

02-065

Master Power Purchase & Sale Agreement

ENVIREPEL ENERGY INC.



MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: October 2, 2003 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: Envirepel Energy Inc. ("Party A")

Name: San Diego Gas & Electric Company ("Party B")

All Notices:

All Notices:

Street: PO Box 426

Street: 8315 Century Park Court

City: Bonsall, CA Zip: 92003

City: San Diego, CA Zip: 92123

Attn: Tony Arand
Phone: 760-451-2761
Facsimile: 760-451-2764

Attn: Electric & Gas Procurement, Contract Administration
Phone: (858) 650-6164
Facsimile: (858) 650-6190
Duns: 006911457

Federal Tax ID Number: [REDACTED]

Federal Tax ID Number [REDACTED]

Invoices:

See Above

Invoices:

San Diego Gas & Electric Company
8315 Century Park Ct.
San Diego, California 92123-1593
Attn: Energy Accounting Manager
Phone: (858) 650-6154
Facsimile: (858) 650-6190

Attn: _____
Phone: _____
Facsimile: _____

Scheduling:

See Above

Scheduling:

San Diego Gas & Electric Company
8306 Century Park Ct.
San Diego, California 92123-1593
Attn: Transaction Scheduling Manager
Phone: (858) 650-6182
Facsimile: (858) 650-6191

Attn: _____
Phone: _____
Facsimile: _____

Payments:

See Above

Payments:

San Diego Gas & Electric Company
PO Box 25110
Santa Ana, CA 92799-5110
Attn: Mail Payments
Phone: (619) 696-4521
Facsimile: (619) 696-4899

Attn: _____
Phone: _____
Facsimile: _____

Wire Transfer:

BNK: TBD
for: _____
ABA: Routing # _____
ACCT: # _____
Confirmation: _____

Wire Transfer:

BNK: Union Bank of California
for: San Diego Gas & Electric Company
ABA: Routing [REDACTED]
ACCT: [REDACTED]
Confirmation: SDG&E, Major Markets
FAX:(213) 244-8316

Credit and Collections:

See Above

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

San Diego Gas & Electric Company, Major Markets
555 W. Fifth Street
ML 10E3
Los Angeles, CA 90013-1011
Attn: Major Markets, Credit and Collections Manager
Fax No.: (213) 244-8316
Phone: 1-866-313-6622 (toll-free)

With additional Notices of an Event of Default or Potential
Event of Default to:
See Above

Attn: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of
Default to:

Sempra Energy
101 Ash Street
San Diego, CA 92101
Attn: Assistant General Counsel, Commercial Law
Facsimile: (619) 696-4377

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff N/A

Party B Tariff Tariff FERC

Dated 9/10/99 and accepted 10/25/99

Docket Number 88 FERC P61,212

Article Two

Transaction Terms and Conditions Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

- Cross Default for Party A:
- Party A: Envirepel Energy Inc. Cross Default Amount: None
- Other Entity: Cross Default Amount: None
- Cross Default for Party B:
- Party B: San Diego Gas & Electric Company Cross Default Amount: None
- Other Entity: N/A Cross Default Amount: N/A

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- X Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: Affiliates shall not include those of Party B.
- Option C (No Setoff)

Article 6

Party A and Party B agree to Transaction Netting as described in Article 6.8.

Article 8

8.1 Party A Credit Protection:

Credit and Collateral Requirements

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following: N/A

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- N/A
- Other:
Specify: _____

(e) Guarantor for Party B: None

Guarantee Amount: \$0

8.2 Party B Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify:
- Option C Specify: Party A shall provide Party B with annual consolidated financial statements prepared by a certified accountant using generally accepted accounting practices.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following: N/A

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following: N/A

(e) Guarantor for Party A: None
Guarantee Amount: \$N/A

Article 10

Confidentiality	<input checked="" type="checkbox"/> Confidentiality Applicable	If not checked, inapplicable.
	10.12 RPS Confidentiality	
	<input checked="" type="checkbox"/> Option A: release immediately	If not checked, inapplicable
	<input type="checkbox"/> Option B: 6 months delay	If not checked, inapplicable

Schedule M – Not Applicable

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

Other Changes

Specify, if any: Yes, the following changes shall be applicable:

Part 1. GENERAL TERMS AND CONDITIONS.

(a) **Definitions.** The following definitions are amended as set forth below:

(1) Section 1.23 “Force Majeure” shall be deleted in its entirety and replaced with the following:

“**Force Majeure**” means any cause or event beyond the reasonable control of the affected Party which was not anticipated as of the date of the Transaction and not due to the fault or negligence of the Party affected, and which could not have been avoided by due diligence and use of reasonable efforts, including but not limited to (but only to the extent that the following examples satisfy such definition): (a) acts of God such as extreme weather conditions, droughts, floods, earthquakes, (b) fires, explosions, accidents that could not have been prevented by acting in accordance with Good Utility Practice, (c) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades, embargoes, industry-wide strikes, and (d) changes in governmental approvals or the conditions imposed thereunder or the failure to renew such governmental approvals not due to the failure of the affected Party to timely submit applications. Notwithstanding anything to the contrary in the foregoing, the following shall not constitute Force Majeure: (a) lack of finances, or (b) mechanical breakdown or electrical breakdown or failure of any machinery or equipment of all or part of the Facility due to operation or maintenance of such machinery or equipment in a manner that is inconsistent with Good Utility Practice. [Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a transmission provider unless (a) such Party has contracted for firm transmission with a transmission provider for the Energy to be delivered to or received at the Delivery Point and (b) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the transmission provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.]

(2) Section 1.27 shall be modified by adding the words “and substantially in the same form as the Letter of Credit template attached hereto as “Exhibit E” at the end of the first sentence.

(3) Section 1.45 shall be modified by including the words “acceptable to the requesting party” after the words “Letter(s) of Credit”.

(4) Section 1.51 is amended by replacing the current definition with the following:

“Replacement Price’ means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point (or, if replacement power is not available at the Delivery Point, any other delivery point where Buyer is able to purchase replacement product) a replacement for any Product that includes its associated RECs and meets the requirements of Section 10.2(ix) but was not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner. The Replacement Price also shall include all charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the scheduled supply resulting from Seller’s failure to deliver; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point. If for any reason a Replacement Price is unavailable at the Delivery Point during a Transaction when Seller fails to deliver Product (“Missing Hours”), then the Replacement Price for Missing Hours shall be the last available Replacement Price prior to the Missing Hours together with any charges and penalties allocated to Buyer for the Missing Hours.”

- (5) Section 1.53 is amended by replacing the current definition with the following:

“Sales Price’ means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or absent a sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner. The Sales Price also shall include all charges and penalties calculated in dollars per megawatt hour with respect to the deviation from the scheduled supply resulting from Buyer’s failure to take Product; provided, however, in no event shall such price include any ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.”

- (6) Section 1.62 is added as follows:

“CAISO” is the California Independent System Operator, or its successor in interest.

- (7) Section 1.63 is added as follows:

"CAISO Schedule Adjustment" means a schedule change implemented by the CAISO that is neither caused by nor within the control of either Party and that results in the CAISO applying Replacement Pricing to all or part of the Contract Quantity.

- (8) Section 1.64 is added as follows:

“ISO Protocol” means the rules protocols, procedures and standards attached to the ISO Tariff as Appendix L, promulgated by the ISO (as amended from time to time).

- (9) Section 1.65 is added as follows:

“ISO Tariff” means the CAISO Operating Agreement and Tariff, as it may be modified from time to time.

- (10) Section 1.66 is added as follows:

“Annual Delivery Period” means all hours within all days for twelve (12) subsequent months following the declared Commercial Operation Date.

- (b) **Transmission and Scheduling.** Section 3.2, “Transmission and Scheduling” shall be amended by renaming it “Transmission, Scheduling and Imbalance Charges” and inserting the following sentences at the end thereof:

"Buyer shall be the designated Scheduling Coordinator (as defined in the CAISO Tariff) for the Facility and shall be responsible for (a) scheduling the forecast of Output to the Delivery Point during the Delivery Period, (b) submitting schedules and any updates to such schedules to the CAISO based on the most current forecast of Output consistent with all scheduling protocols of the CAISO, and (c) arranging for all services beyond the Energy Delivery Point including, but not limited to, all transmission services, ancillary services, and any control area services.

In addition to the remedies provided under Article 4, Buyer shall assume all liability and reimburse Seller for any Penalties incurred as a result of Buyer's failure to (i) properly schedule Energy with CAISO or (ii) abide by a transmitting utility's tariff and scheduling policies. Seller shall assume all liability and reimburse Buyer for any Penalties incurred as a result of Seller's failure to (i) comply with a valid schedule or (ii) abide by the ISO Tariff and Protocols. The Parties shall promptly notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate to eliminate imbalances and minimize Penalties to the extent possible. Such notice shall not impact responsibility for payment of Penalties under this Agreement. "Penalties" shall be defined as any fees, liabilities, assessments, imbalances or similar charges assessed by the ISO.

(c) **Force Majeure. Add the following at the end of Section 3.3:**

"This Agreement may be terminated by the non-Claiming party with no further obligation to either party if a Force Majeure event prevents the performance of a material portion of the obligations hereunder and such Force Majeure is not resolved within six (6) months after the notice given above."

(d) **Events of Default.**

Section 5.1(c) is amended by deleting the reference to three (3) Business Days and replacing it with thirty (30) Business Days."

Section 5.1 is amended by adding the following new subsection 5.1(i): "A Letter of Credit Default has occurred in accordance with Section 8.3 and such default is not remedied within three (3) Business Days after written notice."

(e) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** Section 5.2 is amended to delete the following phrase from the last two lines: "under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable".

(f) **Declaration of an Early Termination Date and Calculation of Settlement Amount.** The following shall be added to the end of Section 5.2: "under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by 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. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under the Transactions under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this agreement and all associated transactions shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(g) **Notice of Payment of Termination Payment.** The following shall be added to the end of Section 5.4:

"Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this

Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."

(h) **Suspension of Performance.** Section 5.7 is amended by deleting the phrase "ten (10) NERC Business Days" and replacing it with "five (5) NERC Business Days."

(i) **Payment and Netting.**

(1) Section 6.2 shall be replaced by the following:

6.2 **Timeliness of Payment.** Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions thirty (30) days after receipt of the invoice or, if such day is not a Business Day, then on the next 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 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. Seller shall submit a monthly invoice via fax and email during the Delivery Period. Buyer has 30 days to pay the invoice. Invoice shall be itemized, identifying all component charges and unit prices. Invoice shall display a running tab of dispatch-down or dispatch-up hours, identify the capacity and energy scheduled and delivered during all hours of the month. The invoice shall describe in reasonable detail the calculations used to arrive at invoiced amounts.

(j) Section 8.3 Grant of Security Interest/Remedies is amended by replacing the first sentence in such section with the following:

"To secure its obligations under this Agreement, Seller agrees to deliver to Buyer (the "Secured Party") on or before January 1, 2004, a Letter of Credit in the amount of US\$300,000 ("Construction Phase Letter of Credit") which shall remain in effect until a Letter of Credit in the amount of US\$5,000,000 is delivered to Buyer and which \$5,000,000 Letter of Credit shall remain in full force and effect through the date which occurs ninety (90) days after the end of the Delivery Period ("Delivery Period Letter of Credit").

Project Fee/Construction Phase Letter of Credit. Buyer shall have the right to draw upon the entire amount of the Construction Phase Letter of Credit, \$300,000, as a project fee if (a) the COD has not yet occurred and (b) Buyer declares an Event of Default. \$300,000, along with any amounts payable to SDG&E with respect to engineering, planning, studying and constructing interconnection facilities and amounts due under Section 8.3(C), shall be Buyer's sole compensation in respect of any Events of Default unless and until the Commercial Operation Date has occurred but shall not limit Buyer's right to damages on or after the Commercial Operation Date.

The Delivery Period Letter of Credit. The amount of the Delivery Period Letter of Credit is not intended to be and shall not be deemed a limitation of Seller's liability on or after the Commercial Operation Date.

All Letters of Credit shall be subject to the following provisions:

(A) The Seller shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and in accordance with this Agreement, (ii) if the issuer has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit at least sixty (60) days prior to the expiration of the outstanding Letter of Credit, and (iii) if an issuer of a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party a substitute Letter of Credit, that is issued by an alternate issuer acceptable to the Secured Party within one (1) Business Day after the Seller receives notice of such refusal.

(B) "Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (iv) Seller shall fail to meet the requirements of this Section 8.3 after the applicable cure periods, if any.

(C) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees, including reasonably allocated costs of in-house counsel of the Secured Party) of enforcing, establishing, renewing, substituting, canceling, increasing and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Seller."

- (k) **Representations and Warranties.** Section 10.2(vi) is amended to delete the phrase "or any of its Affiliates". Section 10.2(ix) is deleted in its entirety and replaced with the following: "The Seller represents and warrants that during the Delivery Period (i) the Energy qualifies as an 'Eligible Renewable Energy Resource,' as defined in Section 399,12(a) of the California Public Utilities Code, and (ii) the Energy will qualify under the requirements of the California Renewable Portfolio Standard."
- (l) **Assignment.** Article 10.5 shall be amended by deleting subsections (ii) and (iii).
- (m) **Governing Law/Venue.** The first sentence of Article 10.6 shall be replaced with the following: **"THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF CALIFORNIA (NOTWITHSTANDING OTHERWISE APPLICABLE CONFLICTS OF LAW PRINCIPLES). THE PARTIES HEREBY CONSENT TO CONDUCT ALL DISPUTE RESOLUTION, JUDICIAL ACTIONS OR PROCEEDINGS ARISING DIRECTLY, INDIRECTLY OR OTHERWISE IN CONJUNCTION WITH, OUT OF, RELATED TO OR ARISING FROM THIS AGREEMENT IN THE CITY OF SAN DIEGO, CALIFORNIA."**
- (n) **Forward Contract.** Section 10.10 shall be deleted in its entirety.
- (o) **RPS Confidentiality.** Add a new section to Article 10 as follows:
10.12 RPS Confidentiality. In compliance with reporting requirements of the California Renewable Portfolio Standard and notwithstanding Article 10.11, the Buyer may disclose limited contract information to the California Public Utility Commission. The information to be reported to the Commission will be limited to: Seller name, resource type, project location, project capacity, contract duration. If Option B is checked on the cover sheet, Seller may delay the release of aforementioned contract information by six months after the date of CPUC Approval of the contract.
- (p) **Dispute Resolution.** Add a new section to Article 10 as follows:
10.13 Dispute Resolution.
(a) If a dispute shall arise between the Parties relating to the interpretation of this Agreement or to performance of any Transaction under it, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.
(b) The Parties shall attempt to resolve any dispute within 30 calendar days after delivery of the written notice referred to above. Any disputes not so resolved shall be referred by each Party to an officer (or the officer's designee) for resolution. If the Parties fail to reach an agreement within 30 days after such referral, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by law.
(c) The existence of any dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of themselves relieve or excuse either Party from its ongoing duties and obligations under this Agreement.
- (q) **Change in Rates.** Add a new section to Article 10 as follows:
"10.14 Changes in Rates. Each Party expressly retains all of its rights under Section 206 of the Federal Power Act. The standard of review for any Section 206 filing shall be the "just and reasonable" standard of review for any such filing. Each Party expressly retains its rights to protest or otherwise challenge any such filing."

Part 2. SCHEDULE P

The following definition is hereby added to Schedule P:

"Commercial Operation" means, with respect to the Facility, (a) all portions of the Facility have been substantially completed in accordance with the EPC Contract (except for customary punch list items) and can be used safely for their intended purposes in accordance with all applicable laws and governmental approvals then in effect, (b) the Facility is in compliance with all applicable laws and governmental approvals for the purposes of operation thereof, (c) the Facility shall have successfully passed all Capacity Tests and complete test reports have been submitted to Buyer for its review and approval, (d) the Facility shall have successfully passed all tests required under applicable laws and governmental approvals,

and complete test reports have been submitted to Buyer for its review and approval, (e) Seller shall have delivered to Buyer, a manufacturer's commissioning certificate certifying that such item of major equipment supplied by it has been designed and installed in accordance with the applicable manufacturer's specifications and thus qualifies for all applicable warranties (f) Buyer shall have delivered to Seller a Delivery Period Letter of Credit in accordance with Section 8.3 and (g) Buyer shall have confirmed that the Facility has satisfied all of the foregoing requirements; provided, however, that such confirmation or a written rejection must be made within fourteen (14) days after receipt of complete test reports from Seller required pursuant to clauses (c) , (d) and (e) above. A written rejection shall be a rejection of Commercial Operation and Seller may be required to retest.

"Commercial Operation Date" with respect to the Facility means the date on which Commercial Operation is achieved.

"Good Utility Practice" means any practices, methods and acts (i) required by the National Electric Safety Code or NERC, whether or not Seller is a member thereof, or (ii) otherwise engaged in or approved by a significant portion of the utility electric generation industry during the relevant time period or any of the practices, methods and acts that in the exercise of commercially reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

"Renewable Energy Credit" –means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable from the facility (the "Environmental Attributes"). Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (3) the reporting rights such as Green Tag Reporting Rights to these avoided emissions. 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 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 kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of Energy. Environmental Attributes do not include any Energy, Capacity, reliability or other power attributes from the project nor production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of the Facility.

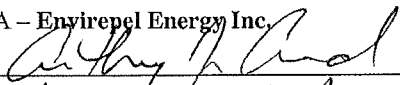
The following definitions shall replace the "Unit Firm" definition within Schedule P.

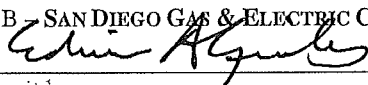
"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused:

1. during Force Majeure;
2. if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) and such Forced Outage is not the result of Seller's negligence or willful misconduct;
3. by scheduled maintenance outages of the specified units; or
4. by Buyer's failure to perform.

In any of such events, Party A shall not be liable to Party B for any damages, including any amounts determined pursuant to Article Four of the Master Agreement.

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

Party A – Envirepel Energy Inc.
By: 
Name: ANTHONY J. ARAND
Title: PRESIDENT

Party B – SANDIEGO GAS & ELECTRIC COMPANY
By: 
Name: Ed Guiles
Title: Chairman and CEO
San Diego Gas and Electric

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

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

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, 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 entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

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

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

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

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller’s supply; or (iv) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission

Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "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 a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "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 termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

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

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where

under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon

proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the

controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and 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. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from

the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its

terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the “Non-Defaulting Party”) shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date (“Early Termination Date”) to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a “Terminated Transaction”) between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the “Termination Payment”) payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. 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 amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the 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. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 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 of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into

account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES

AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

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

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

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party

B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

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

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

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

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet,

Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

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

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

Option C: Party B may request from Party A the information specified in the Cover Sheet.

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

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted

with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

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

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

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of

the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master 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 government authority ("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, 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 legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) 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 Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make

or take delivery of all Products referred to in the Transaction to which it is a Party;

- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

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

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

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

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. 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 herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. 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. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

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

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases

such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and

Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to affect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A: CONFIRMATION LETTER

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated October 2, 2003 (the "Master Agreement") between Party A ("Seller") and Party B ("Buyer"), and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

Seller: Envirepel Energy Inc.

Buyer: San Diego Gas & Electric Co.

RECITALS

WHEREAS, on May 16, 2003, Buyer issued a Request for Proposals for Grid Reliability Capacity (the "RFP");

WHEREAS, in response to the RFP, Seller submitted a proposal to Buyer to develop, permit, finance, construct, operate, and maintain the electrical generating facility and all auxiliary facilities as further described in Paragraph 5.0 (the "Facility");

WHEREAS, Buyer selected Seller's proposal as a qualifying proposal, and Buyer and Seller desire to enter into this Agreement to set forth the terms and conditions for the purchase and sale of Contract Capacity and Energy from the Facility;

WHEREAS, Seller desires to sell the Firm Contract Capacity and Unit Firm Product produced from and provided by, the Facility pursuant to the terms of this Agreement;

WHEREAS, Buyer has determined that it needs the ability to dispatch the Facility under the terms and conditions of this Agreement to have Seller provide Firm Contract Capacity and Energy to serve its load and, if required from time to time, to the CAISO Controlled Grid when required by Buyer to ensure the reliability of the CAISO Controlled Grid and to be included in the CAISO determination of Buyer's Reliability Must Run obligations; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Confirmation, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

- 1.0 Effectiveness of Confirmation Letter - The obligation of Buyer to purchase Contract Capacity and Energy under this Agreement is expressly conditioned upon satisfaction of each of the following:
 - a. CPUC Approval. Buyer shall have received a final, non-appealable order from the CPUC (i) approving the terms and conditions of this Agreement without material alteration of the commercial aspects described herein in form and substance acceptable to Buyer in its sole discretion, (ii) allowing Buyer full rate recovery of the costs associated under this Agreement through any existing or

future cost recovery mechanism that may be developed or instituted by the CPUC, in form and substance acceptable to Buyer in its sole discretion, (iii) a finding by the CPUC that the payments under this Agreement are just and reasonable, and (iv) a finding by the CPUC that this Agreement complies with California state's RPS requirements and the energy delivered will count toward Buyer's annual procurement target. The Parties agree to cooperate and use all reasonable efforts to obtain the CPUC order as soon as is practicable. Should the CPUC issue a decision approving this Agreement with conditions or modifications that materially alter the commercial aspects of this Agreement, the Parties shall have ten (10) Business Days from the mailing date of such decision to provide the other Party written notice of the issuing Party's acceptance or rejection of the CPUC conditions or modifications; provided however, if a Party fails to provide written notification of its acceptance or rejection to the other Party within such ten (10) day period, that Party's silence shall be deemed to constitute acceptance of the condition or modification and agreement by such Party, effective as of the CPUC Approval Date. If a notice of rejection is sent, the parties agree to use good faith efforts to renegotiate the agreement. For purposes of this Agreement, the CPUC Approval Date shall be defined as the first Business Day after the date on which the CPUC issues a final, non-appealable order approving this Agreement.

- b. System Impact Study. Within 10 days of Buyer notifying Seller of the results of the System Impact Study, each of Buyer and Seller shall have approved their respective costs to be allocated to such Party for any required transmission network upgrades and Electrical Interconnection Facilities reasonably necessary to enable the cost-effective and reliable delivery of Energy from the Facility to load; provided that Seller shall be responsible for all costs related to upgrades to transmission/distribution facilities and construction of the Electrical Interconnection Facilities required to interconnect the Facility to the SDG&E Grid, as is consistent with FERC's orders and rulemakings. If the parties are unable to agree on the costs, either Party shall have the right, upon ten (10) Business Days written notice after Buyer notifies Seller of the System Impact Study results, to terminate this Agreement.

2.0 Product: (Check One)

- Firm
- Peaking
- Unit-Firm Capacity and Energy (Including Product A and Product B)

2.1 Product A – All Capacity and associated Energy up to an hourly average of the Net Rated Output Capacity. The Net Rated Output Capacity shall never be above the Product quantity stated in the table in Paragraph 3.0.

2.2 Product B – All Energy that is scheduled and metered in excess of Product A.

3.0 Delivery Period/Contract Quantity/Term. The Term of this Agreement shall be 15 years

from the Commercial Operation Date. The expected capacity amounts are shown below.

Phase	COD	End	Quantity (Net Output)	
			Product A	Product B
I	June 1, 2006	15 years from COD	40MW	All output greater than Product A up to 45 MW

4.0 Peak Hours. For purposes of this Agreement, Peak Hours shall be defined as follows and may be amended by Buyer from time to time:

- a. Summer Months: During the months of May, June, July, August, and September, peak hours are from 10a.m. PPT to 6p.m. PPT.
- b. Winter Months. During the months of January, February, March, April, October, November and December, peak hours are from 1p.m. PPT to 9p.m. PPT.

5.0 Facility. The Product subject to this Agreement will be supplied from the following generation asset:

Facility Name: Envirepel Unit 1
 Site Name: Fallbrook
 Facility Physical Address: Pala Rd., Fallbrook, CA
 Technology Type: Renewable
 Specific Unit Description: Biomass Fueled 60 MW gross generating facility consisting of 6 ten-MW Steam Turbine Generator sets.

6.0 Interconnection. The point of interconnection is described as follows:

Distribution Area: SDG&E
 Congestion Zone: SP15
 Demand Zone: SDG1
 Load Group: SDSD
 Delivery Point: High side of the 69 kV transformer at the Envirepel Metering Substation
 Delivery Point Address: Envirepel Metering Substation
 Additional Information: None

7.0 Exclusivity. At no time shall the Seller sell or otherwise dispose of Energy generated

from the Facility to any third party. Seller may self-serve load.

- a. Option to Purchase. If at any time during the Contract Term additional Capacity and Energy from the Facility is planned or becomes available, Buyer may, in its sole discretion agree in writing to purchase such additional Energy or Capacity at the Contract Price. Neither Seller, nor its current or future affiliates, shall have the right to sell additional Energy or Capacity from the Facility to a third party, unless mutually agreed to by the parties
- b. Right of First Refusal. If at any time during the Contract Term Seller or any current, future affiliates or co-ventures develop additional renewable generation anywhere within California, Buyer shall have the right of first refusal to purchase Capacity and Energy from the new facility at prices and equivalent terms offered to or by third parties.
- c. Should Buyer not exercise its option rights under the Right of First Refusal above within sixty (60) days of such notice, Seller shall have the right to sell any associated energy and capacity to a third party.

8.0 Contract Price. The contract price shall be the sum of the Capacity and Energy Price shown in the pricing tables below. Any Energy Delivered above 45 MW shall be at no Energy or Capacity cost to Buyer, except that if Buyer requests Energy in excess of 45 MW and Seller can deliver such energy, Buyer shall pay the Product B Energy Price for Energy Delivered in accordance with Buyer's schedule request.

8.1 Capacity Pricing. The Summer and Winter months and capacity pricing allocations are set forth below. Buyer, at its sole discretion, may revise the Summer and Winter months and pricing allocations by providing notice to Seller 60 days before the beginning of the Calendar year in which the revisions are effective. If COD occurs mid-month, the capacity pricing shall be pro-rated for the first and last months of the Term.

Season	Month	Product A	Product B
		Monthly Capacity Price (\$/KW)	Monthly Capacity Price (\$/KW)
Winter	Jan	4.29	N/A
	Feb	4.29	N/A
	Mar	4.29	N/A
	Apr	4.29	N/A
Summer	May	18.00	N/A
	Jun	18.00	N/A
	Jul	18.00	N/A
	Aug	18.00	N/A
	Sep	18.00	N/A

Winter	Oct	4.29	N/A
	Nov	4.29	N/A
	Dec	4.29	N/A
Annual Capacity Payment		120.03	N/A

8.2 Energy Pricing.

Phase	Product A Firm Energy (\$/MWH)	Product B Firm Energy (\$/MWH)
I	35.60	The lesser of \$25/MWH or Market Price

For purposes of this Agreement, Market Price shall be defined as the CAISO SP-15 Ex Post price or a successor CAISO pricing mechanism. If the CAISO SP-15 Ex Post price or successor pricing is unavailable, both parties shall accept a mutually agreeable market pricing mechanism.

- a. Alternate Energy Price. For 800 non-Summer Peak Hours per year, Buyer may purchase, from time to time, Product A Energy at the lesser of Product A Firm Energy Price or the Market Price. Buyer shall exercise this option by notifying Seller no later than one (1) day in advance of the affected hours.

8.3 Energy Payment. Energy payment shall be only for actual Energy scheduled by Buyer, delivered by the Seller and received by the Buyer at the Delivery Point. The energy payment shall be calculated as follows:

$$\text{Energy Payment} = \sum_1^H (\text{Metered Output}_A \times \text{Energy Price}_A) + (\text{Metered Output}_B \times \text{Energy Price}_B)$$

where:

Metered Output_A = Hourly Average MWH metered in each hour up to Product A scheduled quantity;

Energy Price_A = Product A Energy Price;

Metered output_B = Hourly Average MWH metered above Product A scheduled quantity;

Energy Price_B = Product B Energy Price;

H = Hours in the Month

- a. Imbalances. Reconciliations of CAISO uninstructed Energy and any associated penalties, credits, and debits shall be handled in accordance with the Cover Sheet.

8.4 Capacity Payment. Capacity payments, shall be calculated as follows:

$$\text{Monthly Capacity Payment} = \left(\frac{\text{Net Rated Output Capacity}}{\text{Output Capacity}} \right) \times \left(\frac{\text{Monthly Capacity Price}}{\text{Capacity Price}} \right) \times \left(\frac{\text{Availability Adjustment Factor}}{\text{Adjustment Factor}} \right)$$

- a. Availability Adjustment Factor. The Availability Factor is measure of the Facility's performance and shall in no event exceed 1.0. The factor shall be calculated as follows:

$$\text{Availability Adjustment Factor} = \frac{\sum_{1}^{H_T} (\text{Metered Output}_A + \text{MWH}_{\text{excused}})}{\text{Net Rated Output Capacity}} \times H_T$$

where:

MWH excused = MWH not delivered up to rated capacity but excused by Force Majeure or Buyer action

Net Rated Output Capacity= Facility's output capability following a Capacity Test.

H_T = Total scheduled hours plus hours Facility on Scheduled Maintenance plus hours Facility on Forced Outage.

If the Availability Adjustment Factor is less than .70, the Monthly Capacity Payment shall be zero (\$0.00).

- 8.5 Seller's invoice shall show the total amount due discounted by 2% if payment is made within 10 days of Buyer's receipt of the invoice.
- 8.6 Additional Event of Default. It shall be an additional Event of Default if (i) the Availability Adjustment Factor is less than 95% for three (3) consecutive months, (ii) if the Availability Adjustment Factor is less than 85% over any consecutive twelve (12) month period, or (iii) Net Rated Output Capacity falls below 32 MW. In no event shall the Seller have the right to procure Energy from sources other than the Facility for sale and delivery pursuant to this Agreement.
- 9.0 Renewable Energy Credits (REC's). All rights and interests in REC's associated with the Facility shall be the property of the Buyer. Seller shall transfer all REC's to Buyer at no additional cost and in its entirety without unbundling of any component attributes.
- 10.0 Project Schedule. The Project Milestones are the following:

<u>Milestone</u>	<u>Milestone Date</u>
<p>Financial Closing</p> <p>Deliver to Buyer satisfactory evidence that the following has occurred: (a) binding commitments to provide the financing for the estimated cost to complete construction of the Facility are issued by the financing parties and are effective, (b) conditions on initial borrowings under such commitments are satisfied, and (c) amounts become available for initial borrowing from the financing parties for the construction of the Facility.</p>	<p>Within 30 days of the date on which all of the conditions precedent set forth in Section 1.0 of the Confirmation Letter are either satisfied or waived</p>
<p>Land Rights</p> <p>Deliver to Buyer documentation in form and substance acceptable to Buyer evidencing Seller's good and marketable title in fee simple to the Facility site free and clear of all liens and encumbrances except for customary exceptions which are acceptable to Buyer in its sole judgment or a valid leasehold interest in the Facility site for the duration of the Term of this Agreement. Any lease of the Facility site shall be subject to the prior review and approval of Buyer, which approval may not be unreasonably withheld or delayed.</p>	<p>April 1, 2004</p>
<p>Submit and pay for Interconnection Application to CAISO</p>	<p>Within 15 days after Effective Date.</p>

<p>Comply with all CAISO timelines with respect to CAISO Tariffs and interconnection requirements.</p>	<p>Within 30 days after completion of the System Impact Study</p>
<p>Certification as a Renewable Facility</p> <p>Provide certification, in form and substance acceptable to Buyer, that the Facility meets the requirements of Section 10.2 (ix) of the Cover Sheet.</p>	<p>January 1, 2004</p>
<p>EPC Contract, Overall Project Schedule, Construction Schedule</p> <p>To evidence Seller's ability to achieve the Commercial Operation Date.</p>	<p>June 1, 2004</p>
<p>Fuel Procurement Plan</p> <p>Include copies of any commitment letters from fuel suppliers, transporters and/or providers of other fuel services, such that the Buyer can verify the dependability of the Facility's fuel supply.</p>	<p>June 1, 2004</p>
<p>Completion of Design</p>	<p>June 1, 2004</p>
<p>Material Air Permits</p>	<p>90 days prior to Capacity Testing</p>

Executed Participating Generator Agreement with CAISO.	90 days prior to Capacity Testing
Executed Meter Service Agreement with CAISO.	90 days prior to Capacity Testing
Electric Wholesale Generator or Qualifying Facility Certification	June 1, 2004
Submit Testing Plan	60 days prior to Capacity Testing
Site Preparation	June 1, 2004
Submit Manufacturer Commissioning Certificate	One month prior to Capacity Testing
Commercial Operation Date	No later than June 1, 2006

10.1 Buyer's Right to Monitor. Buyer may exercise its due diligence responsibilities via the following:

- a. Buyer shall have the right to review Facility design drawings and documents.
- b. Within seven (7) days after the close of each calendar quarter until the Commercial Operation Date, Seller shall provide Quarterly Progress Reports similar in form and content of Exhibit E: Quarterly Progress Reports to the Buyer. Regularly scheduled meetings shall be held between Seller and Buyer for the purpose of reviewing Quarterly Progress Reports and Seller's construction progress.
- c. Buyer may inspect the Project's construction site or on-site Seller data and information pertaining to the Project during business hours upon reasonable notice.

10.2 Milestone Completion Notice. No later than seven (7) days upon completion of each milestone, Seller shall submit written notice to inform Buyer of milestone completion. Seller must provide accompanying documentation (photos, certificates, etc...) sufficient to demonstrate evidence of milestone completion.

10.3 Project Delays.

- a. Missed Milestones. If Seller misses two or more consecutive milestones or misses any one by more than 90 days except as a result of Force

Majeure, Seller shall submit to Buyer, within ten (10) days of such missed milestone date, a Remedial Action Plan.

- b. Missed COD. If a COD is not met, Exhibit F: Late COD Pricing Concession shall apply to the Contract Price. Seller shall also submit a Remedial Action Plan within ten (10) days of a missed COD.
- c. Further Missed COD. If Paragraph 10.3b and Paragraph 10.3d is satisfied but the COD is not achieved within 90 days of June 1, 2006 for reasons not attributable to Force Majeure or if COD is not achieved within 180 days of June 1, 2006 for any reason, then Buyer shall have the right in its sole discretion to declare an Event of Default.
- d. Remedial Action Plan. For purposes of Paragraph 10.3a and Paragraph 10.3b, at a minimum, a Remedial Action Plan shall set forth a detailed description of Seller's course of action and plan to achieve all milestones and COD. Seller shall obtain approval from Buyer with respect to remedial efforts detailed in Seller's Remedial Action Plan; provided however that such approval or withholding of approval shall not relieve Seller of its obligation to meet any subsequent milestones and COD. Buyer at its sole discretion may reject the RAP and declare an Event of Default.

11.0 Capacity Testing. The initial Capacity Demonstration Test will consist of Seller operating the Plant at a capacity factor of 100% for fourteen (14) consecutive days. The first year capacity factor shall be the ratio of the sum of average hourly Energy Delivered for two (2) weeks divided by 13440 MWh (24 hours x 14 days x 40 MW). Energy Delivered shall exclude any Energy greater than 40 MW average in each hour. Upon successful completion of the Capacity Demonstration Test Seller shall notify Buyer at least 7 business days in advance that it has reached Commercial Operation. No later than sixty (60) days prior to Capacity Testing, Seller shall provide Buyer with complete Capacity Testing plan and schedule for the facility. The plan shall describe in detail the testing standard(s) to be used applicable to the technology of the Facility, justification for the adopted testing standards, conditions under which testing shall take place and testing procedures.

11.1 Net Rated Output Capacity. If the Net Rated Output Capacity for the first year of the contract is less than 35MW, Buyer shall have the right, but not the obligation to declare an Event of Default. For subsequent contract years, Buyer shall trigger an Annual Capacity Test to determine each year's Net Rated Output Capacity by scheduling Deliveries from the facility for two consecutive weeks. Buyer shall provide Seller two (2) weeks notice of the Annual Capacity Test. For the second year and thereafter the Net Rated Output Capacity shall be the ratio of the sum of average hourly Energy Delivered for two (2) weeks divided by the 336 hours (24 hours x 14 days). Energy Delivered shall exclude any energy greater than 40 MW average in

each hour. The resulting Net Rated Output Capacity shall remain in effect until the next Annual Capacity Test.

- 11.2 Buyer's Right to Witness. Buyer reserves the right to send one (1) or more representative(s) to witness all capacity tests.
- 11.3 Test Report. No later than fourteen (14) days following the capacity test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the plant.
- 11.4 Test Energy. Seller shall deliver all Energy prior to the COD to the Delivery Point at no cost to Buyer. Seller shall reimburse Buyer for all ISO imbalance costs and charges related to pre-COD Test Energy. For Annual Capacity Tests, Buyer shall pay the Energy Price for all test energy delivered to the Delivery Point. Seller shall coordinate scheduling of test energy with Buyer.
- 12.0 Declaration of Commercial Operation. No less than five (5) Business Days prior to date on which Seller anticipates Commercial Operation, Seller shall provide written notice to Buyer. Upon achieving Commercial Operation, Seller shall certify to Buyer in writing that Commercial Operation is achieved and shall deliver to Buyer a copy of the commissioning certificate for the generating units executed by the manufacturer (a "Commercial Operation Certificate") and Buyer shall either accept such Commercial Operation Certificate (such acceptance not to be unreasonably withheld or delayed) or deliver to Seller written notice stating in detail the reasons for rejecting such Commercial Operation Certificate (a "Rejection Notice") within five (5) days after receipt thereof. In the event that Buyer fails to deliver such notice within five (5) days after receipt of a Commercial Operation Certificate, the Commercial Operation Certificate shall be deemed accepted and approved by Buyer.
- 13.0 Operating Procedures. No later than forty-five (45) days before commercial operation, and from time to time as reasonably determined necessary by the Parties, the Parties shall meet to address how each Parties will perform their respective obligations under this Transaction, including, but not limited to: (1) the method of day-to-day communications; (2) key personnel lists for each Party; (3) procedures for Forced Outage and Scheduled Maintenance Outage reporting; (4) procedures for delivery forecasting; (5) procedures for record keeping; (6) scheduling procedures if applicable; and (7) invoicing and payment procedures; provided that the failure to agree on Operating Procedures will not relieve the Parties of their respective obligations under this Transaction.
- 13.1 Maintenance Outages. A Scheduled Maintenance Outage is defined as a planned interruption of the Facility's Energy production capability that affects Seller's ability to provide Capacity or Energy from the Facility to Buyer under this Agreement that has been scheduled with Buyer in accordance with this Section and is for inspection, testing, maintenance, repairs or replacement of all or a portion of the Facility. Seller shall operate, maintain, and arrange Scheduled

Maintenance Outages for the Facility in accordance with Good Utility Practices. Seller shall be limited to 120 hours of Scheduled Maintenance hours per year. No later than forty-five (45) days before the start of each calendar year, Seller shall provide the Buyer with a timetable of Scheduled Maintenance for the following twelve (12) months. The Buyer may accept or reject such schedules but shall not unreasonably withhold or delay approval. Parties shall cooperate to comply with any CAISO ordered outage scheduling shifts. Scheduled Maintenance Outages shall not occur during Summer Months. During the hour(s) of Scheduled Maintenance, Buyer shall be excused from paying for any Energy associated with the portion of plant capacity scheduled for maintenance. If any Scheduled Maintenance Outage lasts for a period shorter than scheduled, Seller shall provide Buyer one (1) Business Day notice, before both parties continue performance according to this Agreement.

a. Emergency Periods. At Buyer's request, Seller shall make all reasonable effort to deliver power at the Contract Capacity during CAISO declared emergency periods. In the event the Seller has previously scheduled an outage coincident with an emergency, Seller shall make all reasonable efforts to reschedule the outage.

13.2 Maintenance Logs. Seller shall maintain a maintenance log for the Facility. The logs shall include but not be limited to information on power production, fuel consumption and efficiency (if applicable), availability, maintenance (both breakdown and preventative) performed, outages, changes in operating status, inspections, manufacturer recommended services and replacement, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Information maintained pursuant to this Paragraph shall be kept for 2 years and provided to Buyer electronically, within 30 days of Buyer's request.

14.0 Forecasts.

14.1 Annual Delivery Forecast. No later than forty-five (45) days before the beginning of each Calendar Year, Seller shall provide a non-binding forecast of each month's average-day Deliveries, by hour, for the following Calendar Year.

14.2 Monthly Delivery Forecast. Ten business days before the beginning of each month, Seller shall provide a non-binding forecast of each day's average Deliveries, by hour, for the following month. Buyer shall expect daily deliveries based on the Monthly Delivery Forecast unless otherwise revised per Paragraph 15.1.

14.3 Daily Delivery Forecast. By 6:00 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, the Seller shall provide the Buyer with an hourly forecast of deliveries for each hour of the immediately succeeding day if the availability differs from the Monthly Delivery Forecast. A forecast provided on a day prior to any non-Business Day(s) shall include forecasts for the immediate day and each

succeeding non-Business Day(s).

15.0 Scheduling.

15.1 Buyer's Scheduling Changes. At the sole discretion of the Buyer and subject to the limitations set forth in Exhibit B: Facility Dispatch Limitations, Buyer may issue changes to the Delivery hours or Delivery level specified in Seller's Forecasts pursuant to Paragraph 14.2 and Paragraph 14.3 by issuing Exhibit C: Scheduling Change Form no later than one (1) hour in advance of the affected hours. Scheduling changes shall take the form of one or more of the following:

- a. Dispatch-Down. Seller shall reduce or limit the Deliveries during any hour. Such reductions in Deliveries shall be made at the sole discretion of the Buyer but shall be limited to two hundred (200) annual hours.
- b. Dispatch-Up. If available from the Seller, each hour's Deliveries may be increased up to 5 MW (Product B) above 40 MW (Product A) for 8 consecutive hours.

15.2 Unplanned Outages. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Delivery schedule on the actual date of Delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its Deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling SDG&E's on-duty scheduling coordinator. Within two hours of the scheduling change, Seller shall submit Exhibit D: Outage Notification Form to the Buyer in accordance with the instructions shown on the form. Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

16.0 CAISO Ordered Curtailments and System Emergencies. Seller shall reduce Deliveries for any of the following: (i) if notified by the CAISO to curtail Deliveries due to overgeneration conditions, (ii) for system emergencies or (iii) scheduled maintenance on Buyer's facilities. Any CAISO directed curtailment is independent of any dispatch-down option that may be applicable to this Confirmation. Buyer shall be excused from paying energy payment during system emergencies.

17.0 Delivery and Metering. All Deliveries shall be metered in real-time basis at the Delivery Point. A copy of such meter information shall be included in each monthly invoice. All meters and equipment used for the measurement of output shall be provided, owned, maintained, inspected, tested and read at no cost to the Buyer by the Seller.

17.1 CAISO Agreements. Seller shall enter into a Participating Generator Agreement and a Meter Service Agreement with the CAISO and shall comply with all CAISO tariffs and standards applicable to metering. All meters and equipment

used for the measurement of Deliveries shall be provided, owned, maintained, inspected and tested at no cost to the Buyer. To facilitate monthly settlement processes, Seller shall authorize Buyer to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges on Schedule 3 of Seller's Meter Service Agreement with the CAISO.

17.2 Testing and Calibration. Seller shall perform or cause to be performed, at its expense, annual testing and calibration of the electric meters in accordance with Good Industry Practice and the CAISO Tariff. Seller shall give Buyer reasonable advance notice of any inspection, testing or calibration of the electric meters. Buyer shall have the right to have a representative or Designee present at such inspection, test or calibration of the electric meters. Buyer shall have the right to require, at Buyer's expense, except as required below, a test of any of the electric meters not more often than two (2) times every twelve (12) months.

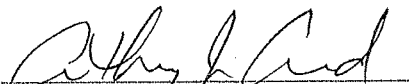
17.3 Inaccurate Meters. If any of the electric meters is deemed to be inaccurate under the Meter Service Agreement, Deliveries shall be measured by reference to Seller's check-meters, if installed and registering accurately, or the meter readings for the period of inaccuracy shall be adjusted as far as can be reasonably ascertained by Seller from the best available data, subject to review and approval by Buyer. If the period of the inaccuracy cannot be ascertained reasonably, any such adjustment shall be for a period equal to one-half of the time elapsed since the preceding test. Seller shall promptly cause such electric meters to be corrected and, where such inaccuracy was determined pursuant to a test required by Buyer, Seller shall bear the expense of any such test.

17.4 Delivered MWh Adjustments. In the event that, due to correction for inaccurate Electric Meters deemed to be inaccurate under the Meter Service Agreement, the amount of Energy is increased or decreased, the revised quantity of Energy shall be used for purposes of calculating the Energy Payment, and the Availability Adjustment Factor. If any of such amounts for any period have already been calculated using the previous quantity of Energy, they shall be recalculated using the revised quantity of Energy. If the recalculation increases any amount payable by Seller to Buyer or decreases any amount payable by Buyer to Seller, Seller shall pay to Buyer the amount of such increase or decrease. If the recalculation increases any amount payable by Buyer to Seller or decreases any amount payable by Seller to Buyer, Buyer shall pay to Seller the amount of such increase or decrease.

Envirepel Energy Inc.

San Diego Gas & Electric Company

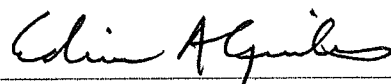
Signature:



By: ANTHONY J. ARAND

Title: PRESIDENT

Signature:



By: Ed Guiles
Title: Chairman and CEO
San Diego Gas and Electric

EXHIBIT B: SCHEDULING CHANGE LIMITATIONS

--- To Be Determined ---

Seller shall populate with operating/dispatching limits of the Facility.

EXHIBIT C: SCHEDULING CHANGE FORM

To: _____ Notification Date: Mm/dd/yyyy

Notification Time: hh:hh
Notification Type: _____ Dispatch-down
From: _____ Dispatch-up

Hours

This notice replaces all previous notifications pertaining to the dates and times identified within.

Dispatch-down

Start: mm/dd/yyyy hh:hh
Stop: mm/dd/yyyy hh:hh

Dispatch-down from: _____ KW
to: _____ KW

Dispatch-up

Start: mm/dd/yyyy hh:hh
Stop: mm/dd/yyyy hh:hh

Dispatch-up from: _____ KW
to: _____ KW

Shift Delivery Hours

Start: mm/dd/yyyy hh:hh
Stop: mm/dd/yyyy hh:hh

Comments

Comments, additional instructions, point-of-contact name, etc...

EXHIBIT D

OUTAGE NOTIFICATION FORM

This form may be used to comply with CAISO's outage notification requirements for both planned and forced outages. Report outages as soon as possible by submitting form via email to TSched@SemptraUtilities.com or via fax at (858) 650-6191.

Request Type:

New Scheduled Maintenance Outage ▼

Previous Notification (if applicable)

Date Sent: _____ mm/dd/yyyy
 Time Sent: _____ hh:mm

Generator Name: _____

Location Code: _____

Address: _____

(For times, use 24hr format)

Today's Date: _____ mm/dd/yyyy

Current Time: _____ hh:mm

Contact Name: _____

Phone Number: _____

Email: _____

Outage Start Date: _____ mm/dd/yyyy

Outage Start Time: _____ hh:mm

Outage End Date: _____ mm/dd/yyyy

Outage End Time: _____ hh:mm

Alternate Name: _____

Alternate Number: _____

Email: _____

Outage Duration: _____

MW Available During Outage: _____

MW Unavailable During Outage: _____

RMR Unit? Yes/No

System (Select One)

- Boiler
Codes 0010-1999
- Generator
Codes 4500-4899
- Regulatory, Safety, Environmental
Codes 9504-9720
- Balance of Plant
Codes 3110-3999
- Pollution Control Equipment
Codes 8000-8835
- Others
Codes 9900-9999
- Steam Turbine
Codes 4000-4499
- External
Codes 9000-9040

Cause Code Ranges / Affected Component

(Select One) ▼

Cause Code / Component Problem

(Select One) ▼

Comments

EXHIBIT E: QUARTERLY PROGRESS REPORTS

Quarterly Progress Report

of

[_____]

(“Seller”)

provided to

San Diego Gas & Electric Company

[Date]

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- **Instructions.**

All capitalized terms used in this report shall have the meanings set forth below and any capitalized terms used in this report which are not defined below shall have the meanings ascribed thereto in the Power Purchase Agreement by and between Seller and San Diego Gas & Electric Company dated _____, 2003 (the "Agreement").

Seller shall review the status of each significant element of the Project Schedule provided pursuant to Section 6.5(b) of the Agreement and Seller shall identify such matters referenced in clauses (i)-(v) below as known to Seller and which in Seller's reasonable judgment are expected to adversely affect the Project or the Project Schedule, and with respect to any such matters, shall state the actions which Seller intends to take to ensure that Conditions and the Milestones will be attained by their required dates. Such matters may include, but shall not be limited to:

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

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

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

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

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

Owner shall complete, certify, and deliver this form Quarterly Progress Report to Buyer, together with all attachments and exhibits.

- **Executive Summary.**

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

Please provide a brief summary of the Major¹ activities to be performed for each of the following aspects of the Project during the current calendar month:

2.1.1 Design

2.1.2 Engineering

2.1.3 Major Equipment procurement

2.1.4 Construction

2.1.5 Milestone report

2.1.6 Permitting (See Section 3.0)

¹ For Purposes of this Report, “Major” shall mean any activity, event, or occurrence which may have a material adverse impact on the construction of the Facility or completion of the Project on a timely basis if such activity, event, or occurrence occurs or if such activity, event, or occurrence fails to occur as anticipated or scheduled, which material adverse impact includes, but is not limited to, Seller’s inability to achieve a Milestone Date.

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

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

2.2.1 Design

2.2.2 Engineering

2.2.3 Major Equipment procurement

2.2.4 Construction

2.2.5 Milestone report

2.2.6 Permitting

- **Overall assessment of the Project status.**

Please provide a brief summary of your assessment of the status and progress of each of the following aspects of the Project:

2.3.1 Design

2.3.2 Engineering

2.3.3 Major Equipment procurement

2.3.4 Construction

2.3.5 Milestone report

2.3.6 Permitting

Exhibit 2-1: Progress Curve.

The progress curve which shows the progress achieved on the construction of the Facility through the current month against the current Quarterly Progress Report is included herewith as Exhibit 2-1.

Exhibit 2-2: Photos.

The photos included with this Exhibit 2-2 indicate construction progress to-date at the Facility Site.

- **Permitting.**

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

- **State and/or federal Governmental Approvals.**

Please describe each of the Major state and/or federal Governmental Approval (including the Permit to Construct issued by the San Diego County Air Pollution Control District) to be obtained by Owner (or EPC Contractor) and the status of each.

DESCRIPTION	STATUS

- **Local and/or county Governmental Approvals.**

Please describe each of the Major local and/or county Governmental Approvals to be obtained by Owner and the status of each.

DESCRIPTION	STATUS

- **Permitting activities which occurred during the previous calendar month.**

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

- **Permitting activities occurring during the current calendar month.**

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

3.5 Permitting Notices received from EPC Contractor.

Please attach to this Quarterly Progress Report, copies of any notices related to permitting activities received from EPC Contractor during the previous calendar month.

- **Design Activities.**

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

The following table lists the design schedule to be followed by Owner and its subcontractors.

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

- **Design activities to be performed during the current calendar month.**

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

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

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

- **Engineering Activities.**

- **Table of engineering schedule to be followed by Seller and its subcontractors.**

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

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE

- **Engineering activities to be performed during the current calendar month.**

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

- **Engineering activities completed during the previous calendar month.**

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

- **Three-month look-ahead engineering schedule.**

Please provide a three-month look ahead engineering schedule.

- **Construction Activities.**

- **Table of construction activities to be performed by Owner and its subcontractors.**

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

ACTIVITY	CONTRACTOR/ SUBCONTRACTOR	SCHEDULED COMPLETION DATE	ACTUAL COMPLETION DATE
Civil Progress			
Structural Progress			
[Steam] Generator Progress			
Piping Progress			
IC and Electrical Progress			
Subcontractor Progress			

- **Construction activities to be performed during the current calendar month.**

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

- **Construction activities completed during the previous calendar month.**

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

- **EPC Contractor Monthly Progress Report.**

Please attach a copy of the Monthly Progress Report received during the previous calendar month from EPC Contractor pursuant to the EPC Contract, certified by the EPC Contractor as being true and correct as of the date issued.

- **Three-month look-ahead construction schedule.**

Please provide a three-month look ahead construction schedule.

- **Milestones.**

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

Please explain in detail each of the following aspects of Seller's remedial action plan:

8.1.1 Missed Milestone

8.1.2 Plans to achieve missed Milestone

8.1.3 Plans to achieve subsequent Milestone

8.1.4 Delays in engineering schedule

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

8.1.5 Delays in Major Equipment procurement

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

- Delays in construction schedule

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

- **Safety and Health Reports**

- **Please list all accidents from the previous calendar month:**

- **Any work stoppage from the previous calendar month:**

- **Work stoppage impact on construction of the Facility:**

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

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT F: LATE COD PRICING CONCESSIONS

COD Late By	Reduce Energy Payment By	Reduce Capacity Payment By	Duration
1 – 90 days	5%	5%	24 months from COD
91 – 180 days	10%	10%	24 months from COD
181 – 270 days	15%	15%	24 months from COD
271 – 360 days	20%	20%	24 months from COD

EXHIBIT G: FORM OF LETTER OF CREDIT

[DATE]

To: [Name and Address of Secured Party]

Re: Our Irrevocable Standby Letter of Credit No. _____
In the Amount of US _____

Gentlemen:

We hereby open our irrevocable standby Letter of Credit Number _____ in favor of [name of Secured Party] ("Secured Party"), by order and for account of [name of Account Party] ("Account Party"), [address of Account Party], available at sight upon demand at our counters, at [location] for an amount of US\$ _____ [amount spelled out and xx/100 U.S. Dollars] against presentation one of the following documents:

1- Statement signed by a person purported to be an authorized representative of Secured Party stating that: "[name of Account Party] ("Account Party") is in default under the agreement between Secured Party and Account Party dated _____ or under any transaction contemplated thereby (whether by occurrence of a "default", "event of default" or similar term as defined in such agreement, any other agreement between Secured Party and Account Party, or otherwise). The amount due to Secured Party is US \$ _____."

or

2- Statement signed by a person purported to be an authorized representative of Secured Party stating that: "as of the close of business on _____ [insert date, which is less than 60 days prior to the expiration date of the Letter of Credit] you have provided written notice to us indicating your election not to permit extension of this Letter of Credit beyond its current expiry date. The amount due to Secured Party, whether or not an Event of Default has occurred, is U.S. \$ _____."

Special Conditions:

- All costs and banking charges pertaining to this Letter of Credit are for the account of Account Party.
- Partial and multiple drawings are permitted.
- Fax of Document 1 or 2 above acceptable.

This Letter of Credit expires on _____ at our counters.

We hereby engage with Secured Party that upon presentation of a document as specified under and in compliance with the terms of this Letter of Credit, this Letter of Credit will be duly honored in the amount stated in Document 1 or 2 above. If a document is so presented by 1:00 pm on any New York banking day, we will honor the same in full in immediately available New York funds on that day and, if so presented after 1:00 pm on a New York banking day, we will honor the same in full in immediately available New York funds by noon on the following New York banking day.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary of such date, unless at least ninety (90) days prior to any such expiry date we have sent you written notice by regular and registered mail or courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

We agree that if this Letter of Credit would otherwise expire during, or within 30 days after, an interruption of our business caused by an act of god, riot, civil commotion, insurrection, act of terrorism, war or any other cause beyond our control or by any strike or lockout, then this Letter of Credit shall expire on the 30th day following the day on which we resume our business after the cause of such interruption has been removed or eliminated and any drawing on this Letter of Credit which could properly have been made but for such interruption shall be permitted during such extended period.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce, Publication No. 500 ("UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.