



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Consideration of continued participation in the Marin Energy Authority's Marin Clean Energy Program.

RECOMMENDED MOTION:

If the City Council takes no action, Sausalito will remain in the Marin Energy Authority. If the Council wishes to withdraw from the Marin Energy Authority, an affirmative vote calling for withdrawal must be passed. If none is forthcoming or fails to win a majority, the matter is decided that the City of Sausalito will remain in the Marin Energy Authority.

SUMMARY

In 2002, AB 117 legislation became State law that allowed the creation of "Community Choice Aggregation" (CCA). Local government agencies under the CCA law could purchase electricity on their own, instead of through a sole provider, such as Pacific Gas and Electric (PG&E).

In 2004, the County of Marin and Marin Municipal Water District began a study to assess the feasibility of a CCA organization in Marin. The 2005 study concluded that a CCA program was indeed feasible in Marin. Later that year, the County and local jurisdictions formed a Local Government Task Force to track the development of a Business Plan to form a Marin CCA.

The Marin CCA Business Plan was completed in 2008 and establishes an outline for a countywide agency. The CCA, now known as Marin Energy Authority (MEA), was formed on December 19, 2008 through the adoption of a JPA that formed a governing board. MEA is composed of nine elected representatives, one from each member jurisdictions as follows: Belvedere, Fairfax, Mill Valley, Ross, San Anselmo, San Rafael, Sausalito, Tiburon, and the County of Marin. Mayor Leone is Sausalito's member on the MEA Board.

Worth noting in 2006 the state of California adopted AB32, the Global Warming Solutions Act. AB32 requires that by 2020 the greenhouse gas (GHG) emissions be reduced to 1990 levels, roughly a 25% reduction.

MEA's purpose is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits. MEA members intend to promote the development and use of a wide range

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of renewable energy sources and energy efficiency programs, including solar and wind energy production, at competitive rates for customers.

BACKGROUND

MEA's initial and most significant effort is a Community Choice Aggregation (CCA) program to supply electric power to customers. Toward this end, on May 7, 2009, the MEA Board approved and released a Request for Proposal (RFP) for 'full requirements' electricity supply. This competitive solicitation process resulted in 12 bids for power with prices in the expected range described in Marin's CCA business plan. The power costs projected in the bid proposals would be at or below PG&E's projected rates for the light green option (starting at 25% renewable energy, growing to 50% in four years). The deep green option (100% renewable energy) would also be available to customers for a slight premium above PG&E's projected rates. On September 3, 2009, the MEA Board selected three of the twelve bidders for contract negotiations.

On October 1, 2009, the MEA Board approved and released a draft contract for power purchase. Feedback on the draft contract was solicited from each of the member jurisdictions, including Sausalito. On October 6, 2009, the Council heard an extensive presentation on the proposed contract from MEA's Interim Director Dawn Weisz and Supervisor Charles McGlashan. The Council also received feedback from PG&E's spokesperson Joe Nation. There were several comments provided by the public, both supporting and opposing the City participation in the CCA program.

On November 5, 2009, the MEA Board approved and released a final draft contract for power purchase. This action initiated the 90-day review period for participating agencies. The draft contract package was delivered to Sausalito on November 6th and included an overview summarizing the Power Purchase Agreement (PPA) documents as well as the three components of the draft PPA for the Marin Energy Authority to secure power supply for the Marin Clean Energy program. The final draft PPA is the result of extensive negotiations and review by the MEA Board, its ad hoc contract committee, staff, technical and legal consultants, the Marin Managers Association's peer review and input from the public.

The MEA Joint Powers Agreement provides that any party may withdraw its membership in the MEA prior to the MEA's execution of Program Agreement 1 (the PPA), by giving at least 30 days advance written notice of its election to do so. Staff expects that MEA will execute the contract with an energy service provider at the end of the 90-day review period, which is February 4, 2010. Accordingly, if the City of Sausalito wishes to withdraw from MEA, it must provide notice by January 13, 2010.

General terms of the draft contract are as follows:

- Contract is based on the industry-standard Edison Electric Institute Master Power Purchase and Sale Agreement (PPA)
- Contract insulates municipal funds before, during and after the delivery period

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- Five year delivery period, beginning on June 1, 2010 and ending on May 31, 2015
- Fixed annual pricing throughout the term

There remains a final opportunity to comment on the various draft power agreements currently still in negotiations with MEA and the primary company under consideration for this electricity supply contract. These agreements are included in this report as follows:

- Attachment 2 – Contract Overview
- Attachment 3 – Master Power Purchase and Sale Agreement
- Attachment 4 – Master Power Purchase and Sale Agreement – Cover Sheet
- Attachment 5 – Confirmation
- Attachment 6 – MEA CEQUA Notice of Public Review and Comment Period
- Attachment 7 – MEA Resolution approved November 5, 2009, required the MEA Board not to approve the draft PPA unless the price for customer electricity costs for the Light Green energy product be at or below PG&E’s projected costs.

As was done with the Business Plan, the Marin Managers Association contracted with MRW and Associates to provide a review and comment on the proposed contracts. Their analysis of the draft PPA contracts, plus a review of the financial risks to MEA, are included in their report and attached as Exhibit 8. As the MRW & Associates report points out, there are risks associated with this action; costs could be higher – or lower – for MEA power relative to PG&E’s rates, although this risk appears likely to diminish over time if MEA develops its own renewable resources. MEA will set its initial rates after PG&E’s rates are approved for the upcoming year, but thereafter, PG&E may be able to drop its rates below MEA’s. If gas prices drop, a complicated formula set by the California Public Utilities Commission will cause effective rates for the CCA to rise temporarily. The converse is also true: if gas prices rise, costs will drop for CCA customers. The point is that these are unknowns at this time. Bill Monson of MRW & Associates will be available to address City Council questions about the risks associated with this endeavor.

Over the past several weeks, additional information has been made available to the public and is posted on MEA’s website. The MEA Board approved a draft Community Choice Aggregation Implementation Plan and Statement of Intent. This is a necessary step to comply with CPUC requirements, and provides updated information that was first outlined in the approved MEA Business Plan in 2008.

At the request of the Marin Managers, two additional forums were held to provide information and seek public input on the draft contracts. One was held on November 23rd in San Rafael, the second forum was held on December 1st in Mill Valley. The purpose of these workshops was to allow members of the Marin County community to learn more about the proposed Marin Clean Energy program. These workshops were recorded by the Community Media Center for Marin and are available to view at <http://cmcm.tv/MEAPublicWorkshop>.

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All MEA documents, as well as meeting agendas, minutes, and audio recordings, are available at: www.marinenergyauthority.org.

FISCAL IMPACT

Continuation in the MEA program does not cause any immediate financial impact to the City's budget. The Joint Power Authority, Marin Energy Authority, was constructed so as to insulate all member agencies from any financial exposure to the CCA. Ratepayers, not taxpayers, form the financial basis for the CCA and that is where the CCA must turn for its resources.

If the City continues its participation in the MEA JPA there may be possible future financial obligations to the City. The enabling MEA Ordinance, under section 6.3.3 (general cost) and 6.3.4 (other energy program costs) allows for cost sharing among member agencies, under allocations and formula defined by the MEA Board. To date, there have been no proposed costs or formulas established by the MEA Board. As MEA members, the City of Sausalito is contractually obligated to our share of non-CCA expenses pursuant to the MEA Board of Directors action on such matters.

The City Managers have devoted significant time reviewing this matter and note that both the MEA JPA and the PPA provide that the member entities shall not be liable for the obligations of the JPA. It still remains possible that the California Public Utilities Commission (PUC) could determine that MEA – in order to receive PUC approval, will require the member agencies to be liable for the MEA's debts and obligations. Should the PUC decide to impose this requirement, each of the member agencies would be faced with the decision to agree to assume such liability. As MEA has been founded on the principal that the general funds of the member agencies will not be placed in risk, it is likely that none of the member agencies, including the City of Sausalito would agree to assume this liability.

The City has incurred minor expenses associated with analyzing the MEA; including three thousand dollars for Sausalito's contribution to the commissioning of the MRW & Associates risk analysis report and their attendance at two regional meetings.

STAFF RECOMMENDATIONS

If the City Council takes no action, Sausalito will remain in the Marin Energy Authority. If the Council wishes to withdraw from the Marin Energy Authority, an affirmative vote calling for withdrawal must be passed. It is therefore recommended that the Mayor, at the end of the evening's presentations, inquire if any member of Council wishes to make a motion to withdraw. If none is forthcoming or fails to win a majority, the matter is decided that the City of Sausalito will remain in the Marin Energy Authority.

Staff recommends that the City Council:

1. Hear a presentation from MEA representative Dawn Weisz and Marin County Supervisor Charles McGlashan,

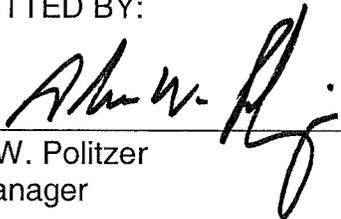
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2. Hear from PG&E representative
3. Hear from MRW & Associates - Bill Monson
4. Receive Public Comment
5. Close the Public Comment and discuss the matter;

ATTACHMENTS

1. November 6, 2009 Letter from Dawn Weisz of MEA
2. Contract Overview
3. Master Power Purchase & Sale Agreement
4. Master Power Purchase & Sale Agreement Cover Sheet
5. Confirmation
6. MEA CEQUA Notice
7. MEA Cost Competitiveness Resolution
8. MRW & Associates Report
9. MEA Responses to Current and Frequently Asked Questions
10. Marin County Civil Grand Jury Report
11. MEA Preliminary Response to Grand Jury Response
12. December 23, 2009 Letter from M.U.T.A. and C.A.R.E.
13. January 4, 2010 Letter from PG&E – Projected Cost and Rates
14. January 5, 2010 Email from MEA Response to PG&E Projected Cost and Rates

SUBMITTED BY:



Adam W. Politzer
City Manager

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marin energy
authority

DAWN WEISZ
Interim Director

Adam Politzer
City Manager
City of Sausalito
420 Litho Street
Sausalito, CA 94965

RECEIVED

NOV 09 2009

CITY OF SAUSALITO

November 6, 2009

Dear Mr. Politzer:

TOM CROMWELL
City of Belvedere

LEW TREMAINE
Town of Fairfax

CHARLES MCGLASHAN
County of Marin

SHAWN MARSHALL
City of Mill Valley

CHRISTOPHER MARTIN
Town of Ross

BARBARA THORNTON
Town of San Anselmo

DAMON CONNOLLY
City of San Rafael

JONATHAN LEONE
City of Sausalito

RICHARD COLLINS
Town of Tiburon

Enclosed for review by your City Council is the final draft Power Purchase Agreement that the Board of Directors of the Marin Energy Authority at its November 5, 2009 meeting directed be released to your Agency. The attachments include an overview summarizing the Power Purchase Agreement (PPA) documents as well as the three components of the draft PPA for the Marin Energy Authority to secure power supply for the Marin Clean Energy program.

Section 7.1.1.1 of the Marin Energy Authority Joint Powers Agreement provides that prior to the Authority's execution of Program Agreement 1 (the Power Purchase Agreement), any Party may withdraw its membership in the Authority by giving no less than 30 days advance written notice of its election to do so. This section further provides that the Authority shall provide a copy of the proposed agreement to each Party at least 90 days prior to the consideration of such agreement by the Board. The Board is expecting to consider the adoption of the Power Purchase Agreement at its February 4, 2010 meeting. The Power Purchase Agreement is being transmitted to your agency for the required final 90 day review.

The final draft Power Purchase Agreement is the result of extensive negotiations and review by the MEA Board, its ad hoc contract committee, staff, technical and legal consultants, and input from the public. We are pleased to answer any questions that your agency may have and offer any assistance that you desire in your review of the Agreement.

Sincerely,

Dawn Weisz
Interim Director

california
AB 32

Marin
Clean
Energy

Cc: Greg Stepanicich, General Counsel

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Overview

Marin Energy Authority Draft Power Purchase and Sale Agreement

Attached you will find three components of the draft Power Purchase Agreement (PPA) for the Marin Energy Authority to secure power supply for the Marin Clean Energy program. The three components of the Agreement are described below. In addition, key terms of the contract are outlined below in the overview section.

1. EEI Master Power Purchase & Sale Agreement

This Edison Electric Institute (EEI) Agreement is a standard industry document used by public and private utilities across the United States for power purchase and sale.

2. EEI Master Power Purchase & Sale Agreement Cover Sheet

This document provides additional detail related to MEA's specific transaction, identifying exceptions, clarifications and areas of applicability which modify the standards terms and conditions of the Master EEI Agreement.

3. Confirmation

This document is referenced in the EEI Agreement and defines the commercial terms of MEA's transaction. Key details include energy quantities, pricing and delivery term. The Confirmation also contains the terms and conditions pertinent to renewable energy content and environmental attributes.

-----Contract Overview-----

General Contract Terms

- Contract is based on the industry-standard Edison Electric Institute (EEI), Master Power Purchase and Sale Agreement
- Contract insulates municipal funds/budgets before, during and after the delivery period
- Five year delivery period, beginning on June 1, 2010 and ending on May 31, 2015

Commercial Terms

- Full requirements product to be provided by the supplier, including all: electric energy, renewable energy, capacity, ancillary services (as required by the California Independent System Operator) and scheduling coordination services
- All MEA customers will receive at least 25% of energy deliveries from California Energy Commission eligible renewable resources
- Supplier must maintain a minimum, "investment grade" credit rating
- MEA's credit exposure is limited to customer receipts/revenues

- MEA will be allowed to substitute renewable energy generated by newly developed and/or purchased resources for contracted energy volumes based on mutually agreeable terms among the parties

Other Important Considerations

- Energy pricing will be refreshed prior to contract signing
- MEA will not execute PPA if costs will not support Light Green (25% renewable) generation at or below PG&E costs
- MEA customers may voluntarily participate in a competitively priced energy supply option that will provide 100% of energy deliveries from clean, renewable fuel sources – energy supplier will procure renewable energy volumes sufficient to support MCE's "Deep Green" product

Finding Contract Provisions in Draft Agreement

- Contract energy price at or below PG&E's generation charges for Light Green energy: Confirmation #5
- No risk or contribution from city, town, or county budgets: EEI Cover Sheet, Other Changes, #25
- Five year, full requirements contract (all energy, scheduling, load following, risk management) at a fixed price: Confirmation #2
- Substituting MEA owned or acquired assets is allowed: Confirmation #11
- Deep green at 100% renewable energy: Confirmation #2.2
- Guaranteed supply of power 24 hrs/day: Confirmation #2

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- Deep green at 100% renewable energy: Confirmation #2.2
- Guaranteed supply of power 24 hrs/day: Confirmation #2

Master Power Purchase & Sale Agreement



Version 2.1 (modified 4/25/00)
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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* ("Master Agreement") is made as of the following date: _____ ("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 ("_____ " or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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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 Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

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: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

- Option A (Applicable if no other selection is made.)
- Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: _____
- Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(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:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:
Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(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:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

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(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____
Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

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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.

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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 therefor 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.

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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.

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(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.

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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.

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SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

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positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

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respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 -
Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

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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

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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.

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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 effect 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

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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.

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, _____
between _____ (“Party A”) and _____ (“Party B”) _____
regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

- Into _____, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm
(Specify System: _____)
- Unit Firm
(Specify Unit(s): _____)
- Other _____
- Transmission Contingency (If not marked, no transmission contingency)
 - FT-Contract Path Contingency Seller Buyer
 - FT-Delivery Point Contingency Seller Buyer
 - Transmission Contingent Seller Buyer
 - Other transmission contingency
(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

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Confirmation Letter
Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, 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.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: _____, 2010 ("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 ("_____ " or "Party A")

Name ("Marin Energy Authority" or "Party B")

All Notices:

All Notices:

Street: _____

Street: [3501 Civic Center Drive, Room 308]

City: _____ Zip: _____

City: [San Rafael, CA] Zip: [94903]

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

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Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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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 Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

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 Cross Default Amount US\$50,000,000

Other Cross Default Amount
Entity: _____ \$ _____

Cross Default for Party B:

Party B Cross Default Amount US\$500,000

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: __

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

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Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

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Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

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(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Ratings from both S&P and Moody's fall below BBB and Baa2, respectively, or if Party A is not rated by either S&P or Moody's.
- Other:
Specify: _____

(e) Guarantor for Party A:

Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality
Applicable

If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8. If not checked, inapplicable. Collateral description as follows:

Party B shall direct Pacific Gas & Electric ("PG&E") to deposit into a lockbox account, in favor of Party A, all of the proceeds of all of the customer account receipts (net of the amounts to be paid to PG&E) received by Party B from the sale of the Product to its customers. Party A shall receive, in accordance with an account control agreement, payments for its invoice for the previous calendar month and after Party A's invoice is paid, the amounts remaining in such lockbox shall be immediately released to Party B on the 25th of each calendar month. Party A acknowledges that revenues from customer account receipts may be subject to a lien securing secured loan facilities for Party B provided that Party A, Party B and the lender(s) of such secured loan facilities shall have agreed to an intercreditor agreement acceptable to Party A in

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its reasonable discretion to the extent that Party A's lien on the amounts in the lockbox is at least pari passu with the lien of Party B's lender(s). The Parties agree that the lockbox account shall be in the name of Party B, and any interest earned thereon shall accrue in favor of Party B.

Other Changes

- 1) In Section 1.1, add the following sentence at the end of the definition of "Affiliate": "

The Parties hereby agree and acknowledge that the members of Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

- 2) In Section 1.27 delete the word "transferable" in the first line and insert the following after the last sentence:

"The value of the Letter of Credit shall be its principal amount (the "Value"), provided that if the Letter of Credit expires within thirty days after the date its Value is being determined, its Value shall be zero. If a Party has delivered more than one form of Performance Assurance to the Secured Party, when a return of Performance Assurance is to be made, the Secured Party may elect which form to transfer." The issuer of any Letter of Credit shall be rated, at all times when such Letter of Credit is outstanding, no less than A by S&P and A by Moody's.

- 3) Section 1.50 (Recording) is hereby deleted in its entirety.
- 4) In Section 2.1, delete "orally or, if expressly required by either Party with respect to a particular Transaction," in the 2nd line.
- 5) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

"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 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; provided, however, the Party A acknowledges that no employee may amend or otherwise materially modify this Master Agreement or

Confirmation without the approval of the board of Party B, and that the only employees with authority to act on behalf of Party B shall be limited based on the certified incumbency delivered to Party A pursuant to Section 10.15.”

- 6) In Section 2.4, delete “either orally or” after “agreed to” in the 7th line.
- 7) Section 2.5 is hereby deleted in its entirety.
- 8) In Section 5.1 (a) change “three (3) Business Days” to “five (5) Business Days”.
- 9) In Section 5.1(d) add the following after “Bankrupt”:

“,provided, however, if the presentation of an involuntary petition for the winding-up or liquidation of a party (an "Involuntary Proceeding") is commenced, such Involuntary Proceeding shall be not be a Default in respect of that party unless the Involuntary Proceeding has not been withdrawn, dismissed, discharged, stayed or restrained within 60 days of its commencement and in such event the other party shall be entitled to exercise its rights and remedies under this Agreement in respect thereof;”

- 10) In Section 5.1(g) add the following at the end of Section 5.1(g):

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

- 11) 5.4 Notice of Payment of Termination Payment. Add the following at the end:

“The Termination Payment shall bear interest at the Interest Rate from the date upon which notice is effective until paid. 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 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 and that the Defaulting Party has returned any Performance Assurance of the Non-Defaulting Party's that is held simultaneously or before the Non Defaulting Party makes any Termination Payment hereunder."

- 12) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.
- 13) In Sections 8.1(b) and 8.2 (b) change "three (3) Business Days" to "five (5) Business Days".
- 14) In Sections 8.1(d) and 8.2(d) on line 5, change "three (3) Business Days" to "five (5) Business Days".
- 15) The following new section 8.2(f) shall be added to Section 8.2:

"Upon the occurrence of an Event of Default by Party A under the Master Agreement, Party A shall reimburse Party B for (i) the costs associated with the posting and payment of the CCA Bond which is posted by Party B and (ii) any actual reentry fees assessed by PG&E in connection with such Event of Default by Party A regardless of the amount of the security posted. The term "CCA Bond" means the bond required to be posted, in form and substance satisfactory to Party B in its sole discretion, pursuant to the Settlement Agreement in Rulemaking R.03-10-003 (Phase 3 – Community Choice Aggregation Bond Proceeding). The CCA Bond [shall be/has been] posted [no later than [____], 20__] and Party B shall advise Party A of the amount of such CCA Bond promptly after an Event of Default."

- 16) In Section 10.1, the phrase "by either Party upon thirty (30) days' prior written notice" shall be deleted and replaced by "upon mutual agreement of the Parties".
- 17) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

"Each party acknowledges and agrees that (i) certain transaction(s) hereunder constitute a "forward contract" providing a "contractual right" within the meaning of such

terms under Title 11 of the United States Code, as amended (the "Bankruptcy Code"); (ii) it is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any transaction that constitutes a "forward contract," (iii) all payments made or to be made by one party to the other party pursuant to this contract constitute a "settlement payment" within the meaning of the Bankruptcy Code; (iv) all transfers of adequate assurance, prepayment or similar performance assurance by one party to the other party under this contract constitute a "margin payment" within the meaning of the Bankruptcy Codes; (v) each party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code; (vi) Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code; and (vii) the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

- 18) In Section 10.5 change "transfer, sell, pledge, encumber or assign" to "pledge, encumber or collaterally assign".
- 19) In Section 10.6 change "State of New York" to "State of California" and add the following after the last line: "EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."
- 20) Section 10.8 General. Add at the end of the second to last sentence: "and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) Arbitration provisions, if applicable, (vi) the obligation of either Party to make payments hereunder, (vii) Section 10.6 and (viii) Section 10.13 shall also survive the termination of the Agreement or any Transaction."

21) In section 10.9 and insert the words “copies of” after the word “examine”. In line 9, change twelve (12) months to twenty-four (24) months.

22) Section 10.10 Bankruptcy Issues. Delete Section 10.10 in its entirety and replace with the following: “The Parties intend that (i) all Transactions constitute a “forward contract” within the meaning of the United States Bankruptcy Code (the “Bankruptcy Code”) or a “swap agreement” within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.”

23) The following sentence shall be added at the end of Section 10.11:

“Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq).”

24) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a).

25) The following new Section shall be added as Section 10.13:

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 19, 2008 (the "Joint Power Agreement") and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have

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no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement or any of the Transactions.

26) The following new Section shall be added as Section 10.14: No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

27) The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Joint Power Agreement and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Joint Power Agreement and other applicable laws, (iii) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Joint Power Agreement or other relevant constitutional, organic or other governing documents and applicable law, (iv) Party B's obligations to make payments hereunder are, except as otherwise specifically set forth herein or in the account control agreement or any other agreement documenting the security of Party B to Party A, unsubordinated obligations which enjoy

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first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Joint Power Agreement and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Joint Power Agreement and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all of Party B's obligations hereunder and under each Transaction, and (v) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B which, in either case, is proscribed by any provision of the Joint Power Agreement or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

28) The Parties agree to add the following representations and warranties to Section 10.2:

Party A represents, warrants and covenants to Party B continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows; (i) no new facilities are required to be constructed in order for Seller to meet its supply obligation under this Agreement, and (ii) Seller shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including the California Environmental Quality Act ("CEQA") and any other applicable California environmental statutes relating to the construction and operation of such facilities. The foregoing representation shall not limit Party A's ability to use newly built facilities to supply the Product hereunder provided such facilities have satisfied all Applicable Law,

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including CEQA and any other applicable California environmental statutes relating to the construction and operation thereof. Party A further agrees to waive any claims against Party B for failure to perform Party B's obligations under this Master Agreement or under any Confirmation to the extent that such failure is a result of Party A's violation or breach of the foregoing representations, warranties and covenants or as a result of litigation against Party B as a result of Party A's violation or breach of the foregoing representations, warranties and covenants.

29) The following sentence shall be added at the end of Section 10.9: Party A agrees to cooperate with Party B's audits in connection with this Master Agreement and the Confirmation, which shall commence on the first Business Day of January and June of each year. To the extent that an audit reveals that Energy Party A sold to Party B was incorrectly classified by Party A as Eligible Renewable Energy or Renewable Energy, Party A (i) shall pay for all audit costs incurred by Party B and (ii) shall, at Party A's cost, deliver to Party B replacement Eligible Renewable Energy or Renewable Energy in a quantity equal to the incorrectly classified Energy.

30) The following shall be added as a new Section 10.15: Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A (i) certified copies of the Joint Powers Agreement and such relevant ordinances, resolutions, public notices and other public documents issued by Party B evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement, (ii) a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, subject to the limitations set forth in Section 2.1 and (iii) opinions of legal counsel for Party B, in form and substance reasonably satisfactory to Party A, with appropriate qualifications, assumptions and limitations, regarding such the following matters: (A) Party B is a validly existing community choice aggregation ("CCA"), (B) Party B has the power and authority to execute, deliver and perform the Master Agreement and the

proposed Confirmation, (C) the execution, delivery and performance by Party B of the Master Agreement and the proposed Confirmation does not contravene: (x) applicable law, or (y) the Joint Powers Agreement of Party B, and (D) the Master Agreement has been executed and delivered and is enforceable against Party B in accordance with its terms.

31) The following shall be added as a new Section 10.16: Party A's Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B certified copies of its certificate of formation, good standing certificate, resolutions, incumbencies, its FERC authorization under Section [205] of the Federal Power Act and such other documents reasonably requested by Party B evidencing the necessary authorizations with respect to the execution, delivery and performance by Party A of this Master Agreement and any Confirmations executed in connection therewith.

32) The following shall be added as a new Section 10.18: The New Two-Third Vote Requirement For Local Public Electricity Providers Initiative. The Parties acknowledge the pendency of the initiative entitled "The New Two-Thirds Vote Requirement For Public Electricity Providers" (the "NTVR Initiative"). The foregoing acknowledgement is for informational purposes only and shall not allocate any risk to either Party regarding the validity or enforceability of the Master Agreement or the proposed Confirmation. Each of the Parties hereby agree and acknowledge that the other Party makes no representations and warranties with respect to the potential impact of the NTVR Initiative on this Agreement. Each Party agrees to pay for its own costs and expenses associated with any actions or suits arising from the NTVR Initiative.

6/8/00

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

Party A

Party B **Marin Energy Authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

For Seller's Use Only	
Trade Date	
Seller's ID	

CONFIRMATION

Reference:

Master Power Purchase and Sale Agreement
 Between <Company Legal Name> ("Seller")
 And Marin Energy Authority ("Buyer")
 As of <Month, Day, Year> (the "Effective Date")
 Transaction Date: <Month, Day, Year>

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

WHEREAS, Buyer is an independent public agency formed in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) and established by that certain Joint Powers Agreement, effective as of December 19, 2008 ("Joint Powers Agreement") to protect the environment by furthering the environmental goals of AB 32, the Global Warming Solutions Act of 2006 (the "GWSA"), and reducing greenhouse gas emissions by studying, promoting, developing, conducting, operating and managing energy and energy-related climate change programs, including but not limited to the CCA program;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, the Buyer submitted Buyer's CCA Implementation Plan ("Implementation Plan") and Statement of Intent to the CPUC;

WHEREAS, pursuant to the GWSA, the State of California has established a timetable to implement measures reduce greenhouse gas emissions;

WHEREAS, pursuant to its regulatory authority and the purposes of the Joint Powers Agreement, Buyer required as part of its Request for Proposals that at least 25% of the Full Requirements Product Supply include Eligible Renewable Energy;

WHEREAS, Buyer, pursuant to this Confirmation, will be taking a regulatory action that will purchase Renewable Energy to promote the regulatory goals established in the GWSA and thereby qualify for Class 8 categorical exemption under Section 15308 of Title 14 of the California Code of Regulations;

WHEREAS, Buyer issued a Request for Proposals for Full Requirements Product Supply for Buyer serving as the CCA;

WHEREAS, Buyer selected Seller to supply the Full Requirements Product for Buyer serving as the CCA;

WHEREAS, Buyer will in turn supply the Full Requirements Product for use by the Members; and

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Full Requirements Product to Buyer, and Buyer shall take and pay for such supply of Full Requirement Product, including, subject to satisfaction of the conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Defined terms shall have the meanings set forth in this Confirmation or as set forth below:

"Ancillary Services" means those ancillary services, including but not limited to those described in FERC Order No. 888, that may from time to time be required by FERC to be supplied by CAISO.

"Applicable Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction; or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"CAISO Charges" mean those amounts [(other than for imbalance Energy)] billed by CAISO and associated with the procurement and delivery at the Delivery Point of any full requirements product through the CAISO market to CCA Customers as such charges may be adjusted from time to time pursuant to the Tariff.

"Capacity" means the net generating capability of a generating resource or generating resources. Capacity is expressed in MW.

"Capacity Requirement" means Capacity as required for Buyer to meet its RAR.

"Commercially Reasonable Efforts" for the purposes of this Confirmation, "commercially reasonable efforts" or acting in a "commercially reasonable manner" shall not require a Party to undertake extraordinary or unreasonable measures.

"Customers" means any account designated, from time to time, by Buyer as being served by Buyer, and identified to Seller pursuant to this Confirmation.

"Energy" means real (not reactive) electric energy in the form of three-phase alternating current having a nominal frequency of approximately 60 cycles per second, a harmonic content consistent with the requirements of the Institute of Electrical and Electronic Engineers Standard No. 519, and a voltage content consistent with the guidelines applied by the Control Area in which the applicable generating resource resides. Energy is measured in MWh.

"Eligible Renewable Energy Source" means any renewable energy source that qualifies for the RPS.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to any Renewable Energy Source or Renewable Energy. Environmental Attributes include but are not limited to renewable energy credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from a Renewable Energy Source, (ii) production tax credits associated with the construction or operation of a Renewable Energy Source and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to a seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by a Renewable Energy Source for compliance with local, state, or federal operating and/or air quality permits. If the Renewable Energy Source is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such Renewable Energy Source.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Imbalance Charge" means any scheduling penalties, imbalance penalties, overpull or unauthorized overrun penalties, operational flow order penalties, cash out charges, banking charges or similar penalties, fees or charges, assessed by, or oversupply credits or payments due with respect to a failure to comply with balance and/or scheduling requirements of any applicable entity, specifically excluding any distribution charges imposed by PG&E on the delivery of the Energy hereunder.

"Other Renewable Energy Source" means any renewable energy source that is not an Eligible Renewable Energy Source, including wind, hydro-electric, geothermal, biogas including landfill gas, digester gases and gas conversion or gasification technologies, direct combustion biomass, biodiesel power producing facilities, photovoltaic, solar thermal, fuel cells using eligible renewable fuels, qualifying municipal solid waste conversion, tidal current, ocean wave, and ocean thermal technology; provided, however, that in no event shall coal or nuclear resources be deemed to be "Other Renewable Energy Source".

"Product" means any products provided by Seller to Buyer under this Confirmation.

"Renewable Energy Certificates" or "RECs" means a certificate of proof representing renewable and/or environmental attributes associated with energy production, issued through the accounting system established by the California Energy Commission under Public Utilities Code Section 399.13, that one unit of electricity was generated and delivered by an Eligible Renewable Energy Resource and such REC satisfies the requirements of RPS.

"Renewable Energy" means electricity generated from Renewable Energy Sources.

"Renewable Energy Source" means any Eligible Renewable Energy Source or Other Renewable Energy Source.

"Renewables Portfolio Standard" or "RPS" means that quantity of renewable energy resources that Buyer is required to procure pursuant to Applicable Law.

"Resource Adequacy Requirement" or "RAR" means those resource adequacy requirements that Buyer is required to comply with pursuant to Applicable Law.

"SC Agreement" means the Scheduling Coordinator Agreement by which Buyer appoints Seller as its scheduling coordinator with the CAISO.

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"System Power" refers to the Energy resource mix for electricity in the State of California net of electricity sold to consumers as specific purchases.

"Tariff" shall mean the electric tariff filed by CAISO with the Federal Energy Regulatory Commission, as such document is amended and replaced by CAISO from time to time.

"Weighted Average Price" shall mean a price determined on a monthly basis as a function of Buyer's actual energy consumption and the corresponding CAISO Real-Time PG&E LAP Price. [The Parties to agree to the specific formula for calculating the actual weighted average price].

2. **PRODUCT.**

2.1 **Seller Supply Obligation.** Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the "Full Requirements Product," which is comprised of:

- (a) a quantity of electrical Energy determined in accordance with this Confirmation;
- (b) a quantity of Renewable Energy as set forth in Section 2.2;
- (c) a quantity of Capacity equal to the Capacity Requirement;
- (d) Ancillary Services required to supply the foregoing electrical Energy identified in this Section 2.1 (the "Full Requirements Energy") to the Delivery Point;
- (e) distribution losses incurred in supplying Full Requirements Energy at the Delivery Point; and
- (f) CAISO scheduling coordination services as set forth in the SC Agreement.

2.2 **Renewable Energy.** During the Delivery Period, Seller shall provide to Buyer Renewable Energy in amounts sufficient to ensure that (i) Customers participating in Buyer's (a) "Light Green" service receive at least 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources, and (b) "Deep Green" service receive 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources and 100% of their Energy from Renewable Energy Sources and (ii) Buyer meets any RPS obligations. The Renewable Energy sold by Seller to Buyer shall also include any and all Environmental Attributes associated with such Renewable Energy. If due to any action by the CPUC or any state, federal or local governmental authority or agency, or any change in Applicable Law which occur after the execution date hereof (a "Change in Law"), the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Renewable Energy on economic terms equal to those in force on the execution date hereof. In the event the Parties cannot reach agreement on any amendments to this Confirmation within 60 days following the Change in Law, Seller shall perform its obligations hereunder with regard to Renewable Energy in accordance with the Applicable Law immediately prior to the Change in Law.

2.3 **No New Construction.** Seller covenants and agrees, during the Delivery Period, that (a) no new facilities are required to be constructed in order for Seller to meet its supply obligation, and (b) it shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including CEQA and any other applicable California environmental statutes relating to the construction and operation of such facility.

2.4 **Non-Renewable Energy.** The Energy provided under this Confirmation may be procured from unit-specific sources, provided such resources are not coal or nuclear, under terms and conditions to be agreed between the Parties. To the extent unit-specific resources have not been agreed to by the Parties, Seller will use System Power to provide the required Energy.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Transaction Date. The terms set forth herein shall apply from the Start Date through the End Date:

Start Date:	End Date:
June 1, 2010	May 31, 2015

4. **LOCATION AND DELIVERY POINT.**

Market Area	Supply Point	Delivery Point	Buyer's Local Utility
CAISO	NP15 EZ Gen Hub	PG&E LAP	PG&E

5. **PRICING.**

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5.1. Contract Price (Electricity): Buyer shall pay the following Contract Price for Energy, including related Ancillary Services (on a pass-through basis), and CAISO scheduling services (expressed in USD per MWh) for all monthly Electricity usage that is within the Balanced Monthly Usage as set forth in the tables, below.

Year	Contract Price (in US\$/MWh)
2010	\$ _____
2011	\$ _____
2012	\$ _____
2013	\$ _____
2014	\$ _____
2015	\$ _____

5.2. Contract Price (Renewable Energy): Buyer shall pay the following Premium (Renewable Energy) (expressed in USD per MWh) for all monthly Renewable Energy which is in addition to the Contract Price (Electricity), including related Ancillary Services (on a pass-through basis), and CAISO scheduling services (expressed in USD per MWh) for all monthly Electricity usage as set forth in the tables, below

Year	Eligible Renewable Energy Premium (in US\$/MWh)	Other Renewable Energy Premium (in US\$/MWh)
2010	\$ _____	\$ _____
2011	\$ _____	\$ _____
2012	\$ _____	\$ _____
2013	\$ _____	\$ _____
2014	\$ _____	\$ _____
2015	\$ _____	\$ _____

5.3. Contract Price (Resource Adequacy Capacity): Buyer shall pay the following Contract Price (Resource Adequacy Capacity) (expressed in USD per kilowatt) on a monthly basis for Capacity as set forth in the tables below:

Year	System Resource Adequacy Capacity (in US\$/kW/month)	Bay Area Resource Adequacy Capacity (in US\$/kW/month)	Other PG&E Resource Adequacy Capacity (in US\$/kW/month)
2010		\$ _____	\$ _____
2011		\$ _____	\$ _____
2012		\$ _____	\$ _____
2013		\$ _____	\$ _____
2014		\$ _____	\$ _____
2015		\$ _____	\$ _____

5.4. Balanced Monthly Usage: The term "Balanced Monthly Usage" shall mean the volume of Energy that is between the "Lower Limit" and the "Upper Limit" as defined and set forth below: [add exhibit with the Baseline hourly volumes]

Balanced Monthly Usage Limits	
Lower Limit (the "Lower Limit") (Percent below Buyer's Baseline Monthly Usage)	Upper Limit (the "Upper Limit") (Percent above Buyer's Baseline Monthly Usage)
«TableStart:TotalContractedQuantity»«lower_limit»%	«upper_limit»«TableEnd:TotalContractedQuantity»%

5.5. Pass-Through Charges: Seller shall be responsible for bidding and scheduling the loads of all Customers in accordance with Applicable Law, including the Tariff. Seller shall pass through to Buyer all CAISO Charges for providing Energy at the Delivery Point. Buyer's Customers will remain responsible for payment of delivery charges for transmission, distribution, public goods and other non-bypassable surcharges charged directly to Customers by PG&E. Buyer may request a review of the relevant records of Seller to confirm the accuracy of any costs passed-through to Buyer hereunder. Seller shall provide such records for Buyer's review during normal business hours and copies of such records at Buyer's cost and subject to any applicable confidentiality restrictions.

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- 5.6. **Distribution Losses:** Buyer shall be responsible for the costs of additional Energy, Renewable Energy and Capacity provided by Seller necessary to cover Distribution Losses, which shall be determined as follows: for energy by using the distribution loss factors required for settlements with the CAISO during the billing period; for Renewable Energy by using the distribution loss factors required by the California Public Utilities Commission for Renewable Portfolio Standards compliance for the compliance year; and for capacity by using the distribution loss factors required by the California Energy Commission for Resource Adequacy compliance for the compliance year.
6. **CONTRACT QUANTITY.** Seller shall service 100% of Buyer's Energy requirements. Energy prices pursuant to this Confirmation will relate to the quantities set forth in the table below (the "Contract Quantities"):

The Contract Price relates to the Contract Quantities at (choose one)				
<input checked="" type="checkbox"/> the Supply Point <input type="checkbox"/> the Delivery Point <input type="checkbox"/> Buyer's Meter				
Commodity				
Month	Energy Baseline Monthly Usage (MWh)	Renewable Energy Baseline Annual Usage (MWh)		Resource Adequacy Obligation (in kW/month)
«ContractedQuantity» «date»	«monthly_usage»	«annual_usage»		«Calc_Demand_RA»«TableEnd: ContractedQuantity»

Buyer shall be liable for all costs associated with delivering Energy from the Supply Point to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from the Supply Point to the Delivery Point. [For unit-specific Energy delivered hereunder pursuant to Section 2.4, Buyer shall be liable for all costs associated with delivering Energy from the generation point (the load aggregation point) to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from such generation point to the Delivery Point.]

7. **MONTHLY BILLING SETTLEMENT.** For monthly volumes within the Balanced Monthly Usage, Seller shall invoice Buyer at the Contract Price for the actual monthly usage.
- 7.1. **Usage Above Upper Limit:** During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) exceeds the Upper Limit ("Excess Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Electricity). For the Excess Quantity, Buyer shall reimburse Seller at the monthly Weighted Average Price plus all related CAISO Charges at the Delivery Point.
- 7.2. **Usage Below Lower Limit:** During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) is less than the Lower Limit ("Underused Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Electricity) and shall credit Buyer's account by an amount equal to the Underused Quantity multiplied by the monthly Weighted Average Price.
- 7.3. **Resource Adequacy Capacity Usage Above Limit.** During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement exceeds the Upper Limit ("Excess Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Resource Adequacy Capacity). For the Excess Resource Adequacy Capacity Quantity, Buyer shall reimburse Seller for its actual cost of buying the Excess Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to minimize the cost of Excess Resource Adequacy Capacity Quantity purchased on behalf of Buyer provided that Seller shall not enter into any such transactions for such purchases without Buyer's consent and acceptance of such transactions.
- 7.4. **Resource Adequacy Capacity Usage Below Limit.** During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement is less than the Lower Limit ("Underused Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Resource Adequacy Capacity) and shall credit Buyer's account for the revenues obtained by Seller from remarketing the Underused Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to maximize the value of Underused Resource Adequacy Capacity Quantity remarketed on behalf of Buyer provided that Seller shall not enter into any such transactions for remarketing without Buyer's consent and acceptance of such transactions.
8. **SEMI-ANNUAL RENEWABLE ENERGY RECONCILIATION.** No later than [January 1st and June 1st] of each calendar year during the term of this Confirmation, Buyer shall provide Seller with notice stating Buyer's then-current estimate of Buyer's compliance with the Renewable Portfolio Standards for such calendar year together with documentation setting forth amounts of Renewable Energy which were required to be delivered for the preceding six-month period pursuant to Section 2.2. Following delivery of this notice, the Parties shall work together promptly to determine whether they anticipate Seller to be compliant or not with the requirements set forth in Section 2.2 for such calendar year and the Parties shall work together in good faith to determine appropriate actions to ensure that Seller will deliver sufficient amounts of Renewable Energy to be compliant with the requirements set forth in Section 2.2.

8.1 **Excess Renewable Energy.** In the event the Parties anticipate that Buyer will purchase more Renewable Energy than required by Section 2.2 for such calendar year, Buyer may, in its sole discretion, to the extent permitted under Applicable Law, bank and carryover such excess Renewable Energy for use in the succeeding calendar year. In the event banking is not permitted by Applicable Law, then Seller shall remarket such excess Renewable Energy for Buyer and shall credit Buyer's account by an amount equal to the amount received by Seller for such sales efforts. Seller shall make commercially reasonable efforts to maximize the value of such excess Renewable Energy remarketed on behalf of Buyer provided that Seller shall not enter into any such transactions for remarketing without Buyer's consent and acceptance of such transactions.

8.2 **Deficient Renewable Energy.** In the event the Parties anticipate that Buyer will purchase less Renewable Energy than required by Section 2.2 for such calendar year, Seller shall seek to procure such additional quantities of Renewable Energy required by Buyer in such calendar year. Seller shall make commercially reasonable efforts to minimize the cost of the purchases of additional Renewable Energy purchased on behalf of Buyer provided that Seller shall not enter into any such transactions for procuring additional Renewable Energy without Buyer's consent and acceptance of such transactions. Seller shall use commercially reasonable efforts to secure such Energy at a price no greater than the Contract Price (Renewable Energy); provided, however that Buyer shall pay Seller the actual costs of such additional Renewable Energy (whether such costs exceed the Contract Price or not).

9. **CAPACITY REDUCTION.** Buyer shall notify Seller as soon as possible if there is to be a permanent decrease in the Capacity Requirement ("Capacity Reduction"). In addition, Buyer shall be deemed to have a Capacity Reduction if reduced capacity is shown on the most recent long-term forecast. Any Capacity associated with a Capacity Reduction shall be remarketed by Seller using its commercially reasonable efforts to maximize such value and no such transactions shall be executed without consultation with, and approval by, Buyer. Buyer shall pay Seller all costs Seller incurs in effectuating the Capacity Reduction, including any costs associated with hedging and other fees, costs, expenses and losses relating to selling or otherwise disposing of the Capacity, reduced by any revenues or gains realized thereby (in the aggregate, the "Resale Costs"), and Seller shall credit Buyer with an amount equal to the actual sales price for such capacity less the Resale Costs). The Parties will cooperate to use commercially reasonable efforts to reduce the cost to Buyer of a Capacity Reduction.

10. **LOAD SERVED.** The services and the Product described under this Confirmation shall be provided to the Customer accounts specified by Buyer. During the initial commencement of this Confirmation, the Customers will be switched to CCA service over an approximately 30-day period in accordance with the applicable meter read cycle for such Customer. At the end of each month, Buyer shall provide to Seller updated account information for Customers to be served during the upcoming month. Buyer shall also provide to Seller a daily report of Customer sales based on the meter data reported by the utility distribution company. Buyer shall prepare invoices to the Seller based on such daily reports. Buyer shall also deliver notice of any Customers which are no longer part of the Buyer's Marin Clean Energy program.

11. **RESOURCE SUBSTITUTION.** Buyer may independently gain control or enter into contractual obligations with respect to specific electric supply or demand-side resources procured from other third parties or independently developed by Buyer (Buyer Facilities). The Parties agree that incorporation of the Energy, Capacity, and Renewable Energy from such Buyer Facilities into this Agreement shall be in the sole discretion of Buyer, subject solely to adjustment of the price for Energy, Capacity, and Renewable Energy set forth in this Agreement hereto payable by Buyer to Seller to reflect all reasonable and actual documented costs Seller incurs in connection therewith, including, reimbursement from Buyer for any costs associated with hedging and other fees, costs, and losses directly incurred by Seller in reducing the Energy, Capacity, and Renewable Energy otherwise provided to Buyer pursuant to this Agreement, such costs to be offset by any revenues or gains of Seller realized thereby. Seller agrees to use commercially reasonable efforts to minimize such costs to Buyer.

The Buyer may pursue the development of Buyer Facilities during the term of this Agreement. Buyer shall have the right, on and after December 31, 2010, to provide Seller not less than one hundred and eighty (180) days written notice that Energy, Capacity, or Renewable Energy will be available to be incorporated into this Agreement. Unless otherwise agreed between the Parties, within ten (10) Business Days of receipt of such notice, the Seller shall notify the Buyer in writing of the costs to Seller determined in accordance with this Section 11 to be incurred in connection with incorporating such Energy, Capacity, or Renewable Energy into this Agreement. Immediately upon receipt of such written cost determination, the Buyer shall have the right (but not the obligation) to direct the Seller in writing to incorporate such Energy, Capacity, or Renewable Energy into this Agreement at the agreed upon price. In the event that Buyer Facilities are expected to become operational or effective during the term of this Confirmation, the Parties shall work in good faith to amend the underlying credit agreements in place between Seller and Buyer and its lenders so that amounts paid by Buyer's customers to PG&E and then into the lockbox arrangement discussed in Schedule M of the Master Agreement shall be apportioned as security between the Parties and/or Buyer's lenders based on the quantity of energy delivered by Buyer to its customers from the Buyer Facilities' as compared with the energy delivered pursuant to this Confirmation.

As supplemented by this Confirmation including its Appendices, if any, all other Terms and Conditions contained in the Agreement remain in full force and effect.

<p>This Confirmation is subject to the Schedule(s) identified below and that are attached hereto: Appendix I - Schedule of Operational Services</p>

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SELLER

MARIN ENERGY AUTHORITY

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

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For Seller's Use Only	
Trade Date	
Seller's ID	

**Appendix I
Schedule of Operational Services**

Reference:

Master Power Purchase and Sale Agreement
Between <Company Legal Name> ("Seller")
And Marin Energy Authority ("Buyer")
As of <Month, Day, Year> (the "Effective Date")
Transaction Date: <Month, Day, Year>

1. Description of Operational Services ("Services"). In conjunction with the attached Confirmation, Seller shall provide the Services listed below:
 - (a) Forecasting: Seller shall be responsible for preparing and submitting short-term load forecasts of Energy and Capacity for less than one year as Buyer's "Scheduling Coordinator" (as such term is defined by CAISO) necessary to meet its energy supply obligations to Buyer. The Parties shall mutually agree from time to time on the assumptions and models to be included in the short-term and long-term forecasts prepared hereunder. Buyer shall provide settlement quality meter data, resource data and load data as reasonably requested by Seller necessary for the preparation of the forecasts. Seller shall not be liable for any costs or losses incurred by or charged to Buyer as a result of Seller's forecasting obligations so long as Seller has performed its obligations in accordance with prudent industry practices. In the event an administrative agency requests clarification of forecasts provided by Seller hereunder or otherwise requires Buyer to substantiate such forecasts, Seller shall in good faith assist Buyer in responding to the administrative agency's request and assist Buyer in defending the reasonableness of such forecasts (such assistance shall exclude payment of any costs or expenses incurred by Buyer in responding to such inquiries).
 - (b) Scheduling Services: Seller shall be responsible for submitting schedules and bidding Product in accordance with the obligations of a Scheduling Coordinator as defined by the CAISO, including the scheduling and bidding for loads of all Customers served by Buyer. Seller shall perform the scheduling and bidding services in accordance with the Tariff, protocols and business practices. Seller shall establish a separate "Scheduling Coordinator" identification to isolate CAISO charges related to providing energy supply services to Buyer. Seller shall adjust schedules as necessary to assist in coordinating the transition of Resource Adequacy obligations between PG&E and Buyer. Seller shall provide the services required pursuant to this sub-paragraph in accordance with the terms of a Scheduling Coordinator Services Agreement to be executed between the Parties.
 - (c) Load Balancing Services: Seller shall be responsible for and shall pay, and shall reimburse or credit Buyer if Buyer pays, all Imbalance Charges resulting from the supply of Product between the Energy Minimum and Energy Maximum, except to the extent such Imbalance Charges are a result of Buyer's failure to perform hereunder, including but not limited to the failure to receive Energy, or under the SC Agreement, or are a result of an event of Force Majeure.
 - (d) Filing: Seller shall file with CAISO all schedules and meter data reports required to be filed by the scheduling coordinator for Buyer.
 - (e) Regulatory Reporting: Seller will provide information to Buyer necessary for Buyer to timely comply with monthly, annual and periodic regulatory reporting requirements for RPS and Resource Adequacy requirements and as otherwise required by Applicable Law with respect to any Product.
2. Buyer's Obligation.
 - (a) Forecasting: Buyer shall prepare appropriate long-term load forecasts for Energy and Capacity greater than one year and Seller will assist and coordinate with Buyer in its preparation of such long-term load forecasts and Buyer shall submit such long-term load forecasts as required by the CPUC, CEC the CAISO or any other applicable regulatory body, including those required of a CCA (including all updates and revisions, the "Long-Term Forecast") and promptly provide Seller with a copy thereof, provided that every ninety (90) days Buyer shall provide Seller with either a new Long-Term Forecast or a statement that no changes to the most recent Long-Term Forecast have occurred. Seller shall have the right to request clarification regarding any change made to the Long-Term Forecast.
 - (b) Information: Buyer shall timely provide any information as reasonably required by Seller to perform the Services.

SELLER

MARIN ENERGY AUTHORITY

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

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