2. **Initial Delivery Date, Delivery Term**

(a) Initial Delivery Date. The initial delivery date shall be that date on which the first delivery of Gas from a Site to a Delivery Point for Buyer’s account is first made (“Initial Delivery Date”). The Initial Delivery Date shall not occur until Buyer has received or waived both CPUC Approval and CEC Approval. Buyer represents and warrants that it will use commercially reasonable efforts to obtain CPUC Approval and CEC Approval, and Seller agrees to cooperate with Buyer in preparing and filing documentation necessary to receive CPUC Approval and CEC Approval, as reasonably requested by Buyer. Buyer will promptly inform Seller when Buyer has received or waived CPUC Approval and CEC Approval.

(b) Delivery Term. The Parties shall specify the period of Product delivery for the “Delivery Term,” as defined herein, by checking one of the following boxes:

- Delivery shall be for a period of ten (10) years.
- Delivery shall be for a period of fifteen (15) years.
- Delivery shall be for a period of twenty (20) years.
- Non-standard Delivery shall be for a period of ____ years.”

If the "Non-standard Delivery" contract term is selected, Parties need to apply to the CPUC justifying the need for non-standard delivery.

The Delivery Term of this Agreement shall begin on the Initial Delivery Date and end on the 10th anniversary thereof. In addition, should Seller be unable to deliver to Buyer at least 25% of the Maximum Quantity for each Site (as listed on Exhibit A) from each Site for a period of one-hundred and twenty (120) consecutive days, then Buyer may at any time thereafter terminate this Agreement as it applies to said Site only, by giving Seller thirty (30) days written notice.

3. Transaction

(a) Product. This Agreement is for the purchase by Buyer from Seller of the Product as described herein.

(b) Additional Gas Environmental Attribute Option. Should, through production of Gas at any Site(s) or the use of Gas produced on the Site(s), Seller receive any tradable Additional Gas Environmental Attributes, Seller shall, prior to selling such Additional Gas Environmental Attributes to any third party, notify Buyer in writing of its intent to sell such Additional Gas Environmental Attributes. Buyer shall then have forty-five (45) days from receipt of such written notice to notify Seller of its intent to exercise its AEA Option. If Buyer so exercises its AEA Option, the Additional Gas Environmental Attributes shall transfer to the Buyer upon the expiration of the 45-day period, or before if specifically stated in the exercise notice.

(c) Quantity.

(1) Throughout the Delivery Term, Seller shall sell and deliver and Buyer shall buy and accept delivery of all Gas produced by Seller at the Site(s) up to a maximum volume which shall be equal to the lesser of (a) the volume of MMBtus available for sale to Buyer from Sites pursuant to this Agreement at thirty-six (36) months following Buyer's having received or waived CPUC Approval and CEC Approval; and (b) 8,000 MMBtus/day ("Maximum Contract Quantity").

(2) For volumes of Gas over the Maximum Contract Quantity on any given day ("Additional Daily Product"), unless otherwise agreed below, Buyer shall have no obligation to buy and accept delivery of such Additional Product from Seller; however, Buyer may elect to purchase such Additional Daily Product at the Contract Price pursuant to the terms of this Agreement. Seller shall provide Buyer written notice of the anticipated Additional Daily Product as soon as reasonably possible after Seller becomes aware of its future availability. Within twenty-four (24) hours of Buyer's receipt of Seller's notice that Seller anticipates having Additional Daily Product on a given day for sale, Buyer must notify Seller of its election to purchase or decline the Additional Daily Product at the Contract Price. If Buyer (a) declines to purchase the Additional Daily Product or (b) fails to provide Seller notice of Buyer's intent to purchase the Additional Daily Product within such twenty-four (24) hour period, then Seller may at any time sell the Additional Product to any third party.

(3) If at any time subsequent to the Maximum Contract Quantity being established pursuant to Section 3(C)(1) of this Agreement, Seller determines it will permanently increase Gas production through the addition of a new Site or Sites to a volume exceeding the Maximum Contract Quantity (“Increased Capacity”), Seller shall notify Buyer in writing of such determination (“Increased Capacity Notice”). The Increased Capacity Notice shall be provided to Buyer as soon as is reasonably practicable following the making of such determination and shall specify both the date of the anticipated addition of the Site(s) creating the Increased Capacity. For a period of forty-five (45) days following the receipt by Buyer of the Increased Capacity Notice, the Parties shall in good faith attempt to negotiate mutually acceptable terms and conditions upon which Buyer will purchase Seller’s Product associated with the Increased Capacity. During such period, Seller will refrain from entering into negotiations with any third parties with respect to the sale of the anticipated Increased Capacity. In the event that the Parties are unable to come to an agreement with respect to the Increased Capacity within the forty-five (45) days period, then Seller shall be free to market such Increased Capacity as it sees fit, without further regard to the terms and conditions of and/or any limitations contained in this Agreement.

(d) Quantity Notification. At or before noon Pacific Prevailing time (“PPT”) two (2) days prior to each day on which Gas will be delivered at the Delivery Point, Seller shall notify Buyer of the quantity of Gas to be delivered and the day that such Gas will be delivered. If Seller fails to notify Buyer as set forth herein, Buyer shall be relieved of any obligation to pay for the Product up to the amount of Gas delivered without such notice. If, having notified Buyer, Seller fails to deliver the Gas Buyer has, in reliance on Seller’s notice, scheduled for delivery, Seller shall be fully liable to Buyer for the amount of any penalties to Buyer for pipeline noncompliance charges that result, in whole or in part, from Seller’s failure to deliver.

(e) Seller Product Representation. Seller represents and warrants:

(1) it has the authority and right during the Delivery Term, free of liens and all other obligations of any kind, freely to dispose of all Products and that nothing contained herein shall be deemed to prevent Seller from complying with the rules and regulations of any Governmental Authority. For the purposes of this Agreement “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

(2) Seller has full control of all Additional Gas Environmental Attributes, and during any period in which there is an AEA Option right available to Buyer for any Additional Gas Environmental Attribute, Seller will not transfer, sell, or otherwise dispose of the rights to any such Additional Gas Environmental Attributes which are now, or may be in the future, associated with the Site(s) to any person other than Buyer and will transfer all Additional Gas Environmental Attributes associated with the Site(s), upon exercise of the AEA Option, to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person (without any charge other than those set forth in Section; and

(f) Delivery Point. The Delivery Point for Gas shall be the point of interconnection between the facilities of a Site and the natural gas transmission system owned and operated by PG&E (the "PG&E System") as identified in Exhibit A. Seller shall be responsible for and retain ownership of the Gas up to the Delivery Point; Buyer shall assume responsibility for and ownership of the Gas at the Delivery Point.

4. Seller's Obligations

(a) On-Site and Interconnection Facilities. Prior to the commencement of deliveries under this Agreement, Seller shall, at its own cost: (i) secure all necessary permits, priorities, rights of way, and materials needed for the production of the Gas at the Site(s) and the delivery of Gas to Buyer at the Delivery Point(s); (ii) install, operate and maintain all facilities necessary for the production of Gas on the Site(s); (iii) install and maintain gas pipelines and other equipment at the Site(s) as required to deliver Gas to Buyer at the Delivery Point(s); and (iv) arrange for the installation of interconnection facilities and a revenue quality meter at each Delivery Point.

(b) Delivery Pressure. Seller shall deliver Gas at the prevailing pressure on the PG&E System at the Delivery Point(s).

(c) Gas Quality. All Gas delivered to Buyer shall meet the Gas Quality specifications set forth in PG&E's gas tariffs on file with the CPUC and shall meet the definition of Gas herein.

5. Buyer's Obligations

(a) Filing of Agreement. Buyer shall file this Agreement with and seek the approval of the CPUC.

(b) Scheduling. Buyer shall be responsible for scheduling Gas pursuant to Seller's notification and for compliance with the requirements of PG&E's tariffs downstream of the Delivery Point(s).

(c) Payment for Gas. Buyer shall, in accordance with the terms hereof, pay Seller the Contract Price for each Decatherm ("Dth") of Gas that (a) has been delivered pursuant to the notice requirements contained herein and (b) meets the Gas specifications contained herein ("Accepted Gas").

(d) Monitoring Compliance. PG&E's Gas Transmission and Distribution Department shall maintain and monitor the equipment at or near the Delivery Point to insure that the Gas specification contained herein.

6. Force Majeure

(a) To the extent either Party is prevented by Force Majeure from carrying out, in whole

or part, its obligations under the Agreement, other than an obligation to make any payment when due, and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

(b) For the purposes of this Agreement “Force Majeure” shall mean, cover and include the following events or circumstances which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was executed, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided: Acts of God or acts of providence including, without limitation, epidemics, landslides, floods, washouts, lightning, earthquakes, the curtailment, allocation, suspension or cessation of transportation services for Gas, except for curtailment, allocation, suspension or cessation of transportation services that is the result of oversold capacity. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price.

7. Payment

(a) Price.

(1) Contract Price:

(i) For each Decatherm of metered Accepted Gas, Buyer shall pay to Seller for the Product as follows, subject to Section 7(a)(ii) below:

Volume	Price
Accepted Gas volume less than or equal to 500 Dct	\$ 10.00
Accepted Gas volume above 500 Dct	\$ 8.80

(ii) Should Buyer not waive CEC Approval, then Buyer shall pay to Seller for the remaining Product as follows:

Volume	Price
Accepted Gas volume less than or equal to 500 Dct	\$ 8.40

Accepted Gas volume above 500 Dct	\$ 7.20
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(2) Buyer shall pay to Seller the then prevailing market price for Additional Gas Environmental Attributes received by Buyer through exercise of its AEA Option.

(b) Billing Period. The calendar month shall be the standard period for all payments under this Agreement. As soon as practicable after the end of each month, Seller will render to Buyer an invoice for the payment obligations for Product delivered, if any, during the preceding month.

(c) Timeliness of Payment. All invoices under this Agreement shall be due and payable in accordance on or before the later of the twenty-fifth (25th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Payments shall be made by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the Buyer.

(d) Disputes and Adjustments of Invoices. Buyer may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment 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 Seller. 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. Upon resolution of the dispute, any required payment shall be made within three (3) Business 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 Buyer from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid by the Seller or deducted by the Buyer. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8. Events of Default.

(a) An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) Calendar Days after written notice, provided that, if such breach is not reasonably capable of being cured during such period, then such period shall be extended for one hundred eighty (180) Calendar Days so long as the Defaulting Party is exercising commercially reasonable, good faith efforts to effect such cure;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the credit requirements agreed to pursuant to Article 9 hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(b) Early Termination. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance.

9. Credit

(a) Grant of Security Interest/Remedies. To secure its obligations under this Agreement Seller hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of 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, Buyer. Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance 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, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to Performance Assurance, including any such rights and remedies

under law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; and (c) draw on any outstanding Letter of Credit issued for its benefit. The Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Seller's obligations under the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

(b) Performance Assurance.

(1) Performance Assurance. To secure its obligations under this Agreement Seller agrees to deliver to Buyer collateral, which Seller shall maintain in full force and effect from the Initial Delivery Date until the end of the Term, Performance Assurance as follows:

At least five (5) Business Days prior to the Initial Delivery Date and again every three months thereafter during the first thirty six (36) months of the Delivery Term, Seller shall fund a Letter of Credit by four hundred sixteen thousand and six hundred sixty six dollars (\$416,667.00) ("Quarterly Collateral Amount"), such that the aggregate Quarterly Collateral Amounts in such Letter of Credit at the end of the first thirty six (36) months of the Delivery Term is five million dollars (\$5,000,000.00) ("Full Performance Assurance Amount"). The Full Performance Assurance Amount shall then be continuously maintained by Seller throughout the remaining Delivery Term.

(2) Return of Performance Assurance. Buyer shall return the unused portion of Performance Assurance, including the payment of any interest due thereon to Seller promptly after the following has occurred: (a) the Term of the Agreement has ended, or the Agreement has been terminated; and (b) all payment obligations of the Seller arising under this Agreement.

(3) In the event that Seller fails to provide such Performance Assurance within three (3) Business Days of receipt of notice to do so, then an Event of Default will be deemed to have occurred.

(c) Letters of Credit. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article 9, 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 Investor Services, Inc. or its successor ("Moody's") and at least an A by the Standard & Poor's Rating Group ("S&P") (a division of McGraw-Hill, Inc.) or its successor, (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 9. For the purposes of this Agreement "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet. 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.

10. Limitation of Remedies, Liability and Damages.

EXCEPT AS SET FORTH HEREIN, 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. 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. 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.

11. Governmental Charges

(a) 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.

(b) Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). 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 the amount of any such Governmental Charges from the sums due to Seller under this Agreement. 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.

12. Miscellaneous

(a) Representations and Warranties. On the Effective Date and the date of entering into this Agreement, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has, or will have on or before the Initial Delivery Date, all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses. For the purposes of this Agreement For the purposes of this Agreement “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (vii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement
- (viii) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (ix) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Agreement.

(b) Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in this Agreement. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible. For the purposes of this Agreement, "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

(c) Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such 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.

(d) 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.

(e) Notices. Any notice to be given hereunder by either Buyer or Seller to the other shall be deemed received by the other on the next business day following the date of delivery if such notice is delivered by facsimile, e-mail, or overnight courier as follows:

If to Buyer: Pacific Gas and Electric Company
Attention: Manager, Electric Gas Supply
245 Market Street, Room 1314
San Francisco, California 94105
PO Box 770000, Mail Stop N13C
San Francisco, California 94177

If to Seller: Environmental Power Corp.
One Cate Street, Fourth Floor
Portsmouth, NH 03801
Attn: Chief Financial Officer

(f) 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. If requested, a Party shall provide to the other Party statements evidencing the quantity delivered at the Delivery Point. 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.

(g) Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

(h) Confidentiality. Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants, advisors or ratings agencies who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request applicable to such Party or any of its Affiliates, or as Buyer deems necessary in order to demonstrate the reasonableness of its actions to duly authorized governmental or regulatory agencies, including, without limitation, the CPUC or any division thereof, including but not limited to the Buyer's Procurement Review Group; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or

limit the disclosure. In addition, Buyer agrees to take reasonable actions to seek confidential treatment of any information it deems necessary to provide to the CPUC, but may disclose such information even without the CPUC having granted the confidential treatment requested. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The confidentiality obligation hereunder shall not apply to any information that was or hereafter becomes available to the public other than as a result of a disclosure in violation of this Section. Notwithstanding the foregoing, a Party may disclose the terms and conditions of this Agreement to index publishers that aggregate and report such data to the public in the form of indices

(i) Publicity. Neither Party shall, without the written consent of the other Party, which consent shall not be unreasonably withheld, make any public statements in regards to the terms and conditions of this Agreement, nor the fact that the Parties have entered into this Agreement.

(j) Measurement of Gas. For the purpose of this Agreement one cubic foot of gas shall be that quantity of gas containable in a volume of one cubic foot at a pressure of 14.73 pounds per square inch absolute at a temperature of sixty degrees (60°) Fahrenheit, and one thousand cubic feet of gas is referred to as an "Mcf". Gas delivered by Seller shall be measured in cubic feet in accordance with the provisions of American National Standard Institute/American Petroleum Institute Report 2530 (ANSI/API 2530) or any subsequent revisions thereof acceptable to the parties hereto.

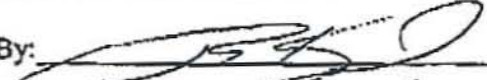
(1) For the purpose of this Agreement the term "Btu" shall mean one "British thermal unit" and is defined as the amount of heat required to raise the temperature of one pound of water one degree (1°) Fahrenheit at sixty degrees (60°) Fahrenheit at a standard pressure of fourteen and seventy three hundredths pounds per square inch absolute (14.73 psia). MMBtu shall mean one million British thermal units.

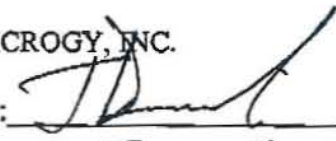
(2) Metering. Except as may otherwise be provided in any interconnection agreement between Seller and PG&E's Gas Transmission and Distribution Department, Seller shall at its own cost and expense arrange for the installation and maintenance of one suitable meter and necessary related gauges (as generally adopted and used in the natural gas business) at each Delivery Point for the purpose of measuring the Gas delivered hereunder.

(k) Counterparts. The Parties agree the Agreement may be executed in counterparts and that a faxed copy of a signature shall have the same effect as an original.

(i) Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

PACIFIC GAS AND ELECTRIC COMPANY MICROGY, INC.

By: 

By: 

Name: Roy Kiga

Name: JEFFREY DASOVICH

Title: VP Energy Supply

Title: SVP Regional Manager

Date: 2/22/07

Date: 2.23.07

PACIFIC GAS AND ELECTRIC COMPANY MICROGY, INC.

By: 

By: _____

Name: *Rory Kuga*

Name: _____

Title: *VP Energy Supply*

Title: _____

Date: *2/22/07*

Date: _____

EXHIBIT A

Site Location, Description and Name	Maximum Quantity	Delivery Point

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