

Confirmation for Resource Adequacy Capacity Product for CAISO Resources

This confirmation letter (“Confirmation”) confirms the mutual understanding and agreement (“Transaction”) between Calpine Energy Services, L.P. (“Seller”) and Pacific Gas and Electric Company (“Buyer”), each individually a “Party” and together the “Parties”, dated as of April __, 2012 (the “Execution Date”), in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Section 3 of this Confirmation. This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of October 11, 2000, along with the Cover Sheet, any amendments and annexes thereto (the “Master Agreement”), collectively referred to as the “EEI Agreement”). The EEI Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the EEI Agreement or the Tariff (defined herein). To the extent that this Confirmation is inconsistent with any provision of the EEI Agreement, this Confirmation shall govern the rights and obligations of the Parties hereunder.

1. Definitions

- 1.1 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.2 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.3 “Availability Standards” has the meaning set forth in the Tariff.
- 1.4 “Buyer” has the meaning specified in the introductory paragraph.
- 1.5 “CAISO” means the California Independent System Operator Corporation, or any successor entity performing the same functions.
- 1.6 “Capacity Attributes” means any and all current or future defined characteristics (including the ability to generate at a given capacity level, provide ancillary services and ramp up or down at a given rate), certificates, tags, credits, howsoever entitled, including any accounting construct in each case which is counted toward any resource adequacy requirements, attributed to or associated with the Units throughout the Delivery Period.
- 1.7 “Capacity Flat Price” means the price specified in the Capacity Flat Price Table in Section 4.1.
- 1.8 “Capacity Replacement Price” means the price paid for any Replacement Capacity purchased by Buyer pursuant to Section 5.2(a), plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of Replacement Capacity, the market price for the Product not delivered by Seller under this Confirmation Buyer shall determine such market price in a commercially reasonable manner. For

purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed the "Replacement Price" for this Transaction.

- 1.9 "Confirmation" has the meaning specified in the introductory paragraph.
- 1.10 "Confirmation Effective Date" means the date that this Confirmation becomes effective pursuant to Section 2.2.
- 1.11 "Contingent Firm RA Product" has the meaning specified in Section 3.3.
- 1.12 "Contract Price" means, for any Monthly Delivery Period, the Capacity Flat Price for such period.
- 1.13 "Contract Quantity" has the meaning set forth in Section 3.5.
- 1.14 "Contract Term" has the meaning set forth in Section 2.1.
- 1.15 "CPUC" means the California Public Utilities Commission.
- 1.16 "CPUC Decisions" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022 and any other existing or subsequent decisions, resolutions or rulings related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.17 "CPUC Filing Guide" is the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program as provided in the CPUC Decisions.
- 1.18 "Credit Rating" means, with respect to any entity, the rating assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement, 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 issuer rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Master Agreement.
- 1.19 "Delivery Period" has the meaning specified in Section 3.4.
- 1.20 "Firm RA Product" has the meaning specified in the Section 3.2.
- 1.21 "GADS" means the Generating Availability Data System, or its successor.
- 1.22 "Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

- 1.23 “Local Capacity Area” has the meaning set forth in the Tariff.
- 1.24 “Local RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes or other locational attributes for a Unit related to a Local Capacity Area, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of a Unit within the CAISO Control Area, that can be counted toward a Local RAR, but exclusive of any RA Attributes.
- 1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 “Local RAR Showings” means the Local RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.
- 1.27 [“Letter of Credit” means an irrevocable, non-transferable, standby letter of credit issued by either (a) a U.S. commercial bank, or (b) a U.S. branch of a foreign commercial bank acceptable to the intended beneficiary. In either case the issuing bank must have a Credit Rating of at least A from S&P or A2 from Moody’s, and the Letter of Credit must be substantially in the form as contained in Appendix I to this Confirmation or in a form acceptable to such issuing bank and the intended beneficiary; provided that, with respect to Letters of Credit to be issued by foreign banks, the intended beneficiary may impose restrictions, limits, and additional requirements regarding any such Letter(s) of Credit. These may include a requirement: (A) that a U.S. commercial bank with the aforesated Credit Rating act as a “confirming bank” (as defined in Article 8 of the ICC Uniform Customs and Practice for Documentary Credits 2007 Revision (also known as “UCP 600”) for such a Letter of Credit, and/or (B) that additional reasonable terms and conditions be included in such a Letter of Credit. In case of a conflict of this definition with any other definition of “Letter of Credit” contained in the Master Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Confirmation applies.][Definition to be discussed by the parties]
- 1.28 “LSE” means load-serving entity.
- 1.29 “Master Agreement” has the meaning specified in the introductory paragraph.
- 1.30 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.31 “Monthly Payment” has the meaning specified in Section 4.1.

- 1.32 “Moody’s” means Moody’s Investors Services, Inc. or its successor.
- 1.33 “NERC” means the North American Electric Reliability Corporation, or its successor.
- 1.34 “NERC/GADS Protocols” means the GADS protocols established by NERC, as may be updated from time to time.
- 1.35 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.36 “Non-Availability Charges” has the meaning set forth in the Tariff.
- 1.37 “Non-Summer Period” means all of the months in a calendar year other than those months in the Summer Period.
- 1.38 “Outage” means any disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of such Unit consistent with the Tariff.
- 1.39 “Planned Outage” shall have the meaning in CPUC Decisions, namely a planned, scheduled, or any other Outage approved by the CAISO for the routine repair or maintenance of a Unit, or for the purposes of new construction work, and does not include any Outage designated as either forced or unplanned as defined by the CAISO or NERC/GADS Protocols.
- 1.40 “Product” has the meaning specified in Section 3.1.
- 1.41 “Prorated Percentage of Unit Factor” means the percentage, as specified in Appendix A, of the Unit NQC that is dedicated to Buyer under this Transaction.
- 1.42 “RA Availability” means, for each Unit, expressed as a percentage, (a) the Unit Quantity for a Monthly Delivery Period as reduced according to Section 3.3(b) if applicable, divided by (b) the Unit Contract Quantity, provided that a Unit’s RA Availability shall not exceed 1.00.
- 1.43 “RA Availability Adjustment” has the meaning specified in Section 4.2.
- 1.44 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as may be identified from time to time by the CPUC, CAISO or other Governmental Body having jurisdiction, that can be counted toward RAR, exclusive of any Local RA Attributes.
- 1.45 “RAR” means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body having jurisdiction.
- 1.46 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to any Governmental Body having jurisdiction.

- 1.47 “Replacement Capacity” means capacity which has equivalent RA, Local RA and Capacity Attributes as the portion of the Product not provided by the Units committed to Buyer hereunder.
- 1.48 “Replacement Unit” means a generating unit providing Replacement Capacity.
- 1.49 “Resource Category” shall be as described in the CPUC Filing Guide.
- 1.50 “RMR Contract” has the meaning set forth in the Tariff.
- 1.51 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.), or its successor.
- 1.52 “Scheduling Coordinator” or “SC” has the meaning set forth in the Tariff.
- 1.53 “Seller” has the meaning specified in the introductory paragraph.
- 1.54 “Showing Month” shall be the calendar month that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Execution Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.55 “Substitute Capacity” has the meaning set forth in Section 3.9(a).
- 1.56 “Substitution Rules” has the meaning set forth in Section 3.9(b).
- 1.57 “Summer Period” means the months May through September, inclusive.
- 1.58 “Supply Plan” has the meaning set forth in the Tariff.
- 1.59 “Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended or supplemented from time to time, of the CAISO.
- 1.60 “Transaction” has the meaning specified in the introductory paragraph.
- 1.61 “Unit” or “Units” shall mean the generation assets described in Appendix A (including any Replacement Units), from which Product is provided by Seller to Buyer.
- 1.62 “Unit Contract Quantity” means the amount of Product (in MWs) to be delivered by Seller to Buyer by each individual Unit, as specified in Appendix A as of the Confirmation Effective Date.
- 1.63 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit.
- 1.64 “Unit Quantity” means the amount of Product (in MWs) actually delivered by Seller to Buyer by each individual Unit and as may be reduced according to Section 3.3(b) as applicable.

2. Term

2.1 Contract Term

The "Contract Term" shall mean the period of time commencing upon the Confirmation Effective Date and continuing until the later of (a) the expiration of the Delivery Period or (b) the date the Parties' obligations under this Agreement have been fulfilled.

2.2 Binding Nature

This Agreement shall be effective and binding as of the date (the "Confirmation Effective Date") each of the following has occurred: (i) contracts for the Unit for the Delivery Period have been duly authorized, executed and delivered by Seller and each of Buyer, San Diego Gas & Electric Company and Southern California Edison (collectively, the "Sutter Contracts") and (ii) the Sutter Contracts are approved or deemed approved by the CPUC pursuant to Resolution E-4471 of the CPUC which approval shall (A) include that Buyer's entry into this Agreement is reasonable and that payments to be made by Buyer hereunder are recoverable in rates and (B) not contain conditions or modifications unacceptable to the Parties. If the Confirmation Effective Date does not occur on or prior to [June __, 2012], then this Agreement shall be of no further force or effect and neither Party shall have any obligation or liability to the other.

3. Transaction

3.1 Product

(a) Seller shall sell and Buyer shall receive and purchase, the RA Attributes, Local RA Attributes and Capacity Attributes of the Units identified in Appendix A (collectively, the "Product") and Seller shall deliver the Product as either a Firm RA Product or a Contingent Firm RA Product, as selected in Section 3.2 or 3.3 below. Product does not confer to Buyer any right to dispatch or receive the energy or ancillary services from a Unit. Seller retains the right to sell any Product from a Unit in excess of its Unit Contract Quantity.

(b) The Parties agree that (i) the Contract Price for the Product shall not change if the CAISO, CPUC or other Governmental Body (A) defines new or re-defines existing Local Capacity Areas which decreases or increases the amount of Local RA Attributes provided hereunder, or (B) defines new or re-defines existing Local Capacity Areas whereby the Units qualify for a Local Capacity Area and (ii) if the event in Section 3.1(b)(i)(B) occurs then the Product shall include such Local RA Attributes.

3.2 Firm RA Product

Seller shall provide Buyer with the Product from the Units in the amount of the Contract Quantity. If the Units are not available to provide any portion of the Product for any reason including without limitation any Outage or any adjustment of the RA Attributes, Local RA Attributes and Capacity Attributes of any Unit, Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with

Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5.

3.3 Contingent Firm RA Product

Seller shall provide Buyer with the Product from the Units in the amount of the Contract Quantity. If Buyer is not able to count the Units for RAR purposes for any reason other than an event of a Planned Outage or reduction in Unit NQC as described in this Section 3.3 (a) and (b), Seller shall provide Buyer with Replacement Capacity from one or more Replacement Units pursuant to Section 5.1. If Seller fails to provide Buyer with such Replacement Capacity pursuant to Section 5.1, then Seller shall be liable for damages and/or indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5. If the Units provide less than the full amount of the Contract Quantity or Buyer is not able to count the Units for RA purposes in the event of a Planned Outage or a reduction to Unit NQC, Seller is not obligated to provide Buyer with Replacement Capacity or liable for damages and/or to indemnify Buyer for penalties, fines or costs pursuant to the terms of Section 5.

(a) Planned Outage: Seller's obligation to deliver the Contract Quantity for any Monthly Delivery Period may be reduced by Seller if any Unit or portion thereof is scheduled for a Planned Outage during that month, provided that Seller notifies Buyer, no later than fifteen (15) Business Days before the relevant deadline for the corresponding RAR or Local RAR Showing applicable to that month. If a Unit is on a Planned Outage for the applicable Showing Month, the Contract Quantity and such Unit's Unit Quantity shall be reduced in accordance with any applicable adjustments stipulated by the CPUC Filing Guide in effect for the applicable Showing Month in which the Planned Outage occurs unless the Seller notifies Buyer of its intent to provide Replacement Capacity from Replacement Units identified by Seller consistent with the notice requirements in this Section 3.3(a). If the CPUC allows Buyer to count a Unit that is on, or scheduled to be on, a Planned Outage towards its RAR, then the Contract Quantity and such Unit's Unit Quantity will not be reduced.

(b) Reduction in Unit NQC: In the event the CAISO reduces the Unit NQC of a Unit from the Unit NQC as of the Confirmation Effective Date, Seller's obligation to deliver the Contract Quantity for any Monthly Delivery Period is likewise reduced. If a Unit's Unit NQC is reduced, such Unit's Unit Quantity and the Contract Quantity shall be reduced by the product of (i) the difference in the Unit NQC as of the Confirmation Effective Date as specified in Appendix A and the current Unit NQC and (ii) the Prorated Percentage of Unit Factor.

3.4 Delivery Period

The "Delivery Period" shall be from July 1, 2012 through December 31, 2013, inclusive, unless terminated earlier in accordance with the terms of this Agreement.

3.5 Contract Quantity:

During the Delivery Period, Seller shall provide the Product in the total amount (“Contract Quantity”) as follows, which may be adjusted according to Section 3.3 if applicable:

Contract Quantity (MW)

Month	Net Qualifying Capacity	Prorated Percentage of Unit Factor <u>[tentative: subject to further refinement of prorated percentage of unit factor]</u>	Contract Quantity
July 2012	505	[%]	[]
August 2012	500	[%]	[]
September 2012	515	[%]	[]
October 2012	520	[%]	[]
November 2012	525	[]	[]
December 2012	525	[]	[]

3.6 Delivery of Product

Seller shall provide Buyer with the Contract Quantity for each Monthly Delivery Period consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause each Unit's SC to submit, Supply Plans to identify and confirm the Unit Quantity provided to Buyer so that the total amount of Unit Quantity identified and confirmed equals the Contract Quantity, unless specifically requested not to do so by the Buyer pursuant to Section 3.9, and;
- (b) Seller shall cause each Unit's SC to submit written notification to Buyer, no later than fifteen (15) Business Days before the relevant deadline for any applicable RAR or Local RAR Showing, that Buyer will be credited with the Unit Quantity for the Delivery Period in the Unit's SC Supply Plan so that the total amount of Unit Quantity credited equals the Contract Quantity.

3.7 CAISO Offer Requirements

Subject to Buyer's request under Section 3.9(a), during the Delivery Period, except to the extent any Unit is in an Outage, Seller shall, or shall cause each Unit's SC to, schedule with, or make available to, the CAISO the Unit Quantity for each Unit in compliance with the Tariff, and shall, or shall cause each Unit's SC, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale and delivery of Product hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's SC, owner, or operator to comply with such Tariff provisions, including any penalties, charges or fines imposed on Seller or such Unit's SC, owner, or operator for such noncompliance.

3.8 Planned Outages

- (a) Seller shall, or shall cause each Unit's SC to, submit a schedule of proposed Planned Outages for the following twelve (12) month period or until the end of the Delivery Period, whichever is shorter ("Outage Schedule"), if any, to Buyer on each of the following dates during the Contract Term (i) the Confirmation Effective Date, (ii) thirty (30) days before the applicable year-ahead showing, and (iii) no later than January 1, April 1, July 1 and October 1 of each calendar year. Within twenty (20) Business Days after its receipt of an Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule, and Seller shall, to the extent consistent with Good Utility Practices, accommodate Buyer's requests regarding the timing of any Planned Outage. Seller or the Unit's SC shall notify Buyer within five (5) Business Days of any change to the Outage Schedule.

- (b) Notwithstanding Section 3.8(a), during the Delivery Period Seller may not (i) schedule Planned Outages in the Summer Period or (ii) schedule in aggregate 168 hours or more of Planned Outages in any calendar month in the Non-Summer Period. In the event that the CAISO declares a system emergency during a Planned Outage, Seller shall make reasonable efforts to reschedule such Planned Outage.

3.9 Unit Substitution

- (a) Substitute Capacity: No later than five (5) Business Days before the relevant deadline for each RAR or Local RAR Showing, Buyer may request that Seller not, or cause each Unit's SC not to, list a portion or all of a Unit's Unit Quantity on the Supply Plan. The amount of Unit Quantity that is the subject of such a request shall be known as "Substitute Capacity" and, for purposes of calculating a Monthly Payment pursuant to Section 4.1, such Substitute Capacity shall be deemed as Unit Quantity provided consistent with Section 3.6.
- (b) Seller's Obligations With Respect to Substitute Capacity: If Buyer makes a timely request for Substitute Capacity under Section 3.9(a), Seller shall (i) make such Substitute Capacity available to Buyer during the applicable Showing Month to allow Buyer to utilize the substitution rules in Section 40.9.4.2.1 of the Tariff ("Substitution Rules"); and (ii) take, or cause each Unit's SC to take, all action to allow Buyer to utilize the Substitution Rules, including, but not limited to, ensuring that the Substitute Capacity will qualify for substitution under the Substitution Rules and providing Buyer with all information needed to utilize the Substitution Rules.

Seller agrees that all Substitute Capacity utilized by Buyer under the Substitution Rules is subject to the requirements identified in Section 3.7 as if such Substitute Capacity had been included on the Supply Plan.

- (c) Failure to Provide Substitute Capacity: If Seller fails to provide Substitute Capacity or Buyer is unable to utilize the Substitute Capacity under the Substitution Rules due to Seller's failure to fulfill its obligations under Section 3.9(b)(ii), then Seller shall pay for any and all Non-Availability Charges incurred by Buyer for such failure or inability to utilize the Substitution Rules; provided, that if Buyer is unable to utilize the Substitution Rules because the Substitute Capacity does not qualify for substitution under Section 40.9.4.2.1(1)(i) or (ii) of the Tariff, or a Planned Outage coincides with the substitution request, then Seller shall not be responsible for any such Non-Availability Charges described in this Section 3.9(c) associated with such inability.

3.10 Buyer's Re-Sale of Product

Buyer may re-sell all or a portion of the Product.

4. Payment

4.1 Monthly Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly Payment to Seller for each Unit after the applicable Monthly Delivery Period, as follows:

$$\text{Monthly Payment} = (A \times B \times 1,000) - \text{RA Availability Adjustment}$$

where:

A = applicable Contract Price (in \$/kW-month) for that Monthly Delivery Period

B = Unit Quantity (in MW) delivered by Seller’s Unit for the Monthly Delivery Period

RA Availability Adjustment = RA Availability Adjustment calculated pursuant to Section 4.2

The Monthly Payment calculation shall be rounded to two decimal places. In no case shall a Unit’s Monthly Payment be less than zero.

CAPACITY FLAT PRICE TABLE

Contract Month	Capacity Flat Price (\$/kW-month)
July 2012	[]
August 2012	[]
September 2012	[]
October 2012	[]
November 2012	[]
December 2012	[]

4.2 RA Availability Adjustment

The Monthly Payment for each Unit shall include an RA Availability Adjustment calculated as follows:

For Firm RA Product

$$\text{RA Availability Adjustment} = 0$$

For Contingent Firm RA Product

(a) When the Unit's RA Availability is greater than or equal to 80 percent, the RA Availability Adjustment shall be zero.

(b) When the Unit's RA Availability is greater than or equal to 50 percent, but less than 80 percent, the RA Availability Adjustment shall be equal to:

$$(0.80 - \text{RA Availability}) * 0.50 * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1,000.$$

(c) When the Unit's RA Availability is less than 50 percent, the RA Availability Adjustment shall be equal to:

$$[((0.80 - 0.50) * 0.50) + (0.50 - \text{RA Availability})] * \text{the applicable Contract Price} * \text{Unit Contract Quantity} * 1,000.$$

The final product of this RA Availability Adjustment calculation shall be rounded to two decimal places. The RA Availability Adjustment for each Unit shall be subtracted from the Monthly Payment as shown in Section 4.1 to determine the amount due to Seller for Unit Quantity provided hereunder from each Unit.

4.3 Allocation of Other Payments and Costs

(a) Seller shall retain any revenues it may receive from and pay all costs charged by, the CAISO or any other third party with respect to any Unit for (i) start-up, shutdown, and minimum load costs, (ii) capacity revenue for ancillary

- services, (iii) energy sales, and (iv) any revenues for black start or reactive power services.
- (b) Buyer shall be entitled to receive and retain all revenues associated with the Contract Quantity during the Delivery Period including any capacity or availability revenues from RMR Contracts for any Unit, Capacity Procurement Mechanism (CPM) or its successor, and Residual Unit Commitment (RUC) Availability Payments, or its successor, but excluding payments described in Section 4.3(a)(i)-(iv).
 - (c) In accordance with Section 4.1 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues described in Section 4.3(b), but received by Seller, or a Unit's SC, owner, or operator shall be remitted to Buyer, and Seller shall pay such revenues to Buyer if a Unit's SC, owner, or operator fails to remit those revenues to Buyer. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense and during normal working hours after reasonable prior notice, to hire an independent third party reasonably acceptable to Seller to audit any documents, records or data of Seller associated with the Contract Quantity.
 - (d) If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit the Contract Quantity for re-sale in such market, and retain and receive any and all related revenues.
 - (e) Subject to the Units being made available to the CAISO in accordance with Article 3 of this Confirmation, Seller agrees that the Units are subject to the terms of the Availability Standards, Non-Availability Charges, and Availability Incentive Payments under Section 40.9 of the Tariff. Furthermore, the Parties agree that any Availability Incentive Payments are for the benefit of Seller and for Seller's account and that any Non-Availability Charges are the responsibility of Seller and for Seller's account.

4.4 Offset Rights

Either Party may offset any amounts owing to it for revenues, penalties, fines, costs, reimbursement or other payments pursuant to Article Six of the Master Agreement against any future amounts it may owe to the other Party under this Confirmation.

5. Seller's Failure to Deliver Contract Quantity

5.1 Seller's Duty to Provide Replacement Capacity

If Seller is unable to provide the Contract Quantity for any Monthly Delivery Period, then:

- (a) Seller shall, at no cost to Buyer, provide Buyer with Replacement Capacity from one or more Replacement Units, such that the total amount of Product provided to Buyer from all Units and Replacement Units equals the Contract Quantity, and;

- (b) Seller shall identify Replacement Units meeting the requirements in Section 5.1(a) no later than fifteen (15) Business Days before the relevant deadline for Buyer's RAR Showing and/or Local RAR Showing.

provided that the designation of any Replacement Unit by Seller shall be subject to Buyer's prior written approval, which shall not be unreasonably withheld. Once Seller has identified in writing any Replacement Units that meet the requirements of this Section 5.1 and Buyer has approved the designation of the Replacement Unit, then any such Replacement Unit shall be deemed a Unit for purposes of this Confirmation for that Monthly Delivery Period. Notwithstanding anything to the contrary in this Confirmation, failure to properly provide Replacement Capacity, including Seller's obligation to identify Replacement Units no later than fifteen (15) Business Days before the relevant deadline for Buyer's RAR Showing and/or Local RAR Showing, may result in the calculation of damages payable to Buyer under Section 5.2 and/or the indemnification of Buyer against any penalties, fines or costs under Section 5.3.

5.2 Damages for Failure to Provide Replacement Capacity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units for any Monthly Delivery Period as required by Section 5.1, then the following shall apply:

- (a) Buyer may, but shall not be obligated to, obtain Replacement Capacity. Buyer may enter into purchase transactions with one or more parties to replace the portion of Contract Quantity not provided by Seller. Additionally, Buyer may enter into one or more arrangements to repurchase its obligation to sell and deliver the capacity to another party, and such arrangements shall be considered the procurement of Replacement Capacity. Buyer shall act in a commercially reasonable manner in purchasing any Replacement Capacity.
- (b) Seller shall pay to Buyer damages, in accordance with the terms of Section 4.1 of the Master Agreement relating to "Accelerated Payment of Damages," if applicable, an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any penalties, fines, transaction costs and expenses incurred by Buyer in connection with procurement of Replacement Capacity, plus (B) Capacity Replacement Price times the portion of Contract Quantity not provided by Seller or purchased by Buyer pursuant to Section 5.2(a), and (ii) the portion of Contract Quantity not provided for the applicable Monthly Delivery Period times the Contract Price for that month.

5.3 Indemnities for Failure to Deliver Contract Quantity

If Seller fails to provide Buyer any portion of the Contract Quantity from Replacement Units as required by Section 5.1, and Buyer is unable to purchase Replacement Capacity, then in lieu of damages pursuant to Section 5.2(b)(i)(B) with respect to the portion of Contract Quantity that Buyer has not replaced, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO, or any Governmental Body having jurisdiction, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Contract Quantity or any portion of the Replacement Capacity;
- (b) Seller's failure to provide timely notice of the non-availability of any portion of the Contract Quantity, or;
- (c) A Unit's SC's failure to timely submit Supply Plans that identify Buyer's right to the Unit Quantity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines and costs. Seller will have no obligation to Buyer under this Section 5.3 with respect to the portion of Contract Quantity for which Seller has paid damages for Replacement Capacity. It is further agreed that Monthly Payment shall be subtracted from any amounts payable under this Section 5.3 for purposes of determining the amount payable by Seller pursuant to this Section 5.3.

6. Other Buyer and Seller Covenants

6.1 Seller's and Buyer's Duty to Take Action to Allow the Utilization of the Product

Buyer and Seller shall, throughout the Delivery Period, take commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's RAR and Local RAR, if applicable. Buyer and Seller shall be deemed to have made commercially reasonable efforts if such actions require a Party to incur, in the aggregate, costs of up to \$100,000 per calendar year during the Delivery Period. The Parties further agree to negotiate in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, FERC, or other Governmental Body having jurisdiction to administer RAR or Local RAR, to maintain the benefits of the bargain struck by the Parties on the Confirmation Effective Date.

6.2 Seller's Representations, Warranties and Covenants

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the Product sold under this Confirmation from each Unit, and shall furnish Buyer, CAISO, CPUC or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR or Local RAR or analogous obligations in any CAISO or non-CAISO markets, other than pursuant to an RMR Contract between the CAISO and either Seller or a Unit's owner or operator;

- (c) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, and is under the control of CAISO;
- (d) Seller shall, and each Unit's SC, owner and operator is obligated to, comply with Applicable Laws, including the Tariff, relating to the Product;
- (e) If Seller is the owner of any Unit, the aggregation of all amounts of Local RA Attributes and RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed the Unit NQC for that Unit;
- (f) Seller has notified the SC of each Unit that Seller has transferred the Unit Quantity to Buyer, and that the SC is obligated to deliver the Supply Plans in accordance with the Tariff fully reflecting such transfer;
- (g) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to Buyer, at least fifteen (15) Business Days before the relevant deadline for each RAR or Local RAR Showing, the Unit Quantity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period;
- (h) Seller has notified each Unit's SC that Buyer is entitled to the revenues set forth in Section 4.3, and such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues;
- (i) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities.

7. Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, the Parties agree that (i) Buyer may disclose this Agreement to the CPUC, CAISO and any Governmental Body, as required by Applicable Law, (ii) Seller may disclose the transfer of the Contract Quantity under this Transaction to the SC of each Unit in order for such SC to timely submit accurate Supply Plans, and (iii) either or both Parties may provide this Agreement to the CPUC in connection with Resolution E-4471 of the CPUC; provided, that each disclosing Party shall use reasonable efforts to limit, to the extent possible, the ability of any such applicable Governmental Body, CAISO, or SC to further disclose such information. In addition, in the event Buyer resells all or any portion of the Product, Buyer shall be permitted to disclose to the other party to such resale transaction all such information necessary to effect such resale transaction.

8. Market Based Rate Authority

Seller shall, upon the request of Buyer, submit a letter of concurrence in the form attached hereto as Appendix C indicating that this Transaction does not intend to transfer "ownership or control of generation capacity" from Seller to Buyer as the

term “ownership or control of generation capacity” is used in 18 CFR § 35.42, as in effect on the date of this Confirmation.

9. Collateral Requirements [Parties to Discuss]

9.1 Seller Collateral Requirements.

Notwithstanding anything to the contrary contained in the Master Agreement, Seller shall, within five (5) Business Days following Confirmation Effective Date, provide to, and maintain with, Buyer a Full Floating Independent Amount as long as Seller or its Guarantor, if any, does not maintain (a) Credit Ratings of at least BBB- from S&P and Baa3 from Moody’s if it is rated by both S&P and Moody’s or (b) a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s if it is only rated by one of the two rating agencies. The “Full Floating Independent Amount” shall be 20% of the sum of the Monthly Payments for the current month and all remaining months of the Delivery Period, without the reductions specified in Section 4.2. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Seller shall be added to the Exposure Amount for Buyer and subtracted from the Exposure Amount for Seller. **[pricing will include cost of credit]**

9.2 Buyer Collateral Requirements.

Notwithstanding anything to the contrary contained in the Master Agreement, Buyer shall, within five (5) Business Days following Confirmation Effective Date, provide to, and maintain with, Seller a Full Floating Independent Amount as long as Buyer or its Guarantor, if any, does not maintain (a) Credit Ratings of at least BBB- from S&P and Baa3 from Moody’s if it is rated by both S&P and Moody’s or (b) a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s if it is only rated by one of the two rating agencies. The “Full Floating Independent Amount” shall be 20% of the sum of the Monthly Payments for the current month and all remaining months of the Delivery Period, without the reductions specified in Section 4.2. For the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Buyer shall be added to the Exposure Amount for Seller and subtracted from the Exposure Amount for Buyer.

- 9.3 The Parties further agree that for the purposes of calculating the Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, the Current Mark-to-Market Value for this Transaction is deemed to be zero. If at any time prior to the expiration of the Delivery Period, a liquid market for the Product develops wherein price quotes for such a product can be obtained, the Parties agree to amend the Confirmation to include a methodology for calculating the Current Mark-to-Market Value for this Transaction, consequently affecting each Party’s Exposure.

10. Declaration of an Early Termination Date and Calculation of Settlement Amounts

Notwithstanding anything to the contrary in this Confirmation, the Parties shall determine the Settlement Amount for this Transaction in accordance with Section

5.2 of the Master Agreement using the defined terms contained in this Confirmation as applicable. Furthermore, with respect to this Transaction only, the following language is to be added at the end of Section 5.2 of the Master Agreement:

“If Buyer is the Non-Defaulting Party and Buyer reasonably expects to incur penalties, fines or costs from the CPUC, the CAISO, or any other Governmental Body having jurisdiction, because Buyer is not able to include the Contract Quantity in any applicable RAR Showing or Local RAR Showing due to Seller’s Event of Default and Buyer has not purchased Replacement Capacity, then Buyer may, in good faith, estimate the amount of those penalties or fines on a \$/kW-month basis subtracting the Contract Price (in \$/kW-month) and include this estimate in its determination of the Settlement Amount, subject to accounting to Seller and a true-up of payments when those penalties or fines are finally ascertained. The rights and obligations with respect to determining and paying any Settlement Amount or Termination Payment, and any dispute resolution provisions with respect thereto, shall survive the termination of this Transaction and shall continue until after those penalties or fines are finally ascertained.”

BUYER

SELLER

PACIFIC GAS AND ELECTRIC COMPANY

CALPINE ENERGY SERVICES, L.P.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX A (RA CONFIRMATION)

Unit Information

Name	Sutter Energy Center	
Location	Yuba City, CA	
CAISO Resource ID	SUTTER_2_PL1X3	
Unit SCID	CALJ	
Unit NQC	Showing Month	Net Qualifying Capacity
	June 2012	515
	July 2012	505
	August 2012	500
	September 2012	515
	October 2012	520
	November 2012	525
	December 2012	525
Prorated Percentage of Unit Factor	[TBD]	
Resource Type	I_Phys_Res	
Resource Top Down Category (1, 2, 3 or 4)	4	
Point of		

interconnection with the CAISO Controlled Grid ("Substation")	
Path 26 (North or South)	North
Local Capacity Area (if any, as Of Confirmation Effective Date)	CAISO System
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

APPENDIX B (RA CONFIRMATION)

FORM OF LETTER OF CREDIT

[PARTIES TO DISCUSS]

[Note: Final draft of the Letter of Credit must be notarized by a public notary]

Issuing Bank Letterhead and Address

ISSUING BANK:
Union Bank, N.A.
Trade Service Operations,
1980 Saturn Street V02-906
Monterey Park, California 91755-7417

BENEFICIARY
Pacific Gas and Electric Company
77 Beale Street, Mail Code B28L
San Francisco, CA 94105
Attention: Credit Risk Management

APPLICANT
CALPINE

Letter of Credit Amount: US\$ _____

Expiry Date: _____ 201_____

Ladies and Gentlemen:

By order of _____ (“Applicant”), we hereby issue in favor of Pacific Gas and Electric Company (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ _____ (_____ and 00/100 United States Dollars) (“Letter of Credit Amount”). This Letter of Credit is available with Union Bank, N.A. Trade Service Operations, 1980 Saturn Street V02-906, Monterey Park, California 91755-7417 by sight payment,

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION:
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
UNION BANK, N.A. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT DATED _____, _____.
APPLICANT:

effective immediately, and it will expire at our close of business on [Insert one year from date of issuance _____]2012 (the "Expiry Date").

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary's signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A.. **"[Insert name of Seller under the RA Confirmation]** is in default under or in breach of the Confirmation for Resource Adequacy Capacity Product for CAISO Resources or any amendments thereto (the "Contract") between **Pacific Gas and Electric Company** and **[Insert name of Seller under the Contract]** , and the amount of **[spell out the amount followed by (US\$xxxxxxxx.xx)]** being drawn under Letter of Credit No. **[Insert number]** does not exceed the amount that is due and owing to PG&E under that Contract"; or

B. "Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Seller under the RA Confirmation]** has not provided replacement collateral acceptable to **Pacific Gas and Electric Company ("PG&E")**, and the amount of **[spell out the amount followed by (US\$xxxxxxxx.xx)]** does not exceed the amount of collateral that **[Insert name Seller under the RA Confirmation]** is required to post to **PG&E** under the terms of the Confirmation for Resource Adequacy Capacity Product for CAISO Resources, or any amendments thereto, between **[Insert name of Seller under the RA Confirmation]** and **PG&E**.

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION:
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
UNION BANK, N.A. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT DATED _____, _____.
APPLICANT:

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant; and
3. This Letter of Credit is not transferable.
4. The Expiry Date of this Letter of Credit shall be automatically extended without an amendment for a period of one (1) year from the Expiry Date or any future Expiry Date, unless at least sixty (60) days prior to the then current Expiry Date, we shall notify you in writing by courier that we have elected not to extend this Letter of Credit for any such additional period.

This Letter of Credit shall finally expire on [Insert date _____] 201_____, if it has not previously expired in accordance with the preceding paragraph.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date, at our offices at Trade Service Operations, 1980 Saturn Street V02-906, Monterey Park, California 91755-7417 Attention: Standby Letter of Credit Section.

All demands for payment shall be made by presentation of copies of this Letter of Credit and originals of the draft and statement as required above; or by facsimile transmission of documents to 323-720-2773, Attention: Standby Letter of Credit Section. If presentation is made by facsimile transmission, you may contact us at 323-720-7957 to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

EXHIBIT TO APPLICATION,

APPLICANT'S SIGNATURE _____

APPLICANT'S SIGNATURE _____

DATE OF APPLICATION _____

DATE OF APPLICATION _____

OHSUSA:750629089.3

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION:
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
UNION BANK, N.A. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT DATED _____, _____.
APPLICANT:

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at 323-720-7957.

Very truly yours,

Union Bank, N.A.

By: _____
Authorized Signature

Name: **[print or type name]** _____

Title: _____

Exhibit A

EXHIBIT FOR STANDBY LETTER OF CREDIT APPLICATION:
THIS EXHIBIT, IN THIS FINAL FORM, IS AN INTEGRAL PART OF AND MUST BE ATTACHED TO
UNION BANK, N.A. APPLICATION AND AGREEMENT FOR
IRREVOCABLE STANDBY LETTER OF CREDIT DATED _____, _____.
APPLICANT:

SIGHT DRAFT

UNION BANK, N.A.
TRADE SERVICE OPERATIONS
1980 SATURN STREET V02-906
MONTEREY PARK, CALIFORNIA 91755-7417
ATTENTION: STANDBY LETTER OF CREDIT SECTION.

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF PACIFIC GAS AND
ELECTRIC COMPANY THE AMOUNT OF U.S. \$ _____ (_____ U.S.
DOLLARS)

DRAWN UNDER UNION BANK, N.A. IRREVOCABLE STANDBY LETTER OF
CREDIT NO. _____.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY:

NAME AND TITLE

APPENDIX C (RA CONFIRMATION)
FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company Name]

[Address]

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

This letter sets forth the understanding of the degree of control exercised by Pacific Gas and Electric Company ("PG&E") and [Company Name] with respect to [Unit Name] (the "Facility") for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission's ("Commission") Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that "a seller making such an affirmative statement seek a 'letter of concurrence' from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing."³

PG&E and [Company Name] have executed a confirmation agreement for resource adequacy capacity (the "Agreement") with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] does not intend to transfer "ownership or control of generation capacity" from [Company Name] to PG&E as the term "ownership or control of generation capacity" is used in 18 CFR § 35.42.

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

Best regards,

[Author]

[Position]

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

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Pacific Gas and Electric Company

Concurring Statement

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

By: _____
[Name]
[Company Position]
[Company Name]