attributable to regulatory action.

15. Seller's Revisions of Contract Capacity. Seller shall have the right to increase or decrease its Contract Capacity once each calendar year after the Initial Energy Delivery Date. However Seller shall not increase its Contract Capacity under this section to a level higher than initially established in Section 6.a. without PG&E's consent. PG&E's decision as to whether to consent to a level higher than established in Section 6.a. shall be at its sole discretion. Any revisions in Contract Capacity under this section shall operate prospectively only.

16. Outages.

a. Seller is responsible for securing ISO approvals for Unit(s) outages, including securing changes in its outage schedules when ISO "disapproves Selle'f's schedules or cancels previously-approved outages. Seller shall communicate any ISO-required changes to PG&E in a timely manner.

b. Planned Outages: Seller shall notify PG&E in writing no later than December 1 of its proposed Planned Outage schedule for the Unit(s) for the following calendar year, subject to PG&E's approval. Seller shall not schedule Planned Outages during the months of January, June through September and December. Seller shall contact PG&E with any requested changes to the Planned Outage schedule if Seller believes the Unit(s) must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Prudent Electrical Practices. Seller shall not change its Planned Outage Schedule without PG&E approval. Seller shall not substitute power from any other source for the output of the Unit(s) during a Planned Outage.

c. Forced Outages: Seller shall use commercially reasonable efforts to notify Buyer of any Forced Outage within 10 minutes, and shall provide an estimate of its expected duration of the outage within 1 hour thereafter. Seller shall not substitute power from any other source for the output of the Unit(s) during a Forced Outage, except for the time necessary to alter the Unit(s)' schedule with the ISO. This substitution of power shall not exceed three (3) hours for any Forced Outage

d. Prolonged Outages: Seller shall notify Buyer of a Prolonged Outage as soon as possible under the circumstances, in writing, and provide an estimate of the duration of the outage. Seller shall notify Buyer when the Unit(s) is again capable of meeting its Contract Capacity. Any outage, other than an outage resulting from a Force Majeure event that prevents the Unit(s) from delivering at least 60% of the Contract Capacity for a period of six (6) consecutive months shall, at Buyer's election, constitute an Event of Default. Seller shall not substitute power from any other source for the output of the Unit(s) during a Prolonged Outage.

e. Force Majeure: Within two weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party written notice describing in detail the particulars of the occurrence giving rise to the Force

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Majeure claim. Failure to provide timely notice constitutes a waiver of a Force Majeure claim. An outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the Contract Capacity for a period of twelve (12) consecutive months shall, at the election of Buyer, constitute an Event of Default. Seller shall not substitute power from any other source for the output of the Unit(s) during an outage resulting from Force Majeure.

f. Notice of Outages[2]: Notice of outages must be provided to PG&E as follows:

(1) [*Name Control Center*] -- ALWAYS notify Control Center of shutdowns and startups as follows:

(a) Call for permission to parallel before any start-up at [(xxx) xxx-xxxx or (xxx) xxx-xxxx.] Call [_____ Control Center] again after your start-up with your parallel time. Call [_____ Control Center] after any separation to report your separation time.

(b) Send the completed Outage Notification Form (the current form is attached; PG&E reserves the right to change the form upon written notice to Seller) to [[_____ Control Center] by sending facsimile to: [(xxx) xxx-xxxx.]

(2) Energy Procurement Operation and Scheduling Department -- ALWAYS notify appropriate day-ahead or hour-ahead schedulers of outages and schedule changes, and send Outage Notification Form to:

(a)	Day-Ahead Trading Desk and Tel: 415-973-6222 Fax: 415-973-0400 daenergy@pge.com	(b)	Hour-Ahead Trading Desk Tel: 415-973-7900 Fax: 415-972-5340 rtenergy@pge.com

(3) Gas and Electric Supply ("GES") Power Settlements departments -- Send the Outage Notification Form by one of these methods:

(a) Internet site: http://www04/customer_services/business/qf. Contact PG&E for access and your password to this web site.

(b) Facsimile: (415) 973-2151, Attention: Manager, GES Power Settlements. The time and date must be on the facsimile.

(c) Mail: Pacific Gas and Electric Company, Attention: Manager, GES Power Settlements, Mail Code N12F, P.O. Box 770000, San Francisco, CA 94177.

(4) Notification Form: The [attached] Outage Notification Form shall be used when reporting outages other than Planned Outages or events of Force Majeure. The Outage Notification Form must be completely filled out,

2 PG&E will provide the information called for in this subsection before Initial Energy Delivery Date.

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including start and stop date and time.

g. Testing the Unit(s) during an outage: Notify the PG&E Control Center by telephone and the GES Power Settlements Department as provided elsewhere in this Agreement before testing the Unit(s) during an outage. (Write on the original notice if testing will be conducted during an outage.)

h. After any outage has been scheduled, at any time up to the start of work, PG&E may request that Seller change its outage schedule. Seller shall notify PG&E of any incremental costs associated with the schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If PG&E agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate PG&E's request. However, unless it is transmitting to Seller an ISO order, PG&E may not change Seller's outage schedule without Seller's approval

i. Communication with PG&E Control Center[3]: Seller shall maintain operating communications with the PG&E Control Center at _____. The operating communications shall include, but not be limited to, system parallel operation or separation, scheduled and unscheduled outages, equipment clearances, protective relay operations, levels of operating voltage and reactive power, and daily capacity and generation reports.

j. Communications With ISO: Seller shall be responsible for all outage coordination communications with ISO outage coordination personnel and ISO operations management, including submission to ISO of updates of outage plans, submission of clearance requests, and all other outage-related communications. Seller shall timely provide PG&E with copies of all outage plans and clearance requests submitted to ISO, and shall promptly inform PG&E of all clearance approvals and disapprovals and other communications with ISO pertaining to the status of planned or in-progress Unit(s) outages. Seller shall maintain a summary of clearance information associated with all current and planned maintenance, including information on then current outages, and make this available to PG&E. If either Party receives information through ISO or directly from transmission or distribution system owners regarding maintenance that will directly affect the Unit(s), it will provide this information promptly to the other Party.

k. The Parties acknowledge the difficulty of measuring the harm to PG&E caused by Seller's failure to comply with the provisions of Section 16. If Seller repeatedly and materially fails to comply with the requirements of Section 16, the arbitrator shall have the power to assess liquidated damages of up to $50,000.00 against Seller.

17. Seller, at no cost to Buyer, agrees to furnish and install the relays, meters, power circuit breakers, synchronizer and other control and protective apparatus as Buyer, in its sole

[3] PG&E will provide the information called for in this subsection before Initial Energy Delivery Date.

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judgment, determines to be reasonably necessary for proper and safe operation of the Unit(s) in parallel with the PG&E or ISO system.

18. Transmission Outages. The risk of transmission outages is allocated to each Party as follows: Seller is responsible for electric transmission to the Delivery Point and bears all risks and costs associated with such outages; Buyer is responsible for electric transmission from the Delivery Point and bears all risks and costs associated with any outages. The Party providing fuel is responsible for gas transmission to the Unit(s) and bears all risks and costs associated therewith. Except for a failure resulting from a Force Majeure, the failure of gas or electric transmission service shall not excuse performance under this Agreement.

19. Production Tax Credits. Seller shall report to Buyer within 30 days of Seller's receipt of any funds from the federal Production Tax Credit relating to the Unit(s). Buyer shall reduce payments otherwise due Seller on a dollar-for-dollar basis by the amount of any such Tax Credits. Seller shall provide PG&E with copies of any documentation regarding any such Tax Credits from the Internal Revenue Service, Franchise Tax Board, or other agency within 10 business days of Seller's receipt of any such documentation. However, this Section 19 shall be modified or eliminated if the CPUC modifies or eliminates its August 13, 2003 mandate in Assigned Commissioner's Ruling Specifying Criteria for Interim Renewable Energy Solicitations (R.01-10-024).

20. Seller agrees to abide by all North American Reliability Council, Western Electricity Coordinating Council ("WECC") and ISO reliability requirements and PG&E's requirements regarding interconnection of the Unit(s). Seller agrees to sign a WECC Reliability Management System ("RMS") Agreement before the Initial Energy Delivery Date and to abide by the RMS Agreement.

21. Billing and Payment, Remedies. On or after the 20th day of each month, Seller shall provide to Buyer (i) records of metered data sufficient to document and verify the generation of Product by the Unit(s) for all hours during the preceding month, including ISO metering and transaction data, and (ii) an invoice, in the format specified by Buyer, covering the services provided in the preceding month. Buyer shall pay the undisputed amount of such invoices on or before ten (10) calendar days after receipt provided the invoice is complete, properly formatted, and sent to the correct address. Buyer shall provide an explanation of any disputed amount at the time of payment.

22. Seller shall indemnify PG&E for all penalties assessed against PG&E by the CPUC pursuant to the Renewable Portfolio Standard, Public Utilities Code Section 399 et. seq., to the extent caused by Seller's failure to deliver its Contract Capacity, unless such failure is caused by a Force Majeure event.

23. RMR Contracts

Seller will assign the proceeds of any RMR contract affecting the Unit(s) to Buyer within 3 days of Initial Energy Delivery Date. Buyer shall retain all revenues from said RMR

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contract, except for Incremental Administrative Costs, Monthly Surcharge Payments, the ISO Repair Share, and Motoring Charges for Ancillary Services Dispatch, as each is defined in the applicable RMR contract, all of which shall be remitted to Seller. If Seller thereafter enters into any new RMR contract affecting the Unit(s), Seller shall assign the revenues from such RMR contract to Buyer in accordance with its terms. Revenues from such additional RMR contract shall be treated in accordance with the second sentence of this provision. If the ISO and/or Seller wish to negotiate an RMR contract that pertains to assets under this Agreement that are not covered by an RMR contract, Seller shall include PG&E in any such negotiations.

24. Remedy for Default. The Non-Defaulting Party only is entitled to a remedy for default. Except as otherwise set forth in Section 22, above, the Non-Defaulting Party's sole remedy for termination of this Agreement shall be to recover an amount (the "Termination Amount") equal to the Non-Defaulting Party's direct, actual damages for the loss of the economic benefit, if any, of this Transaction for the remaining Term of Agreement. Factors used in determining the loss of economic benefit may include, without limitation, market referent prices for renewable power set by the CPUC, comparable transactions, third-party quotations from leading dealers in energy and gas contracts, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), the remaining Term of Agreement, value of Environmental Attributes, and current discount rates. The Termination Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. The Non-Defaulting Party will have the burden of calculating and verifying the Termination Amount. The Non-Defaulting Party shall not have to enter into actual transactions to establish a Termination Amount. If the Parties cannot agree on a Termination Amount, the Termination Amount will be determined pursuant to Section 26 (Dispute Resolution).

25. Operations Records.

    a. Seller shall keep a daily operations log for the Unit(s) which shall include information on availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the operation of the Unit(s), including but not limited to: real and reactive power production; changes in operating status and protective apparatus operations; and any unusual conditions found during inspections. Changes in setting shall also be logged for Seller's Unit(s) if it is "block-loaded" to a specific kW capacity. Seller's log shall be made available for inspection by PG&E upon reasonable notice, during normal business hours.

    b. Seller shall maintain complete daily operations records applicable to the Unit(s), including but not limited to fuel consumption, cogeneration fuel efficiency, maintenance performed, kilowatts, kilovars and kilowatt-hours generated and settings or adjustments of the generator control equipment and protective devices. Seller's records shall be made available for inspection by PG&E upon reasonable

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notice, during normal business hours.

c. Seller shall report to the designated Control Center daily at an agreed-upon time for the current day's operation, the hourly readings in kW of capacity delivered and the energy in kWh delivered since the last report.

d. Buyer shall have access to the Unit(s) at any time to inspect the Unit(s) and Operations and Maintenance Records. Buyer may enter Seller's facilities with reasonable notice during business hours to audit, appraise, inspect and/or examine those facilities to confirm and/or verify Seller's performance.

26. Dispute Resolution.

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

a. Any controversy arising out of or relating to this Agreement, including any claims based on contract, tort, statute, or other authority, shall first be attempted to be resolved informally at a level of management more senior than the individuals who are part of the dispute. If the controversy cannot be so resolved, it shall be resolved at the request of any Party through a two-step dispute resolution process administered by the American Arbitration Association ("AAA"). As the first step the parties agree to mediate any controversy before a mediator from the AAA panel, pursuant to AAA's commercial mediation rules, in San Francisco, California. Either Party may begin mediation by serving a written demand for mediation. If within 60 days after service of a written demand for mediation, the mediation does not result in resolution of the dispute, then the controversy shall be settled by arbitration conducted by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules. Either Party may initiate arbitration by filing with AAA a notice of intent to arbitrate within 60 days of service of the written demand for mediation.

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

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

d. The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages except as set forth in Section 16.k. of this Agreement.

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

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

27. The effectiveness of this Agreement is subject to CPUC Approval.

28. The following sections of the Master Agreement are deleted in their entirety and are replaced with a statement that they are "Intentionally deleted": 1.13, 1.34-1.44 inclusive, 1.48, 1.50, 1.57 and 10.1.

29. <u>The Master Agreement is further amended as follows.</u>

a. The phrase "at Buyer's option" in the fifth line of the definition of "Replacement Price" in Section 1.51 is deleted and replaced by the following: "absent a purchase (Buyer shall have no obligation to enter into actual replacement transactions)…."

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b. The opening phrase of Section 2.4 is modified as follows: "The Parties agree that, whether or not an express election is made on the Cover Sheet, this Section 2.4 shall be applicable to this Master Agreement so that, when...."

c. The last two sentences of Section 2.5 are deleted and are replaced by the following: "The Recording, if admissible, shall be evidence of the Parties' agreement with respect to the matters discussed therein, including, without limitation, scheduling and dispatch."

d. The proviso at the end of the first sentence in Section 3.1 is deleted.

e. The following words are deleted from the first sentence of both Section 4.1 and Section 4.2: "...or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt...."

f. Section 5.1 of the Master Agreement is amended as follows:

   i. Section 5.1(d) shall not apply to PG&E if PG&E is still in bankruptcy when PG&E enters this Agreement; provided that, any subsequent bankruptcy filing by PG&E will be subject to Section 5.1(d).

   ii. Section 5.1 (e) is modified by adding the phrase before the word "hereof" (which word is deleted) "or failure to satisfy the security requirements in Section 29.l. of the Confirmation".

   iii. Section 5.1 (g) is modified by deleting the phrase "...or becoming capable at such time of being declared...."

   iv. A new Section 5.1 (i) is inserted and provides as follows: "if at any time during the Term of Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement electrical power that was not generated by the Unit(s)."

   v. A new Section 5.1 (j) is inserted and provides as follows: "if at any time during the Term of Agreement, any one of the representations and warranties in this Agreement becomes false or inaccurate.

   vi. A new Section 5.1 (k) is inserted and provides as follows: "if at any time during the Term of Agreement, either Party assigns its rights or delegates its duties under this Agreement in violation of Section 10.5 of the Master Agreement."

   vii. A new Section 5.1 (l) is inserted and provides as follows: "if at any time during the Term of Agreement, the Seller or its assignee does not either: (i) own the Unit(s) (ii) remain the lessee under a Lease of the Unit(s) or (iii) have authority to operate the Unit(s)."

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viii. A new Section 5.1 (m) is inserted and provides as follows: "if at any time during the Term of Agreement, the Unit(s) does not qualify as an ERR as defined in Public Utilities Code Section 399.12, except Seller shall have up to 120 days to cure.

ix. A new Section 5.1 (n) is inserted and provides as follows: "if at any time during the Term of Agreement Seller fails to provide satisfactory assurances of its ability to perform hereunder within seven business days of demand therefore.

g. The following words are deleted from the end of the next-to-last sentence of Section 5.3 of the Master Agreement: "...payable by one Party to the other...."

h. The last sentence of Section 5.4 of the Master Agreement is deleted.

i. Section 5.6, Option C, of the Master Agreement shall apply and is revised as follows: "The non-Defaulting Party, only, shall be entitled to receive a Termination Payment. If the calculation of a Termination Payment results in an amount that otherwise would be owed to the Defaulting Party, no payment shall be required by the non-Defaulting Party to the Defaulting Party. The remedy provided in this Section shall be without prejudice and in addition to any right of setoff or other right to which the non-Defaulting Party is otherwise entitled, whether by operation of law, contract, or otherwise)."

j. A new Section 5.8 is added to the Master Agreement and provides: "5.8 Determination of Market Price. For any provision of this Agreement that permits or requires the determination of market price, including without limitation Sections 1.51 and 5.2, such price may, at the option of the Party whose right it is to use the market price, be determined by reference to market referent prices set by the CPUC, exchange prices, or by the average of market quotations provided by five or more bona fide unaffiliated market participants. If five or more quotes are obtained, the high and low quotations shall be excluded and a simple average of the other three quotations shall be used for this purpose. If the number of available quotes is 3, then the average of the 3 quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be for: (a) a like amount (b) of the same Product (c) at the same Delivery Point (d) on the same day and (e) for the remaining Term of Agreement, or in any other commercially reasonable manner. The Gains and Losses shall be calculated as the difference, plus or minus, between the contract value of the remaining term of the Agreement and the equivalent quantities and relevant market prices for the same term that either are quoted by a bona fide market participant or which are reasonably expected to be available in the market for a replacement contract for the Transaction. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine the market price."

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k. Option A of Section 8.2(a) of the Master Agreement shall apply, and (1) the words "and Party A's Guarantor" are added to modify each use of Party A therein, and (2) the final two lines are modified to read: "...so long as Party A and Party A's Guarantor deliver the statements as soon as they are prepared." Options B and C are deleted. Section 8.2(c) is deleted.

l. Section 8.2 (e) of the Master Agreement is deleted in its entirety and replaced with the following provision:

Security Provided By Seller

Within 7 Business Days of CPUC Approval of this Agreement, Seller agrees to provide to PG&E one of the following types of security in the amount of $ $257,740.00 to secure performance of its obligations under this Agreement:

i. Letter of Credit;

ii. Cash;

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

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

v. Failure to provide security in one of the forms specified in subparagraphs i through iv above, within 7 Business Days of CPUC Approval of the Agreement, or to replenish security that has been used to satisfy an obligation, within 7

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Business Days of Buyer's request therefore, shall constitute an Event of Default, the remedy for which shall be the immediate termination of this Agreement and the application of Sections 22 and 24.

m. Section 10.2(v) of the Master Agreement shall not apply to Buyer.

n. Section 10.6 of the Master Agreement is modified by deleting the words "NEW YORK" and replacing them with "CALIFORNIA."

o. Section 10.8 of the Master Agreement is amended by deleting the words "Each Party agrees if it seeks" through the words "is inconsistent with this Agreement."

p. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

q. Section 10.11 of the Master Agreement is deleted in its entirety and is replaced with the following provision, irrespective of the election made by Seller on the Cover Sheet:

Confidentiality: Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or ISO rule or in connection with any court, CPUC, California Energy Commission, Federal Energy Regulatory Commission, or other regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

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

PACIFIC GAS AND ELECTRIC COMPANY		SELLER	
By:		By:	
Name:	Roy Kuga	Name:	Kent Duysen
Title:	Director - Gas & Electric	Title:	President
Date:	9/18/03	Date:	9/22/03

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