

## MASTER POWER PURCHASE AND SALE AGREEMENT

This *Master Power Purchase and Sale Agreement (Version 2.1, modified April 25, 2000)* ("Master Agreement") is made as of the following date: December \_\_, 2002 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("Calpine Energy Services, L.P." or "Party A")

Name: **State of California Department of Water Resources** separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("California Department of Water Resources" or "Party B")

All Notices: Calpine Energy Services, L.P.  
50 West San Fernando Street  
San Jose, California 95113  
Attn: General Counsel

All Notices: DWR/CERS  
Attn: Executive Manager Power Systems

with a duplicate copy to:

Street: 700 Louisiana Avenue, Suite 2700

Street: 3310 El Camino Avenue, Suite 120

City: Houston, TX Zip: 77002

City/State: Sacramento, California 95821

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: (713) 830-8608

Phone: (916) 574-0339

Facsimile: (713) 830-8740

Facsimile: (916) 574-2512

Duns: 11-271-0876

Duns:

Federal Tax ID Number: [REDACTED]

Federal Tax ID Number: [REDACTED]

### Invoices:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8740

### Invoices:

Attn: Settlements Unit; Doreen Singh

Phone: (916) 574-0309

Facsimile: (916) 574-1239

### Scheduling:

Attn: Scheduling

Phone: (713) 830-8642

Facsimile: (713) 830-8722

### Scheduling:

Attn: Power Dispatcher

Phone: 916-574-0161

Facsimile: (916) 574-2569

### Payments:

Attn: Power Accounting

Phone: (713) 830-2000

Facsimile: (713) 830-8740

### Payments:

Attn: Cash Receipts Section

Phone: (916) 653-6892

Facsimile: (916) 654-9882

### Wire Transfer:

BNK: [REDACTED]

ABA: [REDACTED]

ACCT: [REDACTED]

### Wire Transfer:

BNK: [REDACTED]

ABA: Routing # [REDACTED]

ACCT: # [REDACTED]



- Option A
- Option B Specify: \_\_\_\_\_

Option C Specify: Annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$ \_\_\_\_\_ provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ -0-

Party B Rounding Amount: \$ -0-

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party B is not rated by either S&P or Moody's

Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: \_\_\_\_\_

**8.2 Party B Credit Protection:**

Unrated counterparties will be required to (a) post collateral upon the occurrence of a Material Adverse Change (definition to be provided), or (b) provide a guarantee from an entity with a minimum S&P and Moody's ratings to be specified by DWR.

(a) Financial Information:

- Option A
- Option B Specify: Calpine Corporation
- Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ \_\_\_\_\_; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ -0-

Party A Rounding Amount: \$-0-

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: \_\_\_\_\_

**Article 10**

Confidentiality

- Confidentiality Applicable
- If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6 If not checked, inapplicable
- Add Section 8.4 [8.6] If not checked, inapplicable

Other Changes: Applicable

Specify, if any: See below

**Part 1. GENERAL TERMS AND CONDITIONS.**

**(a) Definitions.**

(1) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

(2) Section 1.51, "Replacement Price" shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".

(3) Section 1.53, "Sales Price" shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".

(4) Section 1.46 "Potential Event of Default" is deleted.

(5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(6) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."

(7) Sections 1.62 through 1.70 are added to Article One as follows:

1.62 "Bonds" shall have the meaning set forth in the Rate Agreement.

1.63 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.

1.64 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.65 "Market Value" shall have the meaning set forth in Section 5.3.

1.66 "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.

1.67 "Power Charges" shall have the meaning set forth in the Rate Agreement.

1.68 "Rate Agreement" means the Rate Agreement between Party B and State of California Public Utilities Commission ("CPUC") adopted by the CPUC on February 21, 2001 in Decision 02-02-051.

1.69 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P, or its successor, and Baa2 or better by Moody's, or its successor.

1.70 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

(b) **Transactions.** The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

(c) **Governing Terms.** Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, each Transaction hereunder or under any other agreement between the Parties shall be treated as a stand-alone Transaction and accordingly (a) provisions in

the Master Agreement or any other agreement between the Parties referring to offsetting or netting multiple Transactions, and all other rights of setoff or similar rights under law, shall not be applicable, (b) an Event of Default or Potential Event of Default with respect to a Transaction shall not independently constitute an Event of Default or Potential Event of Default under any other Transaction, and (c) any event permitting suspension of performance with respect to a Transaction shall not permit suspension of performance under any other Transaction. No provision of any Confirmation entered into pursuant to Section 2.4 with respect to a Transaction shall affect any other Transaction."

**(d) Events of Default.** (1) Sections 5.1(c) is amended by deleting the text in such subsection and substituting therefor the following:

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in the Confirmation with respect to a Transaction) if such failure is not remedied within three (3) Business Days after written notice;

(2) Section 5.1 shall be amended by adding the following after Section 5.1(h):

"(i) It shall be an Event of Default if (a) Party A shall use the CAISO uninstructed imbalance markets to effect delivery under any Transaction except (i) in the case where the unit providing the Product trips off line after the close of the CAISO hour-ahead scheduling window for such hour and Party A submits a schedule change as soon as possible upon the occurrence of any under-deliveries, or (ii) such use is the result of a CAISO direction, or (b) the intentional conduct of Party A, or a decision of Party A solely for economic reasons, results in the failure to schedule or the non-delivery of energy or the non-availability of capacity, unless (i) when the Product is to be supplied from one or more generating units, such unit(s) are not available to supply or able to deliver the Product, including as a result of a scheduled or forced outage or Force Majeure, or (ii) the Party A is required to make a third party sale or to curtail its generation pursuant to applicable law, regulation, order or decree of any state or federal governmental authority or quasi-governmental authority (such as the California Independent System Operator). Party A shall provide Party B with such information and data as Party B may reasonably request to verify compliance with this Section 5.1(i)"

**(e) Declaration of an Early Termination Date and Calculation of Termination Payment**

(1) Section 5.2 is replaced in its entirety by the following: "(a) 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 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date, together with interest on such Termination Payment from the date of such notice through the date of payment at an annual rate equal to the "Prime Rate" published in the *Wall Street Journal* under "Money Rates" (as such rate may be adjusted from time to time), but not in excess of the maximum rate permitted by law. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (i) is the subject of a bankruptcy, insolvency, or similar

proceeding, or (ii) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

(3) Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(4) 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(f) **Term of Master Agreement.** (a) The first sentence of Section 10.1 shall be amended by deleting the phrase "terminated by either Party upon (thirty) 30 days prior written notice" and in its place the phrase "the day following the last day of the Term or Delivery Period set forth in the Transaction, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

(b) The following sentence shall be added to Section 10.1:

"This Agreement shall immediately terminate on the earlier of (a) Business Day following the day that the long-term unsecured senior debt of Pacific Gas and Electric Company ("PG&E") is rated BBB- or better by S&P and Baa3 or better by Moody's, or such earlier date as all conditions precedent to PG&E's performance under the Master Power Purchase and Sale Agreement dated November 5, 2002 between Party A and PG&E and the two transactions dated November 14, 2002 issued thereunder have been satisfied or waived, and (b) January 1, 2004."

**(g) Representations and Warranties.** The following changes shall be made to the Section 10.2:

(1) Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

**(h) Indemnity.** The phrase "To the extent permitted by law" is added at the beginning of the first two sentences of Section 10.4, and the following sentence is added to the end of Section 10.4: "To the extent that either Party is excused by law from the foregoing indemnity obligations, the other Party shall also be excused to the same extent."

**(i) Governing Law.** In Section 10.6, "New York" shall be replaced with "California."

**(j) General.** The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

**(k) Additional Provisions.** New Sections 10.12 and 10.13 shall be added to Article 10 as follows:

"10.12 No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

"10.13 No Dedication of Facilities. Party A's undertaking hereunder shall not constitute the dedication of the electric system or any portion thereof of Party A to the public or to the other Party, and it is understood and agreed that any undertaking under this Agreement by Party A shall cease upon the termination of Party A's obligations under this Agreement."

**(l) Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.

(2) "Special Fund" will mean the Fund.

(3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "Governmental Entity" means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).

(4) Clause (v) Section C is amended by deleting the text in such clause and substituting therefor "[Intentionally omitted.]"

(5) In Section D, delete Sections 3.4 and 3.5 and replace it with the following:

"3.4 "[Intentionally omitted.]"

"3.5 No Immunity Claim. California law authorizes suits based on contract against the



State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court.”

(5) In Section G, specify that the laws of the State of California will apply.

(6) Add a new Section H, which shall read as follows:

**“3.7. Rate Covenant; No Impairment.** In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement.”

(7) Add a new Section I, which shall read as follows:

**“3.8. Sources of Payment; No Debt of State.** Party B's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement.”

(8) Add a new Section J, which shall read as follows:

**“3.9. Application of Government Code and the Public Contracts Code.** Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that the provisions of the Government Code and the Public Contracts Code applicable to state contracts are therefore not applicable to or incorporated in this Agreement.”

(9) Add a new Section K, which shall read as follows:

**“3.10. Termination Without Recourse.** In addition to any other termination rights herein, a Party shall have the right, but not the obligation, to terminate the Agreement without recourse against the other Party for any Termination Payment or other costs and without any further obligation or liability of either Party, as follows:

recourse against the other Party for any Termination Payment or other costs and without any further obligation or liability of either Party, as follows:

(i) Party A may terminate if Party B fails to maintain an underlying rating on the Bonds (without regard to credit enhancement) of Baa3 or better by Moody's or BBB- or better by S&P and such failure continues for 30 or more consecutive days,

(ii) a Party not claiming the Force Majeure event may terminate if a Force Majeure event continues uninterrupted for more than 180 days. Party A shall not be entitled to receive capacity payments during a Party A declared Force Majeure event.

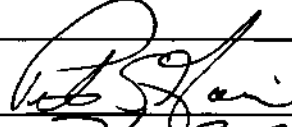
(10) Add a new Section L, which shall read as follows

**"Section 3.11. Party B's Right to Terminate without Recourse for Challenge to Revenue Requirement.** Party A acknowledges that Party B's ability to perform under this Agreement is subject to Party B deriving revenue attributable to each revenue requirement. Accordingly, in addition to any other termination rights herein, and notwithstanding any other provision of this Agreement to the contrary, Party B shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement at any time without recourse against Party B for any Termination Payment or other costs and without any further obligation or liability of either Party, if Pacific Gas and Electric Company or any Affiliate initiates any administrative or judicial action or proceeding, or prosecutes or fails to withdraw from or dismiss any existing or pending action or proceeding, which Party B determines, in its sole discretion, could result in any reduction in amounts derived by Party B under any revenue requirement. Party A acknowledges that a judicial proceeding has been filed by Pacific Gas and Electric Company with respect to Party B's current revenue requirement and that the execution of this Agreement by Party B does not constitute a waiver of the provisions of this Section 3.11 with respect to that proceeding and that unless and until such proceeding is withdrawn Party B may exercise its rights hereunder at any time."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

<b>Party A - CALPINE ENERGY SERVICES, L.P.</b>	<b>Party B - DEPARTMENT OF WATER RESOURCES</b> with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System
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By:   
Name: CURT HILDEBRAND  
Title: VICE PRESIDENT  
BUSINESS DEVELOPMENT

By:   
Name: Peter S. GARRIS  
Title: Deputy Director

**DISCLAIMER:** This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.