

**Execution Version**

**POWER PURCHASE AGREEMENT**

**Between**

**PACIFIC GAS AND ELECTRIC COMPANY**  
**(as "Buyer")**

**and**

**NEVADA IRRIGATION DISTRICT**  
**(as "Seller")**

**POWER PURCHASE AGREEMENT**

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## APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Initial Energy Delivery Date Confirmation Letter
- Appendix II [Reserved]
- Appendix III Example of Calculation of CAISO Charges Under Section 4.2
- Appendix IV Project and Unit Descriptions Including Descriptions of Each Unit Site
- Appendix V Notification Requirements for Unit Capacity and Project Outages
- Appendix VI Resource Adequacy
- Appendix VII Notices List
- Appendix VIII Monthly Allocation Factor Table, Unit Allocation Factor, and Contract Year Price Table
- Appendix IX Calculation of Availability Adjustment
- Appendix X Example of Monthly Payment Amount (Section 4.1(b))
- Appendix XI Form of Letter of Concurrence
- Appendix XII Supplier Diversity Program
- Appendix XIII Certification of Third Party Agreement
- Appendix XIV Change in FERC License Conditions
- Appendix XV Unit Contract Capacity Reduction for Conveyance Failure

## POWER PURCHASE AGREEMENT

### PREAMBLE

This Power Purchase Agreement, together with the appendices and any other attachments referenced herein, is made and entered into between Pacific Gas and Electric Company, a California corporation (“Buyer” or “PG&E”), and Nevada Irrigation District, a California irrigation district organized and existing under the laws of California (“Seller” or “NID”), as of the Execution Date set forth on the signature page hereof. Buyer and Seller hereby agree to the following:

### GENERAL TERMS AND CONDITIONS

#### ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls or is controlled by such person or entity or (b) is under common control with such person or entity. 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.

1.2 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.12, “Governing Law”, the word “agreement” shall have the meaning set forth in this definition. For the purposes of Section 3.1(i)(viii), the word “contract” shall have the meaning set forth in this definition.

1.3 “Amended PPA” has the meaning set forth in Section 10.18(b).

1.4 “Ancillary Services” means regulation (including load following) spinning reserves, non-spinning reserves, and replacement reserves (in each case as defined by the CAISO Tariff) associated with the Project or a given Unit, as applicable, and all other products deemed to be ancillary services by the CAISO or FERC as of the Execution Date or any future date during the Delivery Term.

1.5 “Arbitration” has the meaning set forth in Section 12.3.

1.6 “Availability Adjustment” has the meaning set forth in Appendix IX.

1.7 “Availability Multiplier” has the meaning set forth in Appendix IX.

1.8 “Bankrupt” means with respect to any entity, such entity that (a) 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 and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator,

receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

1.9 “Betterment or Improvement” means any upgrade, improvement or addition to, or any expansion of, the Project or any Unit completed after the Execution Date that increases the generation capability of that Unit or the Project.

1.10 “Bowman Powerhouse” means the Bowman Unit described in Appendix IV.

1.11 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party to whom the Notice, payment or delivery is being sent and by whom the Notice, payment or delivery is to be received.

1.12 “Buyer” has the meaning set forth in the Preamble.

1.13 “Buyer’s Notice” has the meaning set forth in Section 10.16(b).

1.14 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(i)(i).

1.15 “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

1.16 “CAISO Agreements Notice Date” has the meaning set forth in Section 2.8.

1.17 “CAISO Global Resource ID” means, for a given Unit, the number or name assigned by the CAISO for that Unit, which may be subject to change from time to time. Appendix IV lists the CAISO Global Resource ID for each Unit as of Execution Date.

1.18 “CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owner that have been placed under the CAISO’s operational control.

1.19 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.20 “California Renewables Portfolio Standard” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078, codified in California Public Utilities Code Sections 399.11 through 399.20 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.21 “Capacity Attributes” means any current or future defined characteristic, certificate, tag, credit, or Ancillary Services attribute, whether general in nature or specific as to the location or any other attribute of the Project or a given Unit, intended to value any aspect of the capacity of the Project or a given Unit to produce Energy or Ancillary Services, including, but not limited to, any accounting construct so that the full Contract Capacity of a given Unit or the full Project’s Contract Capacity, as applicable, may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity

invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such products.

1.22 "Capacity Test" means a test of a Unit's capacity to generate electrical energy performed in accordance with the Test Procedures and Section 3.1(d)(iii) and includes, without limitation, the Initial Capacity Test, any Seller's Initial Capacity Re-test, and any Capacity Tests performed during the Delivery Term.

1.23 "CEC" means the California Energy Commission or its successor agency.

1.24 "CEC Certification and Verification" means that the CEC has certified that the ERR Powerhouse Resources are each an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the ERR Powerhouse Resources qualifies as generation from an ERR.

1.25 "Chicago Park Powerhouse" means the Chicago Park Unit described in Appendix IV.

1.26 "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 or expiration of this Agreement.

1.27 "Condition Precedent" means each of, or one of, the conditions set forth in Section 2.5(i) through (iii) and "Conditions Precedent" shall refer to all of the conditions set forth in Section 2.5(i) through (iii).

1.28 "Consolidated Contract" means that certain Consolidated Contract dated July 12, 1963 for the Drum-Spaulding Project, FERC Project No. 2310, and the Yuba-Bear Project, FERC Project No. 2266, entered into by and between PG&E and NID, as it may be amended by the Parties.

1.29 "Contract Capacity" means, for a given Unit, the generation capability of that Unit net of all auxiliary loads and station electrical uses as determined pursuant to Section 3.1(d).

1.30 "Contract Year Price" means the contract price specified for the applicable Contract Year in Appendix VIII.

1.31 "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.32 "Conversion Date" means January 1, 2017.

1.33 "Conveyance Failure" means any failure of any portion of the physical infrastructure of the Drum-Spaulding Project or the Yuba-Bear Project that either (i) hinders, impedes or prevents the flow of water through any conveyance identified in Appendix XV as a result of an event of Force Majeure, or (ii) is a Seller Forced Conveyance Outage. For purposes of the Availability Adjustment in Appendix IX, in the event of a Conveyance Failure, the

Modified Capacity of an affected Unit shall be adjusted based on the reduction, expressed as a percentage, in such Unit's Contract Capacity as specified in Appendix XV.

1.34 "Costs" means, with respect to the Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.35 "CPUC" or "Commission or successor entity" means the California Public Utilities Commission, or successor entity.

1.36 "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:

(a) 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; and

(b) 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.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

To the extent procurement pursuant to this Agreement is from the Chicago Park Powerhouse, subsection (b) above shall not apply.

1.37 "Curtailement Order" means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or provides notice to a Party to curtail scheduled Energy for reasons including, but not limited to, (i) any system emergency, as defined in the CAISO Tariff ("System Emergency"), or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;



(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's or distribution operator's transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at a Delivery Point; or

(d) a curtailment in accordance with Seller's obligations under its interconnection agreement with the Participating Transmission Owner or distribution operator.

1.38 "Curtailment Period" means the period of time during which Seller reduces generation from a given Unit pursuant to a Curtailment Order.

1.39 "Day Ahead" means the twenty four (24) hour period prior to the operating day.

1.40 "Day Ahead Schedule" has the meaning set forth in the CAISO Tariff.

1.41 "Declared Contract Capacity" means, for a given Unit, the generation capacity designated for that Unit as specified in Appendix IV.

1.42 "Defaulting Party" means the Party that is subject to an Event of Default.

1.43 "Deficient Month" has the meaning set forth in Section 3.1(i)(v).

1.44 "Delivered Energy" means, for a given Unit, all Energy produced from that Unit, as measured in MWh at the CAISO revenue meter for the Unit based on a power factor of precisely one (1), including any Energy attributable to any Betterment or Improvement.

1.45 "Delivery Point" means, for a given Unit, the point at which Buyer receives Seller's Product from that Unit, as set forth in Section 3.1(c).

1.46 "Delivery Term" has the meaning set forth in Section 3.1(b).

1.47 "Disclosing Party" has the meaning set forth in Section 10.7.

1.48 "Disclosure Order" has the meaning set forth in Section 10.7.

1.49 "Distribution Upgrades" has the meaning set forth in the CAISO Tariff.

1.50 "Drum-Spaulding Project" means the Drum-Spaulding Hydroelectric Project, FERC Project No. 2310, owned and operated by Buyer.

1.51 "DUNS" means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun and Bradstreet.

1.52 "Dutch Flat Powerhouse No. 2" means the Dutch Flat Unit described in Appendix IV.

1.53 "Early Termination Date" has the meaning set forth in Section 5.2.

1.54 "Effective Date" means the date on which all of the Conditions Precedent set forth in Section 2.5 have been satisfied or waived in writing by both Parties.

1.55 “Efficiency Rating Cure Period” has the meaning set forth in Section 3.1(d)(iii)(G)(ii).

1.56 “Efficiency Rating Cure Plan” has the meaning set forth in Section 3.1(d)(iii)(G)(ii).

1.57 “Efficiency Rating Deficiency” has the meaning set forth in Section 3.1(d)(iii)(G)(ii).

1.58 “Efficiency Test” means a test of a Unit’s turbine efficiency performed in accordance with the Test Procedures and Section 3.1(d)(iii) and includes, without limitation, the Initial Efficiency Test, any Seller’s Initial Efficiency Re-test, and any Efficiency Tests performed during the Delivery Term.

1.59 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.60 “Electric System Upgrades” means, for a given Unit, any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to (i) physically and electrically interconnect that Unit of the Project to the Participating Transmission Owner’s electric system for receipt of Energy at that Unit’s Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid and (ii) ensure the delivery of all Product from that Unit to Buyer as contemplated under this Agreement.

1.61 “Eligible Renewable Energy Resource” or “ERR” has the meaning set forth in California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

1.62 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of the definition of “Green Attributes”, the word “energy” shall have the meaning set forth in this definition.

1.63 “ERR Powerhouse Resources” means the Rollins Powerhouse, the Dutch Flat Powerhouse No. 2, and, on and after the Conversion Date, the Bowman Powerhouse.

1.64 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.65 “Event of Default” has the meaning set forth in Section 5.1.

1.66 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.67 “Executive(s)” has the meaning set forth in Section 12.2(a).

1.68 “Extended Delivery Term” has the meaning set forth in Section 10.18.

1.69 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.70 "Final True-Up" means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for the Products delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.71 "Force Majeure" means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party's ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing and to subsection (b) below, events that could qualify as Force Majeure include, but are not limited to, the following:

(i) flooding, lightning, landslide, earthquake, fire, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or a Unit, or making it impossible for the Transmission Provider to transmit Energy from the Project or a Unit, including Energy to be delivered pursuant to this Agreement from the Project or a Unit; provided that, if a curtailment of the Project or a Unit pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(g).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the operation or maintenance of the Project or a Unit (including any permit or approval for any Betterment or Improvement);

(iv) Seller's inability to obtain sufficient power or materials to operate the Project or a Unit, except if Seller's inability to obtain sufficient power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, or any other third party employed by Seller to work on the Project or a Unit;

(vii) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party; or

(ix) drought or dry year water conditions.

1.70 "Forced Outage" means, for a given Unit, any unplanned reduction or suspension of the electrical output from, or unavailability of, that Unit in whole or in part in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of the Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.71 "Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

1.72 "Full Capacity Deliverability Status Finding" shall mean, for a given Unit, a finding by the CAISO that such Unit meets the CAISO's requirements for deliverability at the Unit's Full Capacity Deliverability Status.

1.73 "Gains" means with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties, including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets and settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.74 “Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.75 “Good Utility Practice(s)” has the meaning provided in the CAISO Tariff.

1.76 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use, operation or maintenance of the Project or a given Unit, as applicable.

1.77 “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.

1.78 “Governmental Charges” has the meaning set forth in Section 9.2.

1.79 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup> (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable

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<sup>1</sup> Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.80 “Grid Management Charges” has the meaning set forth in the CAISO Tariff.

1.81 “Initial Capacity Test” means a Capacity Test performed prior to the Initial Energy Delivery Date pursuant to Section 3.1(d)(iii)(A).

1.82 “Initial Efficiency Test” means an Efficiency Test performed prior to the Initial Energy Delivery Date pursuant to Section 3.1(d)(ii)(A).

1.83 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(b).

1.84 “Initial Negotiation End Date” has the meaning set forth in Section 12.2(a).

1.85 “Instructed Imbalance Energy” has the meaning set forth in the CAISO Tariff.

1.86 “Instructed Operation” means (i) an Operational Order or (ii) a mandatory direction of the Transmission Provider, or a requirement under Seller’s CAISO Participating Generator Agreement (explicitly incorporating Section 5 of the CAISO Tariff as in effect as of the Execution Date or any revision thereof), in order to meet emergencies and reliability needs including voltage support.

1.87 “Interconnection Customer’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.88 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.89 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

1.90 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.91 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of the definitions of “CPUC Approval” and “Green Attributes” and for Section 10.2(b), “Seller Representations and Warranties”, and Section 10.12, “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.92 “LGIA” means the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller’s interconnection with the Participating TO’s Transmission System, including any description of the plan for interconnecting to the Participating TO’s Transmission System.

1.93 "LGIP" means the Large Generator Interconnection Procedures set forth in the CAISO Tariff and associated documents; provided that if the LGIP is replaced by such other successor procedures approved by FERC governing interconnection (a) to the Participating TO's Transmission System or (b) of generating facilities with an expected net capacity equal to or greater than the Project's Contract Capacity, the term "LGIP" shall then apply to such successor procedure.

1.94 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining the loss of economic benefit may include, without limitation, reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets and settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product. "Losses" shall exclude any loss of Production Tax Credits, Energy Investment Tax Credits, or other federal or state tax credits, grants, or benefits related to the Project or any generation therefrom.

1.95 "Meter Service Agreement" has the meaning set forth in the CAISO Tariff.

1.96 "Manager" has the meaning set forth in Section 12.2(a).

1.97 "Major Maintenance" means, for a given Unit, an extended outage taken by that Unit that complies with the outage limitations as set forth in Section 3.7(b).

1.98 "MW" means megawatt (AC).

1.99 "MWh" means megawatt-hour.

1.100 "NERC" means the North American Electric Reliability Council or a successor organization that is responsible for establishing reliability criteria and protocols.

1.101 "Net Rated Output Capacity" means, for a given Unit, the Energy production capability of that Unit as measured at the Unit's CAISO revenue meter and as determined by a Capacity Test.

1.102 "Network Upgrades" has the meaning set forth in the CAISO Tariff.

1.103 "New Powerhouse" means any powerhouse constructed after the Execution Date that may be added to or become part of the Yuba-Bear Project.

1.104 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.105 "Non-Summer Months" means the full calendar months of January, February, March, April, September, October, November, and December of a given calendar year.

1.106 "Notice," unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight

courier service, facsimile or electronic messaging (e-mail). Appendix VII contains the names and addresses to be used for Notices.

1.107 “Obligor” means the Party breaching the terms of this Agreement.

1.108 “Operational Order” means a mandate or order issued by a Governmental Authority to Seller requiring Seller to offer or provide Product or to start up, shut down, curtail or operate the Project or any Unit for a specified period of time and for a specified purpose. An Operational Order includes, for example, a mandate issued by the U.S. Secretary of Energy to offer capacity or Energy or to operate the Project or any Unit during a declared governmental emergency. In contrast, by way of further example, a legal obligation to test the Project or any Unit for the purpose of maintaining any respective Governmental Approval is not an Operational Order.

1.109 “Operations Agreement” means the Consolidated Contract, as it may be amended by the Parties, or any such successor agreement under which the Parties coordinate and determine the operation of the Drum-Spaulding Project and the Yuba-Bear Project and which the Parties agree constitutes the Operations Agreement.

1.110 “Outage Notification Procedures” means the procedures specified in Appendix V. PG&E reserves the right to revise or change these procedures upon written Notice to Seller.

1.111 “Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

1.112 “Participating Transmission Owner” or “PTO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

1.113 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.12, “Governing Law”, the word “party” or “parties” shall have the meaning set forth in this definition.

1.114 “Planned Conveyance Outage” means any Work on any portion of the physical infrastructure of the Yuba-Bear Project that hinders, impedes or prevents the flow of water through any conveyance identified in Appendix XV that is part of the Yuba-Bear Project, and that complies with the annual planned outage schedule for conveyances as specified in the Operations Agreement. Any such Work on the Yuba-Bear Project that hinders, impedes or prevents the flow of water through any conveyance identified in Appendix XV that is part of the Yuba-Bear Project and that fails to comply with the above-described schedule in the Operations Agreement shall be deemed a Seller Forced Conveyance Outage.

1.115 “Planned Outage” means, for a given Unit, the removal of Unit equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage Schedule for the given Unit and comply with Section 3.7, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Unit, (b) cannot be



reasonably conducted during operations of the Unit, and (c) has been reasonably approved by Buyer.

1.116 "PNode" has the meaning set forth in the CAISO Tariff.

1.117 "Point of Interconnection" has the meaning set forth in the CAISO Tariff.

1.118 "Preamble" means the paragraph that precedes Article One: General Definitions to this Agreement.

1.119 "Product" means all of the Energy, capacity, and all ancillary products, services, or attributes similar to the foregoing which are or can be produced by or associated with the Project or any Unit, as applicable, including, without limitation, renewable attributes, Renewable Energy Credits, Capacity Attributes, and Green Attributes.

1.120 "Project" means the Chicago Park Powerhouse, the Rollins Powerhouse, and the Dutch Flat Powerhouse No. 2, and, on and after the Conversion Date, the Bowman Powerhouse, together with the other assets, tangible and intangible, that compose each such powerhouse, including but not limited to the assets used to connect each powerhouse to its respective Point of Interconnection, all as more particularly described in Appendix IV, and any Betterment or Improvement. For purposes of the definition of "Green Attributes," the word "project" shall have the meaning set forth in this definition.

1.121 "Project's Contract Capacity" means the total sum of each Unit's Contract Capacity when added together.

1.122 "RA Capacity" means the maximum megawatt amount that the CAISO recognizes from the Project or a given Unit, as applicable, that qualifies for Buyer's Resource Adequacy Requirements and is associated with the Project or such Unit's Capacity Attributes.

1.123 "Reductions" has the meaning set forth in Section 4.3(b).

1.124 "Referral Date" has the meaning set forth in Section 12.2(a).

1.125 "Reliability Coordinator" has the meaning set forth in the CAISO Tariff.

1.126 "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(f) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.127 "Replacement Capacity Rules" means a program set forth in the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain requirements to replace Resource Adequacy capacity on planned outages.

1.128 "Resource Adequacy" means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and (R.) 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

- 1.129 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.
- 1.130 “RES-SIM Model” means the hydrological model used by the Parties and developed by HDR Consulting which provides expected generation profiles for the Yuba-Bear Project and the Drum Spalding Project for the purposes of supporting the renewal of the respective FERC license applications for the Yuba Bear Project and the Drum Spalding Project.
- 1.131 “Revised Offer” has the meaning set forth in Section 10.16(c).
- 1.132 “Rollins Powerhouse” means the Rollins Unit described in Appendix IV.
- 1.133 “Satisfaction Date” has the meaning set forth in Section 2.6.
- 1.134 “Schedule” has the meaning set forth in the CAISO Tariff.
- 1.135 “Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff, for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator”, of the CAISO Tariff, as amended from time to time.
- 1.136 “SEC” means the U.S. Securities and Exchange Commission.
- 1.137 “Seller” has the meaning set forth in the Preamble.
- 1.138 “Seller Excuse Hours” means, for a given Unit, those hours during which Seller is unable to make available all of the Contract Capacity of the Unit or to dispatch the Unit at Buyer’s or CAISO’s instructions as a result of (a) a Planned Outage event directly affecting that Unit to the extent that Seller has not exceeded the number of excused Planned Outage hours specified in Section 3.7(b) for the Unit, (b) Buyer’s failure to comply with or perform any material covenant or obligation in this Agreement, (c) a Curtailment Order directly affecting the Unit, or (d) an Instructed Operation directly affecting the Unit.
- 1.139 “Seller’s Deviation Period” has the meaning set forth in Section 4.2.
- 1.140 “Seller Forced Conveyance Outage” means any failure of any portion of the physical infrastructure of the Yuba- Bear Project that hinders, impedes or prevents the flow of water through any conveyance identified in Appendix XV that is part of the Yuba-Bear Project and that is not a Planned Conveyance Outage and is not the result of an event of Force Majeure.
- 1.141 “Seller’s Initial Capacity Re-test” has the meaning set forth in Section 3.1(d)(iii).
- 1.142 “Seller’s Initial Efficiency Re-test” has the meaning set forth in Section 3.1(d)(iii).
- 1.143 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(i)(i).
- 1.144 “Settlement Amount” means the amount in US\$ equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.
- 1.145 “Settlement Interval” has the meaning set forth in the CAISO Tariff that currently refers to any one of the six ten (10) minute time intervals beginning on any hour and

ending on the next hour (e.g. 12:00 to 12:10, 12:10 to 12:20, etc.), and that may be subject to change from time to time by the CAISO.

1.146 "Site" means, for a given Unit, the location of that Unit of the Project. Appendix IV describes the Site for each Unit of the Project.

1.147 "Summer Months" means the full calendar months of May, June, July, and August of a given calendar year.

1.148 "Switching Center" means PG&E's Drum Switching Center or any other switching center selected by Buyer in its sole discretion at any time during the Delivery Term.

1.149 "System Emergency" has the meaning provided in subsection (a) of the definition of "Curtailed Order".

1.150 "Term" has the meaning provided in Section 2.6.

1.151 "Terminated Transaction" means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.152 "Termination Payment" means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.153 "Test Procedures" has the meaning set forth in Section 3.1(d)(iii)(D).

1.154 "Tested Efficiency Rating" means, for a given Unit, the efficiency rating of the Unit as determined by the applicable Efficiency Test for such Unit.

1.155 "Third-Party SC" means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement.

1.156 "Threshold Capacity" has the meaning set forth in Appendix IX.

1.157 "Transaction" means the particular transaction described in its entirety in Section 3.1(a) of this Agreement.

1.158 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from a given Delivery Point. For purposes of this Agreement, the Transmission Provider is CAISO.

1.159 "Uninstructed Imbalance Energy" has the meaning set forth in the CAISO Tariff.

1.160 "Unit" means the Chicago Park Powerhouse, the Rollins Powerhouse or the Dutch Flat Powerhouse No. 2, or, on and after the Conversion Date, the Bowman Powerhouse, as applicable, together with the other assets, tangible and intangible, that compose such powerhouse, including but not limited to the assets used to connect the powerhouse to its Point of Interconnection, as more particularly described in Appendix IV, and any Betterment or Improvement to the applicable Unit.

1.161 "Unit Allocation Factor" means, for a given Unit, the percentage of the fixed payment for the applicable Contract Year that is allocated to that Unit, as specified in Appendix VIII.

1.162 "WECC" means the Western Electricity Coordinating Council or successor agency.

1.163 "WREGIS" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

1.164 "WREGIS Certificate Deficit" has the meaning set forth in Section 3.1(i)(v).

1.165 "WREGIS Certificates" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

1.166 "WREGIS Operating Rules" means those operating rules and requirements adopted by WREGIS as of June 4, 2007, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.167 "Work" means (a) work or operations performed by a Party or on a Party's behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "a Party's work", and (ii) the providing of or failure to provide warnings or instructions.

1.168 "Yuba-Bear Project" means the Yuba-Bear Hydroelectric Project, FERC Project No. 2266, owned and operated by Seller.

## ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.13:

(a) The term "month" shall mean a calendar month unless otherwise indicated, and a "day" shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a "day" may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or to any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

(h) The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

(i) Except where the context otherwise requires, "or" shall have the inclusive meaning frequently designated by "and/or".

(j) Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

2.3 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Separation of Functions. The Parties acknowledge that this Agreement is between (a) Seller and (b) Buyer acting solely in its merchant function. The Parties further acknowledge that they have no rights against each other or obligations to each other under this Agreement with respect to any relationship between the Parties in which PG&E is acting in its capacity as Participating Transmission Owner, including, but not limited to, orders or instructions relating to Electric System Upgrades and/or Curtailment Periods.

2.5 Conditions Precedent. Subject to Section 2.7 hereof, the Term shall not commence until the occurrence of all of the following:

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

(ii) CPUC Approval has been obtained and Buyer has received a final and non-appealable order of the CPUC that finds that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates; and

(iii) The Operations Agreement is in full force and effect.

2.6 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.5 of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 5.2, Section 11.1, or Section 11.2 of this Agreement (the "Term"); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) (the "Satisfaction Date") or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.5 (Indemnities) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; and (ii) all rights and obligations under Section 10.7 (Confidentiality) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years.

2.7 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

(i) Section 3.1(d)(iii) with respect to Seller's obligation to perform, for each Unit, an Initial Capacity Test and an Initial Efficiency Test as provided in such Section;

(ii) Sections 3.1(e)(ii) and (e)(iii);

(iii) Section 3.7(b)(i)(A);

(iv) Sections 5.1(a)(iv) and (v);

(v) Section 5.1(a)(ii) only with respect to Section 10.2, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.7;

(vi) Sections 5.2 through 5.7;

(vii) Sections 10.2, 10.6 through 10.8, Sections 10.12 through 10.15, and Section 10.17;

(viii) Section 11.1; and

(ix) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

2.8 Seller's CAISO Agreements.

(a) No later than April 1, 2013, the following CAISO agreements shall be in full force and effect between the CAISO and Seller:

(i) a CAISO Participating Generator Agreement (or successor or similar form of agreement providing for interconnected operation with the CAISO) for the Project or for each Unit, as required by the CAISO;

(ii) a CAISO Meter Service Agreement (or successor or similar form of agreement) for the Project or for each Unit, as required by the CAISO; and

(iii) a CAISO LGIA (or successor or similar form of agreement) for the Project and any other required agreements with the CAISO to allow for interconnection of each Unit of the Project to the CAISO Grid.

(b) Seller shall notify Buyer that each of the CAISO agreements described in Section 2.8(a) has been obtained and is effective with the CAISO promptly following the date upon which all such agreements become effective ("CAISO Agreements Notice Date").

2.9 Bowman Powerhouse CAISO Revenue Meter. No later than October 1, 2016, the requisite CAISO revenue meter for the Bowman Powerhouse shall be in place and operational in full compliance with the CAISO's requirements for such a meter ("Bowman Meter"). If the foregoing requirements have not been satisfied by the Conversion Date, then the Bowman Powerhouse shall be deemed to be fully unavailable and its Availability Adjustment shall be deemed to be zero until the date upon which all such requirements have been satisfied. Seller shall notify Buyer that the Bowman Meter has been installed and is operational promptly following the date that the Bowman Meter commences operation.

**ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations.

(a) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at each of the Delivery Points, and Buyer shall pay Seller the Monthly Payment Amount in accordance with the terms of this Agreement. In no event shall Seller have the right (i) to procure any element of the Product from any source other than the Project or any given Unit for sale or delivery to Buyer under this Agreement or (ii) sell Product or any portion thereof to a third party. Seller shall be responsible for any costs or charges imposed on or associated with the Product or the delivery of the Product up to and at each Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt from each Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(b) Delivery Term. The Parties shall specify and agree to 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) Contract Years.

Delivery shall be for a period of fifteen (15) Contract Years.

- Delivery shall be for a period of twenty (20) Contract Years.
- Non-standard Delivery shall be for a period of \_\_\_\_ Contract Years.

As used herein, "Delivery Term" shall mean the period of Contract Years specified above beginning on the first date that Seller delivers Product to Buyer from the Project ("Initial Energy Delivery Date") in connection with this Agreement and continuing until the end of the twentieth (20<sup>th</sup>) Contract Year unless earlier terminated as provided by the terms of this Agreement. The Initial Energy Delivery Date shall be July 1, 2013 provided that (i) all of the Conditions Precedent in Section 2.5 have been satisfied or waived in writing and (ii) Seller has obtained the requisite CEC Certification and Verification for the Rollins Powerhouse, the Dutch Flat Powerhouse No. 2, and the Bowman Powerhouse. As evidence of the Initial Energy Delivery Date, the Parties shall execute and exchange the "Initial Energy Delivery Date Confirmation Letter" attached hereto as Appendix I on or no later than two (2) calendar days following the occurrence of the Initial Energy Delivery Date. Part I (entitled "Yuba-Bear Project Power Purchase Contract") of the Consolidated Contract shall terminate on the Initial Energy Delivery Date.

(c) Delivery Point. The Delivery Point for a given Unit shall be the Point of Interconnection designated by the CAISO for that Unit. The Point of Interconnection for each Unit as of the Execution Date is specified in Appendix IV.

(d) Contract Capacity and Efficiency.

(i) Throughout the Delivery Term, Seller shall sell all Product produced by the Project or a given Unit solely to Buyer.

(ii) Contract Capacity. The Contract Capacity of a given Unit shall be the lower of the following for such Unit: (A) the Declared Contract Capacity of the Unit as specified in Appendix IV; or (B) the Net Rated Output Capacity of the Unit as determined pursuant to Section 3.1(d)(iii) below.

(iii) Capacity and Efficiency Testing Requirement.

(A) Initial Tests. Following the Execution Date and within the one hundred eighty (180) day period prior to the Initial Energy Delivery Date, Seller shall conduct an Initial Capacity Test and an Initial Efficiency Test of each Unit at Seller's expense. Seller shall have the right to perform a re-test of any Unit's Initial Capacity Test or Initial Efficiency Test ("Seller's Initial Capacity Re-test" or "Seller's Initial Efficiency Re-test", as applicable), at Seller's expense, no later than thirty (30) days following such Unit's Initial Capacity Test date or Initial Efficiency Test date, respectively, which re-test may occur after the Initial Energy Delivery Date. Buyer shall decide the date for the Initial Capacity Tests and the Initial Efficiency Tests and for any of Seller's re-tests, subject to Section 3.1(d)(iii)(D).

(B) Delivery Term Tests. During the Delivery Term, Seller shall conduct a Capacity Test and/or an Efficiency Test of a given Unit at Seller's expense if requested by Buyer, provided that Seller shall only be required to do so once each Contract Year for a given Unit. Buyer shall decide the date for any such tests, subject to Section 3.1(d)(iii)(D).



(C) Additional Tests. Notwithstanding clauses (A) and (B) of this subsection (iii), either Party may request one (1) additional Capacity Test and one (1) additional Efficiency Test of a given Unit each Contract Year, at its expense; provided that, a Seller's Initial Capacity Re-test and a Seller's Initial Efficiency Re-test of such Unit shall be deemed an additional test for the purposes of this subsection (C). Buyer shall decide the date for any additional tests, subject to Section 3.1(d)(iii)(D).

(D) Test Procedure and Timing. No later than thirty (30) days prior to Buyer's scheduled date for the Initial Capacity Tests and the Initial Efficiency Tests, the Parties shall develop and agree upon test procedures ("Test Procedures") to be used for the Initial Capacity Tests and Initial Efficiency Tests and for all subsequent Capacity Tests and Efficiency Tests. If the Parties cannot agree upon such Test Procedures by the deadline provided herein, then the Initial Capacity Tests and the Initial Efficiency Tests and all subsequent Capacity Tests and Efficiency Tests shall be conducted in accordance with ASME Performance Test Code 18. A Capacity Test or Efficiency Test shall only be conducted during periods in which hydrological conditions are reasonably expected to produce an accurate measurement of the tested Unit's capacity or efficiency, as applicable.

(E) Buyer's Witness of Tests. Buyer shall have the right to access the applicable Site and witness the conduct of any Capacity Test or Efficiency Test, including the Initial Capacity Tests and Initial Efficiency Tests. Seller shall provide Notice to Buyer at least five (5) Business Days prior to the test day of Seller's test schedule.

(F) Capacity Test Results. Seller shall provide Buyer with the results of each Capacity Test no later than five (5) Business Days after completion of the test.

i. The results of the Initial Capacity Tests and all subsequent Capacity Tests shall include supporting data sufficient to verify the validity of the test results.

ii. The results of the Initial Capacity Tests or of the most recent, undisputed Capacity Test shall set the Net Rated Output Capacity of the respective Unit for the purpose of determining the Contract Capacity for such Unit and shall be effective as of the date of Buyer's receipt of the applicable test results.

(G) Efficiency Test Results. Seller shall provide Buyer with the results of each Efficiency Test five (5) Business Days after completion of the test.

i. The results of the Initial Efficiency Tests and all subsequent Efficiency Tests shall include supporting data sufficient to verify the validity of the test results.

ii. The results of the Initial Efficiency Tests or of the most recent, undisputed Efficiency Test shall set, effective as of the date of Buyer's receipt of the applicable test results, the Tested Efficiency Rating of a given Unit. If at any point the Tested Efficiency Rating of a given Unit established during its Initial Efficiency Test or any subsequent Efficiency Test falls below 90% ("Efficiency Rating Deficiency"), Buyer shall send a Notice to Seller informing Seller of the Efficiency Rating Deficiency and, no later than ninety (90) days after Seller's receipt of such Notice from Buyer, Seller shall provide to Buyer a written plan and schedule ("Efficiency Rating Cure Plan") to rectify the Efficiency Rating Deficiency that is based on recommendations from a qualified independent California-licensed professional engineer.

Upon Buyer's receipt of the Efficiency Rating Cure Plan, Buyer shall send a Notice to Seller specifying that Seller has up to two (2) calendar years from the date of such Notice to implement the Efficiency Rating Cure Plan ("Efficiency Rating Cure Period"). On or before the last day of the Efficiency Rating Cure Period, Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has cured the Efficiency Rating Deficiency of the applicable Unit by establishing that (1) Seller has satisfied its obligations under the Efficiency Rating Cure Plan, and (2) the Tested Efficiency Rating of such Unit is equal to or greater than 90% (such demonstration may include, at Buyer's election, the delivery by Seller to Buyer of a certification of Seller's satisfaction of the requirements in subparts (1) and (2) above, including all supporting data, from a qualified independent California-licensed professional engineer).

iii. If Seller has not demonstrated to Buyer's reasonable satisfaction a cure for an Efficiency Rating Deficiency by the end of the applicable Efficiency Rating Cure Period, then no later than ninety (90) calendar days following such period the Parties shall negotiate and agree upon a reduction to each Contract Year Price for the remainder of the Delivery Term. If after such ninety (90) day period, the Parties have not agreed upon a reduction to each such Contract Year Price for the remainder of the Delivery Term, then the Parties shall resolve the dispute in accordance with Article Twelve.

iv. Seller shall be responsible for all costs incurred to achieve and implement the Efficiency Rating Cure Plan.

(e) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project and the respective Units only.

(ii) Seller shall not make any alteration or modification to the Yuba-Bear Project, the Project or any Unit which results in (A) any reduction to the Contract Capacity or the anticipated output of any Unit without Buyer's prior written consent; or (B) any loss of the CEC certification of the Rollins Powerhouse, the Dutch Flat Powerhouse No. 2 or the Bowman Powerhouse each as an ERR, or the qualification of the output from each such Unit under the requirements of the California Renewables Portfolio Standard. Subject to the foregoing, Seller may increase the Contract Capacity or the anticipated output of a Unit with Buyer's prior written consent, not to be unreasonably withheld. The Parties may discuss additional agreements with respect to any such increase, each of which shall be subject to mutual agreement between the Parties and the approval of the CPUC and any other applicable Governmental Authorities. The Project is further described in Appendix IV.

(iii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project or any Unit without the prior written consent of Buyer, except under the circumstances provided in Section 10.6.

(f) Interconnection Facilities and Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any interconnection agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer's Interconnection Facilities, including metering facilities to be maintained; (C) comply with the procedures set forth in the LGIP and applicable agreements or procedures provided under the LGIP in order to obtain the applicable Electric System Upgrades; and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Product from the Project and the respective Units

up to and including quantities that can be produced utilizing all of the Project's Contract Capacity.

(g) Performance Excuses.

(i) Seller Excuses. Seller shall be excused from operating in accordance with Buyer's or the CAISO's instructions to dispatch a given Unit at the required level for the applicable time period during any Seller Excuse Hours for such Unit and during any event of Force Majeure affecting such Unit; provided that, the Modified Capacity of such Unit affected by an event of Force Majeure shall be adjusted in accordance with Appendix IX.

(ii) Buyer Excuses. The performance of Buyer to receive and/or pay for the Product from a given Unit shall only be excused through an Availability Adjustment as provided for in Appendix IX or by Seller's failure to comply with or perform any material covenant or obligation in this Agreement. For purposes of Appendix IX, there shall be no Availability Adjustment for any increase in Seller's consumptive use of water to meet the demands of Seller's customers located within its service area as now constituted, provided that any such increase is permitted under or provided for by Seller's water rights and the terms and conditions of the Operating Agreement.

(iii) Curtailment and Instructed Operations. Notwithstanding Section 3.1(a) and this Section 3.1(g), Seller shall reduce output from the affected Unit(s) during any Curtailment Period pursuant to a Curtailment Order, and shall operate the Units in accordance with Instructed Operations.

(iv) No Excuse. Except for a failure or curtailment resulting from a Force Majeure or during a Curtailment Period, the failure of electric transmission or distribution service shall not excuse performance with respect to either Party for the delivery or receipt of Product from any Unit to be provided under this Agreement.

(h) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including, but not limited to, reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project or a given Unit reasonably necessary to permit Buyer to comply with such requirements, if any.

(i) WREGIS. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy produced from the ERR Powerhouse Resources are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits for all Delivered Energy to Buyer. Seller shall comply with all Laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(i)(viii) provided that Seller fulfills its obligations under Sections 3.1(i)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the ERR Powerhouse Resources with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall be responsible for all expenses associated with registering the ERR Powerhouse Resources with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(iii) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy produced from a given ERR Powerhouse Resource for such calendar month as evidenced by that ERR Powerhouse Resource's metered data.

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance with Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(i). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy produced from the ERR Powerhouse Resources for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit in any month is caused, or is the result of any action or inaction, by Seller, then Seller shall deliver any WREGIS Certificate Deficit for such month to Buyer's WREGIS Account as soon as possible; provided that, if either Party finds that there exists a WREGIS Certificate Deficit one hundred twenty (120) or more days after the end of the calendar year in which such deficit pertains, then regardless of the cause of the deficit Seller shall reimburse Buyer \$30.00/MWh for each MWh of the WREGIS Certificate Deficit. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(i), if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(i) after the Execution Date, the Parties promptly shall modify this Section 3.1(i) as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of

WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy produced from the ERR Powerhouse Resources in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(j) Access to Data.

(i) Commencing on the Initial Energy Delivery Date and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below; provided that, Seller shall make and bear the cost of any changes to any of the data delivery provisions below, as reasonably requested by Buyer, throughout the Delivery Term that Buyer determines are necessary to satisfy a CAISO requirement or instruction or for Buyer to perform its Scheduling Coordinator or settlements functions under this Agreement:

(A) real-time, read-only access to meteorological measurements from existing systems;

(B) real-time, read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for each Unit, which shall be made available for review on a per Unit basis; provided that if Buyer is unable to access the SCADA system, then upon written request from Buyer, Seller shall provide energy output information to Buyer in 1-minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;

(C) real-time, read-only access to each Unit's CAISO revenue meter(s) and all meter data related to each Unit and the Project as a whole; and

(D) net plant electrical output of each Unit at its respective CAISO revenue meter pursuant to Section 6.1 on a monthly basis.

(ii) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(j)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable). Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of communication (i.e., cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail) until the telecommunications link is re-established.

(iii) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(k) Prevailing Wage.

(i) Seller shall use reasonable efforts to ensure that all Electricians hired under contract by Seller and its contractors and subcontractors are paid wages at rates not less than those prevailing for Electricians performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code. Nothing herein shall require Seller, its contractors or subcontractors to comply with or assume liability created by other inapplicable provisions of the California Labor Code.

(ii) To the extent applicable, Seller shall comply with the prevailing wage requirements of California Public Utilities Code Section 399.14, subdivision (h).

(l) Obtaining and Maintaining CEC Certification and Verification. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for each of the ERR Resources throughout the Term.

3.2 Green Attributes. Seller hereby provides and conveys all Green Attributes associated with all electricity generation from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

3.3 Reliability Obligations.

(a) Resource Adequacy. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Project's Contract Capacity, including Capacity Attributes from or associated with each Unit, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO or other regional entity may prescribe ("Resource Adequacy Requirements"). Seller agrees that during the Delivery Term Seller shall, at a minimum, comply with the terms set forth in Appendix VI to enable Buyer to use all of the capacity, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements. Seller shall obtain and maintain Full Capacity Deliverability Status Finding by the CAISO for each Unit throughout the Delivery Term.

(b) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of all outages pursuant to the provisions of Section 3.7. If Seller fails to provide any such Notice for a particular outage, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(c) To the extent Seller has an exemption from the Replacement Capacity Rules under the CAISO Tariff, then Section 3.3(b) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such an exemption shall not be an Event of Default and Buyer shall not have or be subject to any liability under this Agreement for such failure.

### 3.4 Transmission and Scheduling.

#### (a) Transmission.

##### (i) Seller's Transmission Service Obligations. During the Delivery Term:

(A) Seller shall arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to each of the Delivery Points for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for Full Capacity Deliverability Status for each Unit as of the Initial Energy Delivery Date and throughout the Delivery Term.

(B) Seller shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment to each of the Delivery Points.

(C) Seller shall fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy from each Unit to the CAISO Grid.

##### (ii) Buyer's Transmission Service Obligations. During the Delivery Term:

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Points.

(B) Buyer shall bear all risks and costs associated with such transmission service, including, but not limited to, any transmission outages or curtailment from the Delivery Points.

(C) Buyer shall Schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Points.

(D) Subject to Section 4.2, Buyer shall be responsible for all CAISO costs and charges, electrical transmission losses and congestion at and from the Delivery Points.

(b) Scheduling Coordinator. Buyer shall act as the Scheduling Coordinator for the Project, unless Buyer elects to designate a Third Party SC in accordance with Section 3.4(b)(i)(B). In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) calendar days before the Initial Energy Delivery Date, if requested by Buyer, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer, or Third-Party SC, as Seller's Scheduling Coordinator, and Buyer or Third-Party SC, as applicable, shall take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator.

(B) If Buyer designates a Third-Party SC, then Buyer shall give Seller Notice of such designation at least ten (10) Business Days before the Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all costs, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(C) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Delivery Term.

(ii) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

(c) Coordinated Planning and Operations.

(i) Except as expressly provided in this Agreement, the Operations Agreement shall govern the coordinated planning, operations and maintenance of the Yuba-Bear Project, the Drum-Spaulding Project, and the Project. Buyer shall have the exclusive right to bid or schedule all Product from each Unit and the Project, subject to the terms and conditions of the Operations Agreement, as Buyer deems prudent in its sole discretion.



(ii) Buyer and Seller shall share hydrologic information applicable to the Project, including precipitation, temperature, and runoff data and forecasts. Seller shall provide Buyer with Seller's plans for water withdrawals for non-generation uses, such as irrigation and domestic uses, and any other operating constraints. The Parties shall regularly confer on forecasts as snowfall, precipitation and runoff information become available. If either Party receives information through CAISO or directly from the Participating Transmission Owner regarding maintenance that will directly affect the ability to deliver Energy from the Project or any Unit, it will provide this information promptly to the other Party.

(iii) From time to time as reasonably determined to be necessary by the Parties, the Parties shall reasonably cooperate to confer and agree upon written operating procedures ("Operating Procedures") addressing how the Parties will coordinate the performance of their respective obligations under this Agreement, including, but not limited to: (1) the method of day-to-day communication relating to the operation of, and scheduling and dispatching, each Unit of the Project; (2) key personnel lists for each Party; (3) methods and procedures of collecting and sharing hydrologic data, and jointly developing and conferring on forecasts of runoff and operations schedules; (4) procedures for Forced Outage and Planned Outage scheduling and reporting, which shall be as described in Appendix V unless otherwise agreed by the Parties; (5) procedures for reporting daily reservoir levels; and (6) procedures for record keeping. Any failure to agree on Operating Procedures will not relieve either Party of its respective obligations under this Agreement.

### 3.5 Standards of Care.

(a) General Operation. Seller shall comply with the Operations Agreement and all applicable requirements of Law and the CAISO, NERC, WECC and FERC relating to the Project (including those relating to the construction, maintenance, ownership and/or operation of the Project and those required by Law to be performed by generators).

(b) Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with the Operations Agreement and all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices, (iii) Good Utility Practices, and (iv) FERC requirements.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electrical Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. All Energy produced from a Unit must be delivered through that Unit's CAISO revenue meter, which must be dedicated exclusively to the Unit. Seller shall bear all costs relating to all metering equipment. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to each Unit and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter for each Unit.

### 3.7 Outage Planning and Notification.

(a) CAISO Approval of Outage(s). In its role as Scheduling Coordinator, Buyer shall be responsible for securing CAISO approval for Unit outages, including securing changes in

its outage schedules when CAISO disapproves the proposed outage schedule or cancels previously approved outages. Buyer shall use commercially reasonable efforts to communicate CAISO approvals for Unit outages in a timely manner to Seller. Buyer shall be responsible for entering Unit outages in the Scheduling and Logging for ISO of California system (SLIC) or successor CAISO outage management systems.

(b) Planned Outages Notification and Restrictions.

(i) Throughout the Delivery Term, Seller shall notify Buyer of its proposed annual Planned Outage schedule for each Unit in accordance with Appendix V ("Planned Outage Schedule"), and such Planned Outage Schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. The Planned Outage Schedule notification timeline is as follows:

(A) Seller shall provide Notice of the Planned Outage Schedule for the next calendar year in the Delivery Term no later than July 1<sup>st</sup> of the prior calendar year, commencing July 1, 2012;

(B) Seller shall confirm a previously noticed Planned Outage schedule, provide Notice of a new proposed Planned Outage, or provide updates to a previously noticed Planned Outage schedule ninety (90) calendar days prior to the first day of the calendar month in which a Planned Outage is to occur, and such Notice shall cover the subject month and the following twelve (12) months within the Delivery Term;

(C) Seller shall provide Notice of any intra-month changes to the Planned Outage schedule no later than 10:00 AM on the day of the request and the earlier of fourteen (14) Business Days prior to the applicable operating day of the outage or two (2) Business Days prior to the CAISO deadline for submitting CAISO planned outages, provided that such intra-month request is subject to approval by Buyer in its sole discretion.

(ii) To the extent that Notice of any update or change is not provided in accordance with this Section 3.7(b) or not excused by Buyer, the applicable Unit shall be deemed unavailable to the extent such outage was not Noticed by the timeline specified in Section 3.7(b)(i) for the purposes of calculating Availability pursuant to Appendix IX, regardless of the CAISO's approval of such update or change.

(iii) Seller shall not conduct Planned Outages during the Summer Months. Planned Outages shall not exceed the following annual hourly maximum: 340 hours for Chicago Park Powerhouse; 340 hours for Dutch Flat Powerhouse No. 2; 410 hours for Rollins Powerhouse; and, after the Conversion Date, 340 hours for Bowman Powerhouse.

(iv) Notwithstanding Section 3.7(b)(iii), Seller shall be allowed to perform Major Maintenance on each Unit, which shall take place no more than once every five (5) years and shall total no more than 2,880 hours among all Units. Major Maintenance that complies with the limitations of this Section 3.7(b)(iv) shall be deemed a Planned Outage and not subject to an Availability Adjustment pursuant to Appendix IX.

(v) Buyer may grant exemptions to the foregoing restrictions if Buyer believes an additional outage is required and cannot be delayed to another date. Seller shall contact Buyer with any requested changes to a given Planned Outage Schedule if Seller believes a Unit must be shut down to conduct maintenance that cannot be delayed until the next scheduled

Planned Outage consistent with Good Utility Practices. Seller shall make reasonable efforts to complete Work during periods of Planned Outages in the shortest possible time in order to return the affected Unit(s) to normal operation. Seller shall not change its Planned Outage Schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Seller shall not substitute Energy from any other source for the output of the affected Unit(s) during a Planned Outage. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of Work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage Schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Forced Outages. Seller shall orally notify the Switching Center of a Forced Outage of a Unit within ten (10) minutes of Seller's awareness of the Forced Outage and in accordance with the notification procedures set forth in Appendix V. Notification procedures for Forced Outages shall be subject to change from time to time by Buyer. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Force Majeure. Prior to the expiration of the second full Business Day subsequent to the commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the expected duration and effect of such event of Force Majeure. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. Promptly, but in any event within ten (10) days after a Notice is given as described above, the Parties shall meet to discuss the basis and terms upon which the arrangements set out in this Agreement shall be continued taking into account the effects of such Force Majeure event. Seller shall not substitute Product from any other source for the output of the Project or any Unit during an outage resulting from Force Majeure. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Each Party suffering a Force Majeure event shall take, or cause to be taken, such action as may be necessary to void, or nullify, or otherwise to mitigate, in all material respects, the effects of such Force Majeure event. The Parties shall take all reasonable steps to ensure resumption of normal performance under this Agreement after the cessation of any Force Majeure event. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(e) Communications with CAISO. Buyer or Third-Party SC, in coordination with Seller, shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(f) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7 or 3.8 or Appendix V, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and operating procedures described in the above-referenced sections are subject to change by Buyer from time to time and, upon receipt of Notice of any such changes, Seller agrees to work in

good faith to implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increase cost of performance to Seller hereunder other than *de minimis* amounts.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include, but not be limited to, information on power production, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors shall have the right of ingress to and egress from the Project, each Unit and each Site on reasonable advance notice during normal business hours and for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer (i) in the Operations Agreement or by (ii) Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21 (if PG&E is the Participating Transmission Owner), and rules on file with the CPUC.

**ARTICLE FOUR: PRODUCT COMPENSATION; MONTHLY PAYMENTS**

4.1 Product Compensation.

(a) During the Delivery Term, Seller's compensation for all Products delivered to Buyer shall be paid on a monthly basis ("Monthly Payment Amount") and determined pursuant to this Article Four. For purposes of determining the Monthly Payment Amount, the following definitions shall apply:

- (i) MPAm is the Monthly Payment Amount for month *m*;
- (ii) CPY is the "Contract Year Price" for contract year *y* as specified in Appendix VIII;
- (iii) UAF<sub>*i*</sub> is the "Unit Allocation Factor" for the subject Unit as specified in Appendix VIII;
- (iv) MAF<sub>*m*</sub> is the "Monthly Allocation Factor" for month *m* as specified in Appendix VIII; provided that ninety (90) calendar days prior to the start of a full calendar year, Buyer may modify the Monthly Allocation Factor in Appendix VIII by Notice to Seller so long as any individual month has a percentage allocation of not less than 4% or greater than 15% and the total MAF in any calendar year equals 100%; and
- (v) AAm,<sub>*i*</sub> is the Availability Adjustment for month *m* as determined in accordance with Appendix IX.

(b) The Monthly Payment Amount shall be determined as follows where the summation is from *i*=1 to 3 for all three (3) Units of the Project prior to the Conversion Date and

i=1 to 4 for all four (4) Units of the Project on and after the Conversion Date. An example of this calculation is set forth in Appendix X.

$$MPA_m = \sum [ CP_Y * MAF_m * UAF_i * AA_{m,i} ]$$

#### 4.2 CAISO Charges during Forced Outages.

(i) Seller shall be responsible for all costs, charges, and penalties assessed by the CAISO with respect to Uninstructed Imbalance Energy, Instructed Imbalance Energy, and the failure of Seller to provide any scheduled or awarded Ancillary Services (as available to Buyer per Appendix IV), including Grid Management Charges, for the period starting from the beginning of any Forced Outage event until (i) the end of the first calendar day of the Forced Outage if the Forced Outage was noticed to Buyer prior to 5:00AM on that day, or (ii) the end of the second calendar day of the Forced Outage if the Forced Outage was noticed to Buyer after 5:00AM on the day the Forced Outage began ("Seller's Deviation Period"). Seller shall only be responsible for CAISO costs, charges, and penalties during Forced Outage hours in which there was a Day Ahead Schedule or Day Ahead award for Ancillary Services for the applicable Unit(s) during Seller's Deviation Period. The Parties agree that any credit received from the CAISO in any hour for any Product delivered beyond what was scheduled shall be for the benefit of Buyer and for Buyer's account. An illustrative example of how CAISO costs and charges are to be calculated pursuant to this Section 4.2 is provided in Appendix III.

(ii) Buyer shall be responsible for all costs, charges, and penalties incurred, and receive all revenues and credits from, the CAISO during the hours that do not fall within a Seller's Deviation Period as defined in Section 4.2(i).

(iii) Notwithstanding Section 4.2(i) and 4.2(ii), Seller shall assume liability and reimburse Buyer for any and all CAISO costs, charges, and penalties incurred by Buyer as a result of Seller's actions or inactions. Buyer shall assume all liability and reimburse Seller for any and all CAISO costs and penalties incurred by Seller as a result of Buyer's actions or inactions.

#### 4.3 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party or receives any credits related to Electric System Upgrades contemplated in Section 3.1(f), Seller shall retain such compensation or credits.

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as "Reductions"), then, at Buyer's option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reductions and Seller shall retain the Reductions.

## ARTICLE FIVE: EVENTS OF DEFAULT

5.1 Events of Default. An "Event of Default" shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

(i) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) Business Days after written Notice is received by the Party failing to make such payment;

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.2(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.2(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.2(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within thirty (30) days after Notice;

(iv) such Party becomes Bankrupt; or

(v) 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) with respect to Seller as the Defaulting Party, if at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Project or a Unit.

5.2 Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") on which to collect the Termination Payment for any Event of Default;

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) withhold any payments due to the Defaulting Party under this Agreement;

- (d) suspend performance; and
- (e) exercise any other rights or remedies available at Law or in equity to the extent otherwise permitted under this Agreement.

### 5.3 Calculation of Termination Payment.

(a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three 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 to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (a) for a like amount, (b) of the same Product, (c) at the same PNode or nearest liquid pricing point of the respective Unit, (d) for the remaining Delivery Term, and (e) any other commercially reasonable manner. For purposes of calculating Gains or Losses, the Availability Adjustment for each Unit shall be presumed to be the average of the Unit's Availability Adjustment for the twenty-four (24) months preceding the Early Termination Date, or the term of the Agreement if the Early Termination Date is less than twenty four months after the Effective Date.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

5.4 Notice of Payment of Termination Payment. As soon as practicable after termination pursuant to Section 5.2, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

## ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10<sup>th</sup>) day of each month beginning with the second month of the first Contract Year and every month thereafter, and continuing through and including the first month following the end of the Delivery Term:

(i) Seller shall provide to Buyer an invoice, in a format agreeable to Buyer, for the Monthly Payment Amount for the preceding month including adequate detail of the calculation of the Monthly Payment Amount and such invoice shall be subject to audit by Buyer;

(ii) Buyer shall provide to Seller an invoice for any CAISO charges or penalties for which Seller is responsible pursuant to Section 4.2, and any amount due to Buyer pursuant to Section 3.1(i)(v) ("WREGIS Certificate Deficit");

(iii) Seller shall provide to Buyer a record of metered data, in a format agreeable to Buyer, including CAISO metering and transaction data sufficient to document and verify the generation of Energy from each Unit for any Settlement Interval during the preceding month; and

(iv) Seller shall provide to Buyer access to any records that pertain to Reductions pursuant to Section 4.4, and Buyer shall net any Reductions from payments due to Seller in the month that the applicable records of the Reductions are received by Buyer.

If each Party is required to pay the other Party in the same month under this Agreement, then the Party owing the greater aggregate amount shall pay to the other Party the undisputed difference between the amounts owed. Payments under this Article Six shall be made on or before the later of the twenty-fifth (25<sup>th</sup>) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. 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 other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and



including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

## **ARTICLE SEVEN: LIMITATIONS**

7.1 Limitation of Remedies, Liability and Damages. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED, UNLESS THE PROVISION IN QUESTION PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.5 (INDEMNITIES), IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## **ARTICLE EIGHT: FINANCIAL REPORTING REQUIREMENTS**

8.1 Buyer Financial Information. If requested by Seller, Buyer shall deliver to Seller (a) within one hundred twenty (120) days after the end of each fiscal year with respect to PG&E Corporation, a copy of PG&E Corporation's annual report containing audited consolidated financial statements for such fiscal year and (b) within sixty (60) days after the end of each of

PG&E Corporation's first three fiscal quarters of each fiscal year, a copy of PG&E Corporation's quarterly report containing unaudited consolidated financial statements for each accounting period prepared in accordance with Generally Accepted Accounting Principles. Buyer shall be deemed to have satisfied such delivery requirement if the applicable report is publicly available on www.pge-corp.com or on the SEC EDGAR information retrieval system; provided however, that should such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default, so long as such statements are provided to Seller upon their completion and filing with the SEC.

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

#### ARTICLE NINE: GOVERNMENTAL CHARGES

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

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Points, including, but not limited to, ad valorem taxes and other taxes attributable to the Project, each Unit, land, land rights or interests in land for the Project or the Units. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Points. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Buyer's payments to Seller, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

#### ARTICLE TEN: MISCELLANEOUS

10.1 Recording. Unless a Party expressly objects to a recording at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording of all telephone conversations between Buyer's employees or representatives performing a Scheduling

Coordinator function and any representative of Seller. The Parties agree that any such recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.

## 10.2 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, 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 all regulatory authorizations necessary for it to perform its obligations under this Agreement, except for (A) CPUC Approval in the case of Buyer, and (B) all permits necessary to operate and maintain the Project in the case of Seller;

(iii) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(iv) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(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 the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the ERR

Powerhouse Resources of the Project qualify and are certified by the CEC as Eligible Renewable Energy Resources (“ERRs”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the output from the ERR Powerhouse Resources delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(c) Supplement to Seller Representations and Warranties. To the extent a change in Law occurs after execution of this Agreement that causes the representation and warranty set forth in Section 10.2(b) above to be materially false or misleading, Seller shall be deemed to have made commercially reasonable efforts to comply with such change in Law if Seller takes all actions to comply with or implement any change or improvement to the ERR Powerhouse Resources to maintain such certification or qualification (“RPS Qualification Improvement”) which would require Seller to incur, in the aggregate, costs up to \$150,000.00 (excluding Seller’s administrative and internal staffing expenses that Seller would otherwise be obligated to pay) over the Term of this Agreement (“RPS Qualification Expenditure Maximum”). If after such change in Law has occurred, Seller determines that it will exceed the RPS Qualification Expenditure Maximum to implement the RPS Qualification Improvement, Seller shall notify Buyer and provide documentation and calculations to support the expected exceedence (“RPS Qualification Improvement Notice”). Buyer shall then have sixty (60) days after receipt of the RPS Qualification Improvement Notice to verify or dispute Seller’s documentation and calculation. The Parties shall then have thirty (30) days to agree in writing (such agreement not to be unreasonably withheld, conditioned or delayed) on the amount by which Seller will exceed the RPS Qualification Expenditure Maximum in order to satisfy the RPS Qualification Improvement (“RPS Qualification Improvement Amount Agreement”). Buyer may then:

(i) elect to pay Seller the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such election, subject to CPUC Approval (if required), within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement. If Buyer so elects, Seller shall, upon receipt of payment from Buyer, implement the RPS Qualification Improvement; or

(ii) elect not to pay Seller for the amount set forth in the RPS Qualification Improvement Amount Agreement and notify Seller of such decision within ten (10) Business Days of the effective date of the RPS Qualification Improvement Amount Agreement, in which case this Agreement shall continue in full force and effect and Seller shall not be required to implement any further or additional RPS Qualification Improvement.

### 10.3 Covenants.

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

- (i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;
- (ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and
- (iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

- (i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Resource Adequacy Requirements.
- (ii) Seller covenants that it shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including but not limited to payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades, if any, prior to the Initial Energy Delivery Date or as soon as practicable thereafter.
- (iii) Seller covenants that throughout the Delivery Term that it will take all reasonable steps consistent with Good Utility Practices to maintain the efficiency, condition, and/or proper functioning of all facilities and equipment pertaining to the Project.

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

### 10.5 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement up to and at the Delivery Points, (ii) Seller's operation and/or maintenance of the Project or any Unit, or (iii) Seller's actions or inactions with respect to this Agreement, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Points, including, without limitation, any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

#### 10.6 Assignment.

(a) General Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing, consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment in Connection with a Change in Control. Any direct or indirect change of control of Buyer or Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of the other Party, which consent shall not be unreasonably withheld.

(c) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.6 is void.

#### 10.7 Confidentiality.

(a) Neither Party shall disclose the non-public terms or conditions of this Agreement to a third party, other than as follows:

(i) to the Party's Affiliates, the Party's or its Affiliates' respective employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential,

- (ii) for disclosure to Buyer's Procurement Review Group, as defined in CPUC Decision D. 02-08-071, subject to a confidentiality agreement,
- (iii) to the CPUC under seal for purposes of review,
- (iv) for disclosure of those certain terms specified in and pursuant to Section 10.8 of this Agreement;
- (v) in order to comply with any applicable Law, regulation, or any exchange, control area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing Party ("Disclosing Party"), other than to those entities set forth in subsection (vi); or
- (vi) in order to comply with *any* applicable regulation, rule, or order of the CPUC, CEC, or the FERC.

(b) If a Party is required to disclose confidential information in order to satisfy an obligation pursuant to subsection (a)(v) above ("Disclosure Order") each Party shall, to the extent practicable, use reasonable efforts: (i) to notify the other Party prior to disclosing the confidential information and (ii) prevent or limit such disclosure. After using such reasonable efforts, the Disclosing Party shall not be: (y) prohibited from complying with a Disclosure Order or (z) liable to the other Party for monetary or other damages incurred in connection with the disclosure of the confidential information. Except as provided in the preceding sentence, the Parties shall be entitled to all remedies available at Law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. In addition to the foregoing, Seller shall provide timely Notice to Buyer of any request for Seller to disclose any of the non-public terms or conditions of this Agreement. If Buyer requests that Seller deny any such request, Buyer shall indemnify, pay all defense costs and hold Seller harmless for any and all loss incurred by Seller because of its denial of the request.

(c) Notwithstanding the provisions in Section 10.7(a), the Parties are permitted to disclose information related to the bidding and negotiation process as follows: (i) to PG&E's Procurement Review Group, as defined in California Public Utilities Commission ("CPUC") Decision (D) 02-08-071, subject to a confidentiality agreement, (ii) to the CPUC (including CPUC staff) under seal for purposes of review (if such seal is applicable to the nature of the Confidential Information), and (iii) to the Independent Evaluator, as defined and specified in the PG&E RPS Solicitation Protocol dated May 11, 2011 ("Protocol").

(d) The Parties agree that the confidentiality provisions under this Section 10.7 are separate from, and shall not impair or modify any other confidentiality agreements that may be in place between the Parties or their Affiliates; provided however, that the confidentiality provisions of this Section 10.7 shall govern confidential treatment of all information related to this Agreement exchanged between the Parties as of and after the Effective Date.

#### 10.8 RPS Confidentiality.

(a) Notwithstanding Section 10.7 of this Agreement, at any time on or after the date on which the Buyer makes its advice filing letter seeking CPUC Approval of this Agreement, either Party shall be permitted to disclose those terms required by the CPUC in its then-current advice letter template, including the following: Party names, resource type, Delivery Term,

Project location, capacity factor, Contract Capacity, Delivery Points, and applicability of the Energy Investment Tax Credit or Production Tax Credit.

(b) Seller acknowledges and agrees that pursuant to CPUC Decision D.06-06-066, which implements Senate Bill (SB) No. 1488 (2004 Cal. Stats., Ch. 690 (Sept. 22, 2004)), Buyer may make this Agreement publicly available. Seller further acknowledges that the CPUC's rules regarding confidential treatment of this Agreement are subject to change and therefore the timing and extent of disclosure is subject to amendment pursuant to CPUC order, rule or regulation.

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

10.10 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain its insurance coverage extant on the Execution Date for the Delivery Term in accordance with Good Utility Practice.

10.11 Access to Financial Information. The Parties agree that Generally Accepted Accounting Principles and SEC rules require Buyer to evaluate if Buyer must consolidate Seller's financial information. Buyer will require access to financial records and personnel to determine if consolidated financial reporting is required. If Buyer determines that consolidation is required, Buyer shall require the following during every calendar quarter for the Term:

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

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

Any information provided to Buyer pursuant to this Section 10.11 shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed on an aggregate basis with other similar entities for which Buyer has power purchase agreements. The information will only be used for financial statement purposes and shall not be otherwise shared with internal or external parties.

10.12 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. To the extent enforceable at such time, each party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement.

10.13 General. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent provided for, no amendment or modification to this Agreement shall



be enforceable unless reduced to writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.15. This Agreement shall be binding on each Party's successors and permitted assigns. The standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "just and reasonable" standard of review rather than the "public interest" standard of review. Nothing in this Agreement shall in any way restrict or otherwise limit the rights of either Party under Sections 205 and 206 of the Federal Power Act.

10.14 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.15 Counterparts. This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.16 Purchase of Product from a New Powerhouse. If the construction of a New Powerhouse is completed during the Delivery Term, then neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Product from that New Powerhouse to any third party except as permitted under this Section 10.16.

(a) Seller shall first offer, in writing, to sell to Buyer all Product from a New Powerhouse on the same terms and conditions, except for the contract price, as this Agreement ("First Offer"). Seller shall determine a contract price for the Products of the New Powerhouse and that shall also be included in the First Offer.

(b) If Buyer accepts the First Offer, Buyer shall Notify Seller within sixty (60) days of receipt of the First Offer ("Buyer's Notice"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, each being subject to CPUC Approval and rate recovery of all payments to be made by Buyer.

(c) If Buyer rejects or fails to accept Seller's First Offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Product from the New Powerhouse to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If Seller desires to enter into such an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing

the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide such third party with more favorable material terms and conditions than those offered in the First Offer to Buyer. Seller's certificate shall be in substantially the form of Appendix XIII. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, any Product from the New Powerhouse without first offering to sell or otherwise transfer the Product to Buyer on such more favorable terms and conditions ("Revised Offer") in accordance with subpart (b) above. If within thirty (30) days of receipt of Seller's Revised Offer Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Product from the New Powerhouse to any third party on such terms and conditions as set forth in the certificate.

10.17 Change in FERC License Conditions. If at any time after the Execution Date, Buyer determines that the conditions of Seller's FERC license applicable to the Project are changed in a manner that decreases the Project's expected annual generation by more than ten percent (10%), then Buyer may calculate and apply an appropriate reduction to each Contract Year Price to account for the decrease. Buyer's calculation shall be based on a comparison of the final RES-SIM Model run used for FERC re-licensing purposes against the August 2011 RES-SIM Model run result as specified in Appendix XIV. The provisions of Article Twelve shall govern any dispute relating to Buyer's calculation.

10.18 Extension of Delivery Term. The Delivery Term shall be extended for an additional ten (10) Contract Years ("Extended Delivery Term") if all of the following conditions are satisfied:

(a) Seller requests an Extended Delivery Term by Notice to Buyer no later than July 1, 2031, and such Notice includes Seller's proposal for a contract price to be applied for the duration of the Extended Delivery Term; and

(b) Within six (6) months following Buyer's receipt of such Notice, the Parties amend the terms and conditions of this Agreement to account only for the change in the length of the Delivery Term and a mutually agreed upon change in the contract price for the Extended Delivery Term ("Amended PPA");

(c) Each Party agrees in its sole discretion to the Amended PPA; and

(d) CPUC Approval of the Amended PPA is obtained and Buyer receives a final and non-appealable order of the CPUC finding that Buyer's entry into the Amended PPA is reasonable and that payments to be made by Buyer under the Amended PPA are recoverable in rates.

## ARTICLE ELEVEN: TERMINATION EVENTS

11.1 Failure to Meet All Conditions Precedent. If each Condition Precedent set forth in Section 2.5 is not satisfied or waived in writing by both Parties on or before two hundred forty (240) days from the date on which Buyer files this Agreement for CPUC Approval, then either Party may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination under this Section 11.1; provided that the terms of Section 2.6 shall apply.

11.2 Operations Agreement. If, after the Effective Date of this Agreement, the Operations Agreement is terminated because of a default under such contract, then the non-defaulting party under that contract may terminate this Agreement effective upon receipt of Notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment, by reason of such termination under this Section 11.2; provided that the terms of Section 2.6 shall apply.

## ARTICLE TWELVE: DISPUTE RESOLUTION

12.1 Intent of the Parties. Except as provided in the next sentence, the sole procedure to resolve any claim arising out of or relating to this Agreement is the dispute resolution procedure set forth in this Article Twelve. The lone exception to the foregoing is that either Party may seek an injunction in Superior Court in San Francisco, California if such action is necessary to prevent irreparable harm, in which case both Parties nonetheless will continue to pursue resolution of all other aspects of the dispute by means of this procedure.

### 12.2 Management Negotiations.

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

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

(c) All communication and writing exchanged between the Parties in connection with these negotiations shall be deemed confidential and subject to the confidentiality provisions of this Agreement. All such communication and writing shall be inadmissible as evidence such that it cannot be used or referred to in any subsequent binding adjudicatory process between the Parties, whether with respect to this dispute or any other.

(d) If the matter is not resolved within forty-five (45) days of the Referral Date, or if the Party receiving the written request to meet, pursuant to Section 12.2(a), refuses or does not meet within the ten (10) Business Day period specified in Section 12.2(a), either Party may initiate mediation of the controversy or claim according to the terms of the following Section 12.3.

12.3 Mediation. If the dispute cannot be resolved by negotiation as set forth in Section 12.2 above, then either Party may initiate mediation, the first-step of a two-step dispute resolution process, which JAMS shall administer. As the first step, the Parties agree to mediate any

controversy before a commercial mediator from the JAMS panel, pursuant to JAMS's then-applicable commercial mediation rules, in San Francisco, California. Either Party may initiate such a mediation by serving a written demand for mediation. The mediator shall not have the authority to require, and neither Party may be compelled to engage in, any form of discovery prior to or in connection with the mediation. If within sixty (60) days after service of a written demand for mediation, or as extended by mutual agreement of the Parties, the mediation does not result in resolution of the dispute, then the Parties shall resolve such controversy through Arbitration by one retired judge or justice from the JAMS panel, which Arbitration shall take place in San Francisco, California, and which the Arbitrator shall administer by and in accordance with JAMS's Commercial Arbitration Rules ("Arbitration"). If the Parties cannot mutually agree on the Arbitrator who will adjudicate the dispute, then JAMS shall provide the Parties with an Arbitrator pursuant to its then-applicable Commercial Arbitration Rules. The period commencing from the date of the written demand for mediation until the appointment of a mediator shall be included within the sixty (60) day mediation period. Any mediator(s) and arbitrator(s) shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. Either Party may initiate Arbitration by filing with the JAMS a notice of intent to arbitrate within sixty (60) days of service of the written demand for mediation.

12.4 Arbitration. At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (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 (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.

(a) Each of the Parties shall submit to the arbitrator, in accordance with a schedule set by the arbitrator, offers in the form of the award it considers the arbitrator should make. If the arbitrator requires the Parties to submit more than one such offer, the arbitrator shall designate a deadline by which time the Parties shall submit their last and best offer. In such proceedings the arbitrator shall be limited to awarding only one of the two "last and best" offers submitted, and shall not determine an alternative or compromise remedy.

(b) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.

(c) The arbitrator's award shall be made within nine (9) 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.

(d) The prevailing Party in this dispute resolution process is entitled to recover its costs and reasonable attorneys' fees.

(e) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before him or her.

(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.

#### **ARTICLE THIRTEEN: NOTICES**

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of outages or other scheduling or dispatch information or requests, as provided in Appendix V, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, or contact to which Notice is to be given it by providing Notice of such change to the other Party.

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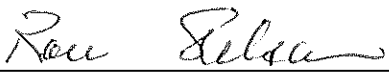
**SIGNATURES**

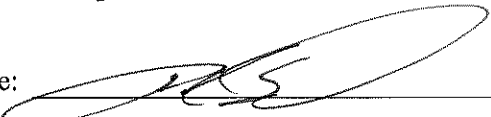
**Agreement Execution**

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

**NEVADA IRRIGATION DISTRICT, a  
California Irrigation District**

**PACIFIC GAS AND ELECTRIC COMPANY,  
a California corporation**

Signature:   
Name: RON NELSON  
Title: GENERAL MGR  
Date: MAY 9, 2012

Signature:   
Name: Roy M. Kuga  
Title: Vice President, Energy Supply Mgmt  
Date: 5/8/2012

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**APPENDIX I**

**INITIAL ENERGY DELIVERY DATE CONFIRMATION LETTER**

In accordance with the terms of that certain Power Purchase Agreement dated May \_\_\_\_, 2012 (“Agreement”) by and between Pacific Gas and Electric Company (“Buyer”) and Nevada Irrigation District (“Seller”), this letter (“Initial Energy Delivery Date Confirmation Letter”) serves to document the Parties’ further agreement that (i) the Conditions Precedent to the occurrence of the Initial Energy Delivery Date have been satisfied, and (ii) Seller has scheduled and Buyer has received the Product from the Project, as specified in the Agreement, as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (the “Initial Energy Delivery Date”). All capitalized terms not defined herein shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, each Party has caused this Initial Energy Delivery Date Confirmation Letter to be duly executed by its authorized representative as of the date of last signature provided below:

**NEVADA IRRIGATION DISTRICT**

**PACIFIC GAS AND ELECTRIC COMPANY**

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**APPENDIX II**

**[Reserved]**

## APPENDIX III

### EXAMPLE OF CALCULATION OF CAISO CHARGES UNDER SECTION 4.2

#### Appendix III - Section 4.2 (CAISO Charges during Forced Outages)

**Case 1:**

Chicago Park has a 30MWh Energy schedule and a 10MW Spin schedule per hour from HE 1 - HE 24 for operating day June 1st in the CAISO Day Ahead market.  
 A Forced Outage on the Unit was called on June 1st starting in HE 2 that made Chicago Park fully unavailable for the remainder of the day.  
 The Forced Outage did not register into the CAISO Real Time Market until HE 3.

*Sample settlement of HE 2 and HE 3 of June 1st.*

|   | HE 2          | HE 3        |
|---|---------------|-------------|
| Day Ahead Price \$/MWh  | \$ 30.00      | \$ 35.00    |
| Day Ahead Schedule (MWh)  | 30            | 30          |
| Day Ahead Spin price (\$/MW)  | \$ 5.00       | \$ 8.00     |
| Day Ahead Spin schedule (MW)  | 10            | 10          |
|   |               |             |
| Day Ahead energy revenues from CAISO (\$)                             | \$ 900.00     | \$ 1,050.00 |
| Day Ahead spin revenues from CAISO (\$)                               | \$ 50.00      | \$ 80.00    |
|   |               |             |
| Real Time Price \$/ for all intervals of the hour (\$/MWh)            | \$ 50.00      | \$ 25.00    |
| Real Time schedule for all intervals of the hour (MWh)                | 30            | 0           |
| Delivered Energy for Chicago Park(MWh)                                | 0             | 0           |
|   |               |             |
| Instructed Imbalance Energy (MWh): (RT Schedule - DA Schedule)        | 0             | -30         |
| Instructed Imbalance Energy Revenue (Charge) (\$)                     | \$ -          | \$ (750.00) |
| Uninstructed Imbalance Energy (MWh): (Delivered Energy - RT Schedule) | -30           | 0           |
| Uninstructed Imbalance Energy Revenue (Charges) (\$)                  | \$ (1,500.00) | \$ -        |
|   |               |             |
| Ancillary Service Spin No-Pay Charge from CAISO.                      | \$ (50.00)    | \$ (80.00)  |
|   |               |             |
| Revenues from CAISO (Day Ahead & Real Time):                          | \$ 950.00     | \$ 1,130.00 |
| Charges from the CAISO (Day Ahead & Real Time):                       | \$ (1,550.00) | \$ (830.00) |
| Net Profit from CAISO:  | \$ (600.00)   | \$ 300.00   |
|   |               |             |
| Seller owes Buyer (\$)  | \$ 1,550.00   | \$ 830.00   |

**Notes:**

1. Calculation of CAISO revenues and charges are on a per settlement interval basis, and is shown above on an hourly basis only for illustrative purposes.
2. The above example may not capture all possible CAISO charges as a result of a Forced Outage in which Seller may be liable pursuant to Section 4.2.
3. Pursuant to Section 4.2, Seller is liable for all CAISO charges from HE 2 (start of the forced outage) through HE 24 of June 1st (which is not shown as part of the example.) If the Forced Outage was reported after 5:00AM of June 1st, then Seller is liable for CAISO charges from start of outage until the end of June 2nd.

## APPENDIX IV

### PROJECT AND UNIT DESCRIPTIONS INCLUDING DESCRIPTIONS OF EACH UNIT SITE

#### PROJECT DESCRIPTION

The Project: Yuba Bear Project

Total number of Units at the Project prior to Conversation Date (committed to Buyer): **Three**

Total number of Units at the Project on and after the Conversation Date (committed to Buyer): **Four**

#### UNIT DESCRIPTION:

Unit Name: **Chicago Park Powerhouse**

Site: APN: 65-240-35-000

LAT/LONG: 39°10'40.76"N 120°53' 27.46"W

Technology Type: **Large Hydro**

CAISO Global Resource ID: **CHICPK\_7\_UNIT 1**

PNode: **CHIPARK\_7\_B1**

Declared Contract Capacity: **40 MW**

Interconnection Details:

Congestion Zone: NP15

Physical Point of Interconnection: Drum-Higgins 115Kv Line, Disc SW #133

Delivery Point Address: 24199 Lowell Hill Road, Nevada City, CA 95959

Additional Information:

Ramp Rate:

Maximum Operational Ramp Rate: 12.87 MW/min

AGC Ramp Rate (if applicable): None

Ancillary Services (if applicable): **Spin, Non-Spin**

Other Operational Restrictions: Forebay is not to be operated below elevation of 10' or above 16'

Unit Name: **Dutch Flat Powerhouse No. 2**

Site: APN: 65-220-14-000

LAT/LONG: 39°13'01.07"N 120°50'08.03"W

Technology Type: **Hydro (ERR Powerhouse)**

CAISO Global Resource ID: **DUTCH2\_7\_UNIT 1**

PNode: **DTCHFLT2\_7\_B1**

Declared Contract Capacity: **26 MW**

Interconnection Details:

Congestion Zone: NP15

Physical Point of Interconnection: Drum Rio Oso #1, 115Kv Line, Disc SW #123

Delivery Point Address: 33199 Diggins Road, Nevada City, CA 95959

Additional Information:

Ramp Rate:

Maximum Operational Ramp Rate: 3.87 MW/min

AGC Ramp Rate (if applicable): None

Ancillary Services (if applicable): **Spin, Non-Spin**

Other Operational Restrictions: Dutch Flat After-bay isn't to be operated below elevation of 2729' with Dutch Flat Powerhouse No. 2 on line.

Unit Name: **Rollins Powerhouse**

Site: APN: 28-300-04-000

LAT/LONG: 39°8'00.17"N 120°57'54.77"W

Technology Type: **Hydro (ERR Powerhouse)**

CAISO Global Resource ID: **ROLLIN\_6\_UNIT**

PNode: **ROLLINSF\_7\_B1**

Declared Contract Capacity: **13 MW**

Interconnection Details:

Congestion Zone: NP15

Physical Point of Interconnection: Grass Valley 60 Kv Line, Disc SW #73

Delivery Point Address: 15531 Arrowhead Lane, Grass Valley, CA 95945

Additional Information:

Ramp Rate:

Maximum Operational Ramp Rate: 0.1 MW/min

AGC Ramp Rate (if applicable): None

Ancillary Services (if applicable): **None**

Other Operational Restrictions: Load increases that affect the Bear River below the Bear River Canal Diversion (PG&E's) have a ramping rate of "not to exceed a stage of .25' per hour or exceed 1' in six hours as measured at YB-196 located at the Hwy 174 Bridge over the Bear River below Rollins.

Unit Name: **Bowman Powerhouse**

Site: APN: 13-320-10-000

LAT/LONG: 39°26'54.01"N 120°39'12.23"W

Technology Type: **Hydro (ERR Powerhouse)**

CAISO Global Resource ID: **BOWMAN\_6\_UNIT**

PNode: **BOWMAN\_7\_B1**

Declared Contract Capacity: **3.6 MW**

Interconnection Details:

Congestion Zone: NP15

Physical Point of Interconnection:

Drum Spaulding 60 Kv Line, SW 62

LAT/LONG: 39°18'56.11"N 120°39'03.23"W

As delivered by the Bowman Spaulding 60Kv line with SW86 at Bowman PH as separation point from Line

Delivery Point Address:

Additional Information:

Ramp Rate:

Maximum Operational Ramp Rate: 3.6 MW/min

AGC Ramp Rate (if applicable): None

Ancillary Services (if applicable): **None**

Other Operational Restrictions: Unit is block loaded based on downstream water demand.

## APPENDIX V

### NOTIFICATION REQUIREMENTS FOR UNIT CAPACITY AND PROJECT OUTAGES

#### A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, notify the Switching Center.

- Call the Switching Center and advise of the intent to parallel.
- Call the Switching Center after the Unit has been paralleled and report the parallel time and intended Unit output.
- Call the Switching Center after any routine separation.

#### B. SUBMISSION OF PLANNED OUTAGE INFORMATION AND UPDATES

1. Seller shall follow the below instructions for submittal of any request for Planned Outages. PG&E reserves the right to revise or change the procedures described in this Appendix V upon written Notice to Seller.
  - a. For notification of annual Planned Outages, email to DAenergy@pge.com; PGOutageCoordination@pge.com; Bilat\_Settlements@pge.com;
  - b. For monthly updates to previously Noticed Planned Outages, email to DAenergy@pge.com; PGOutageCoordination@pge.com; Bilat\_Settlements@pge.com;
  - c. If Seller has daily updates to Unit availability or previously Noticed Planned Outages and such notification is to be made before the CAISO deadline for submitting Day-Ahead Schedules, call primary phone (415) 973-1971 or backup phone (415) 973-4500. Also send email to Bilat\_Settlements@pge.com. Such notice, if not given by the timelines specified in Section 3.7(b), shall not be deemed an excused Planned Outage that is exempt from an Availability Adjustment unless Buyer grants such an exemption.
  - d. If Seller has hourly updates to Unit availability or previously Noticed Planned Outages and such notification is to be made after the CAISO deadline for submitting Day-Ahead schedules, call PG&E's Real Time Desk at (415) 973-4500 and email to RealTime@pge.com; DAenergy@pge.com; Bilat\_Settlements@pge.com. Such notice, if not given by the timelines specified in Section 3.7(b), shall not be deemed an excused Planned Outage that is exempt from an Availability Adjustment unless Buyer grants such an exemption.
  - e. Please use the following email for submittal of all outages:
    - i. *Email subject Field: Delivery Date Range, Contract Name, Email Purpose (i.e. dd/mm/yyyy through dd/mm/yyyy XYZ Company Project #2 Outage Notification)*

*ii. Email body:*

- 1. Type of Outage: Planned Outage*
- 2. Start Date and Start Time*
- 3. Estimated or Actual End Date and End Time*
- 4. Date and time when reported to PG&E and name(s) of PG&E representative(s) contacted*
- 5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage.*

**C. FORCED OUTAGE REPORTING**

1. Forced Outages – Seller shall notify the Switching Center orally within 10 minutes of awareness of such an event, if such conversation has not occurred between the Parties, or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
  - a. Oral notification shall include time of Forced Outage, cause, current availability and estimated return date and time.
  - b. Seller shall continually inform the Control Center of any updates to the Forced Outage and the status of the Project as soon as information becomes available.
  - c. During the Delivery Term, Seller shall comply with any requests from the Control Center operators or Buyer for additional notification or reporting requirements for Forced Outages.
  - d. Please use the following phone number for reporting Forced Outages:

**Drum Switching Center**  
Phone: 530-389-2115

- e. Following oral notification to the Switching Center, Seller shall send an email notification in the format specified in this section(B)(i)(e) of this Appendix to the following groups: RealTime@pge.com; DAenergy@pge.com; Bilat\_Settlements@pge.com.

## APPENDIX VI

### RESOURCE ADEQUACY

1. Seller and Buyer agree that throughout the Delivery Term the Parties shall take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to enable Buyer to use the RA Capacity to satisfy Buyer's Resource Adequacy Requirements. Such commercially reasonable actions may include, but are not limited to, the following. The Parties agree that this Appendix only supplements the obligations in the Agreement relating to Resource Adequacy and does not override or qualify such obligations in any way.
  - A. Cooperating with and encouraging the regional entity, including the CAISO, if applicable, responsible for Resource Adequacy administration to certify or qualify each Unit's Contract Capacity for Resource Adequacy Requirements purposes. This includes following requirements the CAISO and/or CPUC has established and may establish in the future, including calculation of RA Capacity over all hours required for Resource Adequacy Requirement eligibility, and delivery of the RA Capacity to the Point of Interconnection for each Unit; and
  - B. Negotiating in good faith to make necessary amendments, if any, to this Agreement to conform this Agreement to subsequent clarifications, revisions or decisions of the CPUC or any other entity, including the CAISO, with respect to Resource Adequacy.
2. Seller shall comply with the Resource Adequacy reporting requirements set forth in Section 40 of the CAISO Tariff as may be changed from time to time, including but not limited to the following:
  - A. Taking all actions to register each Unit with the CAISO to ensure that each Unit's Capacity Attributes and/or Contract Capacity is able to be recognized and counted as RA Capacity;
  - B. Coordinating with Buyer on the submission to the CAISO of the Monthly Resource Adequacy Plan, as defined in the CAISO Tariff;
  - C. Complying with the dispatch requirements applicable to each Unit's resource type, as set forth in Section 40 of the CAISO Tariff; and
  - D. Coordinating with Buyer with respect to the applicable reporting requirements, such as submitting Supply Plans to the CAISO.
3. RA Capacity Delivery Point. The delivery point for each Unit, with respect to Buyer's Resource Adequacy Requirements, shall be the Point of Interconnection of each Unit.



**APPENDIX VII**

**NOTICES LIST**

Name: Nevada Irrigation District, a California Irrigation District ("Seller")

All Notices:

Delivery Address:

Street: 1036 West Main St.

City: Grass Valley State: CA, 95945

Mail Address: (if different from above)

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

DUNS:

Federal Tax ID Number:

**Invoices:**

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Outages:**

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Payments:**

Attn: [REDACTED]

Phone: [REDACTED]

Facsimile: [REDACTED]

**Wire Transfer:**

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn:

Name: Pacific Gas and Electric Company, a California corporation

("Buyer" or "PG&E")

All Notices:

Delivery Address:

77 Beale Street, Mail Code N12E

San Francisco, CA 94105-1702

Mail Address:

P.O. Box 770000, Mail Code N12E

San Francisco, CA 94177

Attn: Candice Chan (CWW9@pge.com)

Director, Contract Mgmt & Settlements

Phone: (415) 973-7780

Facsimile: (415) 973-5507

DUNS:

Federal Tax ID Number:

**Invoices & Payments:**

Attn: Azmat Mukhtar (ASM3@pge.com)

Manager, Bilateral Settlements

Phone: (415) 973-4277

Facsimile: (415) 973-2151

**Day Ahead Desk:**

Email: DAEnergy@pge.com

Phone: (415) 973-1971

**Real Time Desk:**

Phone: (415) 973-4500

Email: RealTime@pge.com

**Switching Center (Drum)**

Phone: 530-389-2115

Email: GTSHydroDrumPhOperation@pge.com

**Wire Transfer:**

BNK:

ABA:

ACCT:

**Credit and Collections:**

Attn: Justice Awuku

Phone:  
Facsimile:

Manager, Credit Risk Management  
Phone: (415) 973-4414  
Facsimile: (415) 973-7301

With additional Notices of an Event of Default  
to Contract Manager:

Attn: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

**Contract Manager:**

Attn: Chad Curran (CRCq@pge.com)  
Manager, Contract Management  
Phone: (415) 973-6105  
Facsimile: (415) 972-5507

With additional Notices of an Event of Default to:

PG&E Law Department  
Attn: Renewables Portfolio Standard attorney  
Phone: (415) 973-4377  
Facsimile: (415) 972-5952

**APPENDIX VIII**

**MONTHLY ALLOCATION FACTOR (MAF) TABLE, UNIT ALLOCATION FACTOR (UAF),  
AND CONTRACT YEAR PRICE TABLE**

| <b>Month</b>  | <b>Monthly Allocation Factor</b> |
|---------------|----------------------------------|
| <b>Jan</b>    | 8%                               |
| <b>Feb</b>    | 5%                               |
| <b>Mar</b>    | 4%                               |
| <b>Apr</b>    | 4%                               |
| <b>May</b>    | 4%                               |
| <b>Jun</b>    | 8%                               |
| <b>Jul</b>    | 14%                              |
| <b>Aug</b>    | 15%                              |
| <b>Sep</b>    | 11%                              |
| <b>Oct</b>    | 9%                               |
| <b>Nov</b>    | 9%                               |
| <b>Dec</b>    | 9%                               |
| <b>Totals</b> | <b>100.0%</b>                    |

**Unit Allocation Factor Prior to Conversion Date:**

Chicago Park Powerhouse: 47.50%

Rollins Powerhouse: 25%

Dutch Flat Powerhouse No. 2: 27.50%

**Unit Allocation Factor on and after the Conversion Date:**

Chicago Park Powerhouse: 45%

Rollins Powerhouse: 25%

Dutch Flat Powerhouse No. 2: 25%

Bowman Powerhouse: 5%

**CONTRACT YEAR PRICE**

| Period               | Contract Year | Contract Year Price |
|----------------------|---------------|---------------------|
| 7/1/2013 - 6/30/2014 | 1             | \$ 19,986,837.50    |
| 7/1/2014-6/30/2015   | 2             | \$ 20,286,640.06    |
| 7/1/2015-6/30/2016   | 3             | \$ 20,590,939.66    |
| 7/1/2016-12/31/2016  | 4             | \$ 20,899,803.76    |
| 1/1/2017 - 6/30/2017 | 4             | \$ 22,027,863.46    |
| 7/1/2017-6/30/2018   | 5             | \$ 22,358,281.41    |
| 7/1/2018-6/30/2019   | 6             | \$ 22,693,655.63    |
| 7/1/2019-6/30/2020   | 7             | \$ 23,034,060.47    |
| 7/1/2020-6/30/2021   | 8             | \$ 23,379,571.37    |
| 7/1/2021-6/30/2022   | 9             | \$ 23,730,264.95    |
| 7/1/2022-6/30/2023   | 10            | \$ 24,086,218.92    |
| 7/1/2023-6/30/2024   | 11            | \$ 24,447,512.20    |
| 7/1/2024-6/30/2025   | 12            | \$ 24,814,224.89    |
| 7/1/2025-6/30/2026   | 13            | \$ 25,186,438.26    |
| 7/1/2026-6/30/2027   | 14            | \$ 25,564,234.83    |
| 7/1/2027-6/30/2028   | 15            | \$ 25,947,698.36    |
| 7/1/2028-6/30/2029   | 16            | \$ 26,336,913.83    |
| 7/1/2029-6/30/2030   | 17            | \$ 26,731,967.54    |
| 7/1/2030-6/30/2031   | 18            | \$ 27,132,947.05    |
| 7/1/2031-6/30/2032   | 19            | \$ 27,539,941.26    |
| 7/1/2032-6/30/2033   | 20            | \$ 27,953,040.38    |

\*Contract Year Price is adjusted twice in Contract Year 4 to represent the addition of the Bowman Powerhouse to this Agreement on Conversation Date (1/1/2017). Contract Price Year will be used to calculate a Monthly Payment Amount per Section 4.1(b).

## APPENDIX IX

### CALCULATION OF AVAILABILITY ADJUSTMENT

“Threshold Capacity”: The “Threshold Capacity” of each Unit means the capacity level for that Unit specified below.

“Availability Adjustment” or “AA”: An Availability Adjustment shall be calculated on a monthly basis for each Unit by Seller and shall be subject to audit by Buyer. Each Availability Adjustment shall be determined by month and by Unit pursuant to the following formula and rounded to four decimal places:

$$\text{Availability Adjustment}_{m,u} = [\text{Max}(S, 0)] / (\text{TC}_u * N)$$

where  $S = \sum (\text{TC}_u * H_{i,u} * \text{AM}_{i,u})$ , and summation is from  $i=1$  to  $N$  (the number of hours in month  $m$ )

$H_{i,u}$  is the portion of the hour  $i$  in which a given Unit  $u$  is available at  $\text{MC}_{i,u}$ . For example, if Unit  $u$  is available for only half of hour  $i$  at  $\text{MC}_{i,u}$ , then  $H_{i,u}$  shall equal 0.5.

$\text{TC}_u$  is the Threshold Capacity for Unit  $u$ . The following shall be the Threshold Capacity of each Unit for the duration of the Delivery Term:

Threshold Capacity of Chicago Park Powerhouse = 38 MW  
Threshold Capacity of Dutch Flat Powerhouse No. 2 = 25 MW  
Threshold Capacity of Rollins Powerhouse = 12 MW  
Threshold Capacity of Bowman Powerhouse = 3 MW

$\text{AM}_{i,u}$  is the Availability Multiplier of Unit  $u$  during hour  $i$  or a portion thereof. The “Availability Multiplier” shall be calculated pursuant to the following formula:

$$\text{AM}_{i,u} = 1 - [1 - (\text{Min}(\text{MC}_{i,u}, \text{TC}_u) / \text{TC}_u)] * P_{i,u}$$

$P_{i,u}$  shall be 1.4 in all cases except when any Contract Capacity of a given Unit is unavailable during any hour or portion thereof because of (a) an event of Force Majeure or (b) a Conveyance Failure that is the result of a Force Majeure event.  $P$  shall be 1.0 in such cases of an event of Force Majeure or a Conveyance Failure that is the result of a Force Majeure event.

$\text{MC}_{i,u}$  is the Modified Capacity of Unit  $u$  during hour  $i$  or partial hour thereof. The Modified Capacity for a given Unit shall be the Contract Capacity of that Unit less any capacity (MW) unavailable for dispatch due to (a) any Forced Outage (whether full or partial reduction), (b) any Planned Outage to the extent such Planned Outage exceeds the number of hours allowed in Section 3.7, (c) any failure of Seller to notify Buyer of any outage pursuant to Section 3.7, (d) any event of Force Majeure, or (e) any Conveyance Failure; provided that if any of the foregoing items (a) through (e) occurs at the same time as another such item(s) with respect to a given Unit, then such Unit’s Modified Capacity for that period of simultaneous occurrence shall be calculated using the individual item with the greater or greatest reduction to the Unit’s Contract Capacity.

**Example 1: Calculation of Availability Adjustment(AA) for Dutch Flat Power No. 2 during a Planned Outage event.**

Dutch Flat Powerhouse No. 2 is fully available at 26 MW for hours 1 through 15. There was an approved Planned Outage that was notified within the timeline specified in Section 3.7 that reduced the capacity to 20MW from hours 16 through 24.

**Note:** Planned Outages that comply with Section 3.7 will not affect availability of Unit pursuant to calculation of Modified Capacity.

| Hours        | Dutch Flat Powerhouse No. 2 Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|--------------|--|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 2            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 3            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 4            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 5            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 6            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 7            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 8            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 9            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 10           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 11           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 12           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 13           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 14           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 15           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 16           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 17           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 18           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 19           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 20           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 21           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 22           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 23           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 24           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| S =          |  |   |                         |              |  |                              | 600.00          |
| Max (S, 0) = |  |   |                         |              |  |                              | 600.00          |

\* For illustrative purposes, assume 24 hours in a month.

$$N = 24$$

$$TC * N = 600$$

$$\text{Availability Adjustment (AA)} = 600. / 600 = \boxed{100.00\%}$$

**Example 2A: Calculation of Availability Adjustment(AA) for Chicago Park Powerhouse during Forced Outage.**

Chicago Park Powerhouse is fully available at 40MW for hours 1-10. There was a Forced Outage due to a mechanical equipment failure that reduced the capacity of the Unit to 10MW starting from hour 11 through 20 and half of hour 21. The Unit returned from Outage starting at 21:31 and remained available at 40MW until end of hour 24.

**Note:** Since the Forced Outage only affected half of hour 21, the calculation was adjusted to account for this. The value of P for non-Force Majeure causes has a value of 1.4.

| Hours        | Chicago Park Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|--------------|-------------------------------------|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 2            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 3            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 4            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 5            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 6            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 7            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 8            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 9            | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 10           | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 11           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 12           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 13           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 14           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 15           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 16           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 17           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 18           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 19           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 20           | 10                                  | 1   | 38                      | 10           | 1.4  | -0.05                        | -1.20           |
| 21:00-21:30  | 10                                  | 0.5   | 38                      | 10           | 1.4  | -0.05                        | -0.60           |
| 21:31-21:59  | 40                                  | 0.5   | 38                      | 38           | 1.4  | 1.00                         | 19.00           |
| 22           | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 23           | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 24           | 40                                  | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| S =          |                                     |   |                         |              |  |                              | 500.40          |
| Max (S, 0) = |                                     |   |                         |              |  |                              | 500.40          |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 912 \\
 \text{Availability Adjustment (AA)} &= 500.4 / 912 = \boxed{54.8684\%}
 \end{aligned}$$

**Example 2B: Calculation of Availability Adjustment (AA) for Chicago Park Powerhouse for Force Majeure cause that affected unit availability.**

Chicago Park Powerhouse is fully available at 40MW for hours 1-10. There was a Force Majeure event that reduced the capacity of the Unit to 10MW starting from Hour 11 through 20 and half of hour 21. The Unit returned from Outage starting in 21:31 and remained available at 40MW until the end of hour 24.

**Note:** Since the outage only affected half of hour 21, the calculation was adjusted to account for this. The value of P for Force Majeure reasons has a value of 1.0.

| Hours        | Chicago Park Powerhouse Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|--------------|--|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 2            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 3            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 4            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 5            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 6            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 7            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 8            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 9            | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 10           | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 11           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 12           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 13           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 14           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 15           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 16           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 17           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 18           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 19           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 20           | 10   | 1   | 38                      | 10           | 1.0  | 0.26                         | 10.00           |
| 21:00-21:30  | 10   | 0.5   | 38                      | 10           | 1.0  | 0.26                         | 5.00            |
| 21:31-21:59  | 40   | 0.5   | 38                      | 38           | 1.4  | 1.00                         | 19.00           |
| 22           | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 23           | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| 24           | 40   | 1   | 38                      | 38           | 1.4  | 1.00                         | 38.00           |
| S =          |  |   |                         |              |  |                              | 618.00          |
| Max (S, 0) = |  |   |                         |              |  |                              | 618.00          |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 912 \\
 \text{Availability Adjustment (AA)} &= 618. / 912 = \boxed{67.7632\%}
 \end{aligned}$$



**Example 3: Calculation of Availability Adjustment(AA) for Rollins Powerhouse for a Forced Outage.**

Rollins Powerhouse is fully available at 13 MW for hours 1-5. There was a Forced Outage that reduced the capacity of the Unit to 5 MW for hour 6 and then to 0 MW starting from hour 7-24.

**Note:** The value of P for non-Force Majeure Forced Outages has a value of 1.4.

| Hours      | Rollins Powerhouse Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|------------|---|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1          | 13  | 1   | 12                      | 12           | 1.4  | 1.00                         | 12.00           |
| 2          | 13  | 1   | 12                      | 12           | 1.4  | 1.00                         | 12.00           |
| 3          | 13  | 1   | 12                      | 12           | 1.4  | 1.00                         | 12.00           |
| 4          | 13  | 1   | 12                      | 12           | 1.4  | 1.00                         | 12.00           |
| 5          | 13  | 1   | 12                      | 12           | 1.4  | 1.00                         | 12.00           |
| 6          | 5   | 1   | 12                      | 5            | 1.4  | 0.18                         | 2.20            |
| 7          | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 8          | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 9          | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 10         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 11         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 12         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 13         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 14         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 15         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 16         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 17         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 18         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 19         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 20         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 21         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 22         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 23         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| 24         | 0   | 1   | 12                      | 0            | 1.4  | -0.40                        | -4.80           |
| S =        |   |   |                         |              |  |                              | -24.20          |
| Max (S, 0) |   |   |                         |              |  |                              | 0.00            |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 288 \\
 \text{Availability Adjustment (AA)} &= 0 / 288 = \boxed{0.00\%}
 \end{aligned}$$

**Example 4: Calculation of Availability Adjustment(AA) for Dutch Flat Power No. 2 during a drought condition.**

Dutch Flat Powerhouse No. 2 can only generate 20MW for hours 1 - 24 due to low water availability resulting from a drought condition.

**Note:** Drought or low water availability conditions does not affect availability of Unit pursuant to calculation of Modified Capacity.

| Hours        | Dutch Flat Powerhouse No. 2 Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|--------------|--|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 2            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 3            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 4            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 5            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 6            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 7            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 8            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 9            | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 10           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 11           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 12           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 13           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 14           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 15           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 16           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 17           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 18           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 19           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 20           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 21           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 22           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 23           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| 24           | 26   | 1   | 25                      | 25           | 1.4  | 1.00                         | 25.00           |
| S =          |  |   |                         |              |  |                              | 600.00          |
| Max (S, 0) = |  |   |                         |              |  |                              | 600.00          |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 600 \\
 \text{Availability Adjustment (AA)} &= 600. / 600 = \boxed{100.00\%}
 \end{aligned}$$

**Example 5A: Calculation of Availability Adjustment(AA) for Chicago Park Powerhouse for a Conveyance Failure due to Force Majeure reasons.**

Starting in hour 1, the Chicago Powerhouse experienced a Forced Outage that derated the unit 10MW (ie. available for 30MW); time of return from outage is unknown. There was an earthquake (Force Majeure event) that caused major damage to PG&E's Drum Canal for hours 10 through 24. Pursuant to Appendix XV, the capacity of Chicago Park Powerhouse will be deemed derated 64% of contract capacity during the Conveyance Failure (ie. available for 40MW\*(1-0.64) = 14.4MW). Modified Capacity in hours 10-24 shall be calculated using the lesser of 14.4MW and 30MW.

**Note:** For Forced Outage hours, the value of P has value 1.4. During a Conveyance Failure, the derate to Contract-Capacity pursuant to Appendix XV shall apply. If the Conveyance Failure is due to a Force Majeure reason, then P shall equal 1.

| Hours        | Chicago Park Powerhouse Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |
|--------------|--|---|-------------------------|--------------|--|------------------------------|-----------------|
| 1            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 2            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 3            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 4            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 5            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 6            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 7            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 8            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 9            | 30   | 1   | 38                      | 30           | 1.4  | 0.71                         | 26.80           |
| 10           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 11           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 12           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 13           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 14           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 15           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 16           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 17           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 18           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 19           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 20           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 21           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 22           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 23           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| 24           | 14.4   | 1   | 38                      | 14.4         | 1  | 0.38                         | 14.40           |
| S =          |  |   |                         |              |  |                              | 457.20          |
| Max (S, 0) = |  |   |                         |              |  |                              | 457.20          |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 912 \\
 \text{Availability Adjustment (AA)} &= 457.2 / 912 = \boxed{50.1316\%}
 \end{aligned}$$

**Example 5B: Calculation of Availability Adjustment(AA) for Dutch Flat Powerhouse No. 2 due to a Seller Forced Conveyance Outage.**

Starting in hour 1, The Dutch Flat Flume owned by Seller experienced a Seller Forced Conveyance Outage. Pursuant to Appendix XV, the capacity of Dutch Flat Powerhouse No. 2 will be deemed derated 100% of contract capacity during the Conveyance Failure (ie. 0MW) for the duration of the Seller Forced Conveyance Outage.

**Note:** During a Conveyance Failure the derate to Contract Capacity pursuant to Appendix XV shall apply. If the Conveyance Failure is a Seller Forced Conveyance Outage, then P shall equal 1.4.

| Hours | Dutch Flat No. 2 Powerhouse Modified Capacity (MC) | Fraction of Hour that Unit is available at MC (H) | Threshold Capacity (TC) | Min (MC, TC) | Cause of Adjustment to Contract Capacity (P) | Availability Multiplier (AM) | S = TC x H x AM |         |
|-------|--|---|-------------------------|--------------|--|------------------------------|-----------------|---------|
| 1     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 2     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 3     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 4     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 5     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 6     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 7     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 8     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 9     | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 10    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 11    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 12    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 13    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 14    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 15    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 16    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 17    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 18    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 19    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 20    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 21    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 22    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 23    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
| 24    | 0  | 1   | 25                      | 0            | 1.4  | -0.40                        | -10.00          |         |
|       |  |   |                         |              |  |                              | S =             | -240.00 |
|       |  |   |                         |              |  |                              | Max (S, 0) =    | 0.00    |

\* For illustrative purposes, assume 24 hours in a month.

$$\begin{aligned}
 N &= 24 \\
 TC * N &= 600 \\
 \text{Availability Adjustment (AA)} &= 0 / 600 = \boxed{0.00\%}
 \end{aligned}$$

**Appendix X - Example of Monthly Payment Amount - Section 4.1(b)**

*All values used below are for illustrative purposes only.*

Contract Year Price (Year 2) = \$20,286,640.06 (prior to Availability Adjustment)

UAF (Chicago Park) = 47.5%

UAF (Dutch Flats #2) = 27.5%

UAF (Rollins) = 25%

| Months in Contract Year 2 | MAF     | Monthly Contract Price after MAF Adj. | Availability Adjustment (Chicago Park) | Availability Adjustment (Rollins) | Availability Adjustment (Dutch Flat No. 2) | Monthly Payment Amount (MPA) |
|---------------------------|---------|---------------------------------------|--|-----------------------------------|--|------------------------------|
| Jul                       | 14.00%  | \$ 2,840,129.61                       | 100.00%                                | 100.00%                           | 100.00%                                    | \$ 2,840,129.61              |
| Aug                       | 15.00%  | 3,042,996.01                          | 95.00%                                 | 98.00%                            | 96.00%                                     | 2,922,036.92                 |
| Sept                      | 11.00%  | 2,231,530.41                          | 100.00%                                | 100.00%                           | 100.00%                                    | 2,231,530.41                 |
| Oct                       | 9.00%   | 1,825,797.61                          | 100.00%                                | 100.00%                           | 100.00%                                    | 1,825,797.61                 |
| Nov                       | 9.00%   | 1,825,797.61                          | 100.00%                                | 100.00%                           | 100.00%                                    | 1,825,797.61                 |
| Dec                       | 9.00%   | 1,825,797.61                          | 100.00%                                | 100.00%                           | 100.00%                                    | 1,825,797.61                 |
| Jan                       | 8.00%   | 1,622,931.20                          | 100.00%                                | 100.00%                           | 100.00%                                    | 1,622,931.20                 |
| Feb                       | 5.00%   | 1,014,332.00                          | 100.00%                                | 100.00%                           | 100.00%                                    | 1,014,332.00                 |
| Mar                       | 4.00%   | 811,465.60                            | 100.00%                                | 100.00%                           | 100.00%                                    | 811,465.60                   |
| Apr                       | 4.00%   | 811,465.60                            | 100.00%                                | 100.00%                           | 100.00%                                    | 811,465.60                   |
| May                       | 4.00%   | 811,465.60                            | 98.00%                                 | 98.00%                            | 98.00%                                     | 795,236.29                   |
| Jun                       | 8.00%   | 1,622,931.20                          | 97.00%                                 | 97.00%                            | 94.00%                                     | 1,560,854.09                 |
| Totals                    | 100.00% | \$ 20,286,640.06                      |  |                                   |  | \$ 20,087,374.54             |

Using the yearly data above, the Monthly Payment Amount (for August) is calculated as follows:

$$MPA_m = \sum [ CP_Y * MAF_m * UAF_i * AA_{m,i} ]$$

Where the summation is from  $i=1$  to 3 for all three (3) Units.

$$MPA_{Aug} = (\$20,286,640.06 * 0.15 * 0.475 * 0.95) + (\$20,286,640.06 * 0.15 * 0.25 * 0.98) + (\$20,286,640.06 * 0.15 * 0.275 * 0.96) \\ = \$ 2,922,036.92 \text{ (Payment from Buyer to Seller)}$$

MAF = Monthly Allocation Factor

AA = Availability Adjustment

MPA = Monthly Payment Amount

UAF = Unit Allocation Factor

CP<sub>Y</sub> = Contract Year Price for Contract Year y

## APPENDIX XI

### FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company ("PG&E") and [Company Name] with respect to [Facility Name (the "Facility")] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission's ("Commission") Order No. 697.<sup>1</sup> Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.<sup>2</sup> The Commission further requires that "a seller making such an affirmative statement seek a 'letter of concurrence' from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing."<sup>3</sup>

PG&E and [Company Name] have executed a [power purchase and sale agreement (the "Agreement")] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

\_\_\_\_\_  
[Author]

[Position]

Pacific Gas and Electric Company

#### Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

<sup>1</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

<sup>2</sup> Order No. 697 at P 186.

<sup>3</sup> Order No. 697 at P 187.

By: \_\_\_\_\_  
[Name]  
[Company Position]  
[Company Name]

## APPENDIX XII

### SUPPLIER DIVERSITY PROGRAM

1. Women-, Minority-, and service Disabled Veteran-owned Business Enterprises, as verified pursuant to the procedures prescribed in Section 2 of CPUC General Order 156 (“WMDVBE”), shall have the maximum practicable opportunity to participate in the performance of work supporting Seller’s development of the Project.
2. Upon request from Buyer, Seller shall provide a separate “Supplier Plan” consisting of a specific list of suppliers that may participate in the performance of the work supporting development of the Project, and a statement setting forth any additional efforts Seller will employ to increase the participation of WMDVBE suppliers supporting development of the Project.
3. Upon request from Buyer, but no less than once per 365 day period of time between the execution of the Agreement and the Initial Energy Delivery Date, Seller shall report its spend with WMDVBE owned suppliers using PG&E’s electronic reporting system located at: <https://www.pgesupplierdiversity.com/pge/login.asp>. To establish a user ID, Seller shall submit a request via email to the following address: [supplierdiversityteam@pge.com](mailto:supplierdiversityteam@pge.com).
4. Seller agrees that the obligations established through this Appendix XII are material obligations.



**APPENDIX XIII**

**CERTIFICATION OF THIRD PARTY AGREEMENT**

Pursuant to Section 10.16 of the Power Purchase and Sale Agreement dated \_\_\_\_\_ between Pacific Gas and Electric Company and Nevada Irrigation District ("Seller"), the undersigned representative of Seller hereby delivers this certificate. As required by Section 10.16, the material terms and conditions of Seller's proposed third-party agreement ("Third-Party Agreement") are as follows:

Price (describe any applicable escalation, adjustment and/or other key terms)

Energy Amount (annual), guaranteed and expected

Capacity Amount, guaranteed and expected

Delivery Term

Delivery Point

Form and Amount of Security

Date of Commencement of Delivery Term

Other Material Terms, including performance standards affecting any price or payment terms and events of default

I certify that the above summary is a truthful and accurate summary of all of the material terms and conditions of the Third-Party Agreement. I further certify that the Third-Party Agreement will not provide Seller with more favorable material terms and conditions than those offered in the applicable First Offer to Buyer, as defined in Section 10.16.

NEVADA IRRIGATION DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX XIV

CHANGE IN FERC LICENSE CONDITIONS

Table 1.

|               | Annual Generation<br>(GWh) | 90% of Annual Generation<br>(GWh) |
|---------------|----------------------------|-----------------------------------|
| Project Total | 247.50                     | 222.75                            |

Source: Res-Sim Model run dated Aug 2011, Base Case (scenario L081011A).

**APPENDIX XV**

**UNIT CONTRACT CAPACITY REDUCTION FOR CONVEYANCE FAILURE**

Table 1: In the event of a Conveyance Failure, the following reductions, expressed as a percentage, shall be used to determine the Modified Capacity of each affected Unit pursuant to Appendix IX (“Availability Adjustment Calculation”).

| <b>Owner</b>                  | <b>Conveyance</b>      | <b>Powerhouse</b> | <b>% of reduction to Contract Capacity during Conveyance failure</b> |
|-------------------------------|------------------------|-------------------|--|
| NID - Yuba Bear Project       | Bowman-Spaulding Canal | Dutch Flat 2      | 100%   |
|                               |                        | Chicago Park      | 32%  |
|                               |                        | Rollins           | 38%  |
|                               |                        | Bowman            | 0%   |
| NID - Yuba Bear Project       | Dutch Flat #2 Flume    | Dutch Flat 2      | 100%   |
|                               |                        | Chicago Park      | 0%   |
|                               |                        | Rollins           | 0%   |
|                               |                        | Bowman            | 0%   |
| NID - Yuba Bear Project       | Chicago Park Flume     | Dutch Flat 2      | 0%   |
|                               |                        | Chicago Park      | 100%   |
|                               |                        | Rollins           | 0%   |
|                               |                        | Bowman            | 0%   |
| PG&E - Drum Spaulding Project | Drum Canal             | Dutch Flat 2      | 100%   |
|                               |                        | Chicago Park      | 64%  |
|                               |                        | Rollins           | 54%  |
|                               |                        | Bowman            | 0%   |

Any failure to the conveyances in the Drum-Spaulding Project or Yuba-Bear Project **not** listed in Table 1 above shall have no impact to the Availability Adjustment calculation of the Units pursuant to Appendix IX.

