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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's Own Motion into Combined Heat and Power Pursuant to Assembly Bill 1613.	**R.08-06-024**

SUPPLEMENTAL WORKING GROUP REPORT ON SIMPLIFIED AB 1613 CONTRACT SUBMITTED BY PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

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June 30, 2009

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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SUPPLEMENTAL WORKING GROUP REPORT
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SUBMITTED BY
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

This proceeding seeks to implement Assembly Bill ("AB") 1613, which concerns new, combined heat and power ("CHP") facilities that meet certain efficiency requirements and are 20 megawatts ("MW") or less in size. In the *Administrative Law Judge's Ruling For Filing Of A Simplified Contract and Revising Schedule* ("Ruling") issued June 12, 2009, Administrative Law Judge ("ALJ") Yip-Kikugawa asked interested parties to work together develop a simplified AB 1613 contract for small CHP facilities and to file the simplified contract by June 30, 2009. Comments on the simplified AB 1613 contract are to be filed by July 10, 2009. This Supplemental Working Group Report ("Supplemental Report") attaches a copy of a simplified contract submitted by the following parties: Pacific Gas and Electric Company ("PG&E"), Southern California Edison Company ("SCE"), San Diego Gas & Electric Company ("SDG&E"), Fuel Cell Energy ("FCE"), and the California Clean DG Coalition ("CCDC") (collectively "Working Group").

I. DESCRIPTION OF THE WORKING GROUP ON SIMPLIFIED AB 1613 CONTRACT

All of the parties on the service list in this proceeding were invited to participate in the initial working group that developed the form AB 1613 contract submitted on May 15, 2009. During the initial discussions to develop the form AB 1613 contract, Working Group members

also began to discuss a simplified AB 1613 contract. Discussions of the simplified AB 1613 contract continued actively after May 15th. Since that time, Working Group members have conducted a number of conference calls to negotiate the terms of the simplified AB 1613 contract and circulated draft language for the agreement. As the result of these efforts, the Working Group has developed a simplified AB 1613 contract that is included as Attachment A.[1]

II. SIMPLIFIED AB 1613 FORM CONTRACT AND OUTSTANDING ISSUES

The simplified AB 1613 contract was developed for small CHP facilities that satisfy the AB 1613 requirements. Because of the smaller size of these facilities, the Working Group was able to significantly reduce the length of the agreement and modify and shorten a number of provisions. Although the Working Group was able to reach agreement on many of the simplified AB 1613 contract terms, agreement was not reached on every term. In Attachment A, some contract provisions are bracketed and include corresponding footnotes. The bracketed and footnoted provisions were proposed by one or more parties, but were not agreed to by the entire Working Group. The footnotes explain the party or parties that support the proposed language. In some cases, there are two proposals for a specific provision. Working Group members will address simplified contract terms and specific proposed language in their July 10th comments.

While there are a number of contractual issues that were not agreed to by all of the Working Group members, there are two particularly important issues. First, Working Group members disagree about the appropriate size limitation for the simplified AB 1613 contract. PG&E, SDG&E, FCE and CCDC have proposed a limit of 5 MWs and under, while SCE has proposed a limit of less than 1 MW. Second, Working Group members disagree about whether to include language allowing the Buyer to terminate the Agreement if certain events (*e.g.*,

[1] The simplified contract is the result of negotiation and compromise among the parties, and is not intended to serve as precedent in any other proceeding. Accordingly, the parties do not waive any positions or arguments regarding issues addressed in the simplified contract, and expressly reserve the right to address those or similar issues in any other proceeding in which they may arise.

Commission actions) occur. The utilities have proposed this buyer termination provision and the CHP Parties oppose it. Additionally, CCDC has proposed that the utilities consider an even further simplified contract for very small CHP (*i.e.*, CHP sized 500 kW or less). Working Group members will address the issues described herein, along with any other areas of disagreement, in their July 10th comments.

III. CONCLUSION

PG&E respectfully submits this Supplemental Report to ALJ Yip-Kikugawa, together with the attached simplified AB 1613 contract.

Respectfully submitted,

PACIFIC GAS AND ELECTRIC COMPANY

By: _____/S/_____
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Dated: June 30, 2009

ATTACHMENT A

POWER PURCHASE AND SALE AGREEMENT
between
[BUYER'S NAME]
and
[SELLER'S NAME]

This Power Purchase and Sale Agreement (this "Agreement") by and between **[Buyer's name]**, a California corporation ("Buyer"), and **[Seller's name]**, a [Seller's form of business entity and state of registration] ("Seller"), is dated as of [Date of execution] (the "Effective Date"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and jointly as the "Parties." Unless the context otherwise specifies or requires, initially capitalized terms used in this Agreement have the meanings set forth in Exhibit A. Exhibits A through G inclusive are hereby incorporated into and made a part of this Agreement.

RECITALS

A. On June 26, 2008, the CPUC opened Rulemaking 08-06-024 to implement Assembly Bill 1613 (codified in California Public Utilities Code Section 2840 et. seq.), which establishes the Waste Heat and Carbon Emissions Reductions Act (the "Act").

B. Buyer is required to offer this Agreement to Seller in order to fulfill its obligations under the Act and Decision [___], and Seller desires to accept such offer and enter into this Agreement.

The Parties, intending to be legally bound, agree as follows:

{Buyer Comment: If the Term is greater than or equal to five years and if the Generating Facility provides baseload generation, before executing this Agreement, Seller must provide to Buyer documentation evidencing its compliance with the Greenhouse Gas Emissions Performance Standard set forth in D.07-01-039 and in subsequent CPUC rulings implementing D.07-01-039, and with any subsequent CPUC-established precondition to the execution of this Agreement.}

ARTICLE ONE. SPECIAL CONDITIONS

1.01 Term. The term of this Agreement (the "Term") commences on [Date] (the "Term Start Date") and ends on [Date] (the "Term End Date"). The Term Start Date must be on the first day of a calendar month. If the Generating Facility is (a) a New Eligible CHP Facility, the Term Start Date must occur within 18 months of the Effective Date, or (b) an Existing Eligible CHP Facility, the Term Start Date must occur within 6 months of the Effective Date. Subject to the limitation set forth in the immediately preceding sentence, Seller may change the Term Start Date set forth in this Section 1.01 by providing Notice to Buyer at least three months before such Term Start Date. The Term must be no less than one year and no more than 10 years.

1.02 Generating Facility. The name of the Generating Facility is [Generating Facility name], which is [a New Eligible CHP Facility] [an Existing Eligible CHP Facility], and which is further described in Exhibit G. The Generating Facility is located at [Generating Facility address], which must be located within Buyer's service territory.

1.03 As-Available Contract Capacity; Power Rating. The As-Available Contract Capacity equals [___] kW. (The As-Available Contract Capacity must be [no more than 5 MW] [less than 1 MW].[2]) The Power Rating of the Generating Facility must be no more than 20 MW. Seller has no obligation under this Agreement to produce or deliver firm energy or capacity.

1.03 Site Host Load. The Site Host Load is expected to equal, on average, [___] kW. The amount of electric energy to be used to serve the Site Host Load is expected to equal, on average, [___] kWh per Term Year, which amount may change from time to time; *provided*, *however*, that Seller shall provide Notice to Buyer at least 30 days, or as soon as otherwise is practicable, before any such change that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis; and *provided further*, that the As-Available Contract Capacity shall [never exceed 5 MW] [always be less than 1 MW].[3]

1.04 Expected Term Year Energy Production. The Expected Term Year Energy Production for each Term Year equals [___] kWh. The actual energy production of the Generating Facility may change from time to time; *provided*, *however*, that (a) Seller shall provide Buyer with 30 days advance Notice of any change to the actual energy production that Seller reasonably anticipates will be greater than 4,380,000 kWh, on an annual basis, and (b) the Expected Term Year Energy Production may not exceed the As-Available Contract Capacity at 100% capacity factor applied over the Term Year.

1.05 [Delivery Point. The delivery point is the point where Seller's facilities connect with facilities owned by Buyer (the "Delivery Point"). Seller shall convey to Buyer and Buyer shall accept all the As-Available Contract Capacity and associated electric energy from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product shall transfer from Seller to Buyer at the Delivery Point. Buyer shall pay any transmission or distribution costs to deliver the power from the Generating Facility's bus bar to the point of interconnection of the Generating Facility to the CAISO-Controlled Grid (Interconnection Point); Seller shall be responsible for interconnection costs, including necessary facility upgrades (consistent with Applicable Laws and the Interconnection Agreement), and line losses from the Delivery Point to the Interconnection Point.][4]

1.05 [Delivery Point. The delivery point is the point of delivery of the Power Product to the CAISO Controlled Grid (the "Delivery Point"). Seller shall provide and convey to Buyer all the electric energy and electric capacity, net of Station Use and, if applicable, the Site Host Load, from the Generating Facility at the Delivery Point. Title to and risk of loss related to the Power Product shall transfer from Seller to Buyer at the Delivery Point.][5]

1.06 [Power Product Prices.][6]

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[2] PG&E/SDG&E and the CHP parties propose the 5 MW limitation. SCE proposes the 1 MW limitation.
[3] PG&E/SDG&E and the CHP parties propose the 5 MW limitation. SCE proposes the 1 MW limitation.
[4] This Section 1.05 is proposed by PG&E/SDG&E and the CHP parties.
[5] This Section 1.05 is proposed by SCE.
[6] This section is left intentionally blank, and will be updated (along with Exhibits A and B) upon resolution of the pricing issue. The IOUs believe that, if the CPUC sets the price with respect to the Act, several provisions of this Agreement will need to be updated to reflect Seller's obligation to obtain and maintain its status as a Qualifying Facility. The CHP parties maintain that all issues regarding inclusion of Green Attributes in the definition of Product and the Seller's obligation to pay any scheduling costs cannot be resolved until pricing issues are resolved.

1.07 Scheduling Coordinator. Buyer is the Scheduling Coordinator under this Agreement. Buyer shall take all steps necessary to be authorized as the Scheduling Coordinator during the Term. Seller shall cooperate with Buyer in good faith to assure that Buyer is authorized as the Scheduling Coordinator during the Term. In accordance with Section 4.01, Buyer shall invoice to Seller and set off against future payments to Seller:

(a) [$1,500.00][$2,500.00][7] per month in consideration for Buyer rendering its services to Seller as the Scheduling Coordinator; *provided*, *however*, that if the As-Available Contract Capacity is less than 1 MW, Seller shall not be required to pay this fee; and

(b) A fee (the "SC Set-Up Fee") equal to the costs Buyer incurs as a result of the Generating Units or the Generating Facility registration, as applicable, as well as installation, configuration, and testing of all equipment and software necessary, in Buyer's sole discretion, to Schedule the Generating Unit or the Generating Facility, as applicable. Buyer's invoice to Seller shall provide a detailed accounting of all costs and charges encompassed in the SC Set-Up Fee. The actual cost will be a simple pass-through to Seller of Buyer's actual costs. Buyer estimates that the SC Set-up Fee for this Agreement will equal [$2,000.00 or less] $[___][8].

ARTICLE TWO. SELLER'S SATISFACTION OF OBLIGATIONS; TERMINATION

2.01 Seller's Satisfaction of Obligations before the Term Start Date. Before the Term Start Date, Seller must demonstrate to Buyer that Seller has satisfied all of the requirements necessary for Seller to Operate the Generating Facility in accordance with the terms of this Agreement (including Section 7.10), Applicable Law, the CAISO Tariff (to the extent applicable), and any other applicable tariff, legal, and regulatory requirements.

2.02 Termination Rights of the Parties.

(a) [Termination Rights of Buyer. Buyer has the right to terminate this Agreement on Notice, which becomes effective five Business Days after such Notice is delivered:

(i) If, at any time after the Effective Date, the CPUC eliminates, determines that Buyer does not possess, or in any way diminishes Buyer's rights under Decision 04-12-048, Decision 08-09-012 or other Applicable Law to collect any above-market costs of this Agreement from departing load customers; or

(ii) If the mandatory purchase obligation under the Act is eliminated as applied to Buyer, whether on a prospective or retroactive basis, or it is otherwise determined under Applicable Law that Buyer does not have the obligation, either prospectively or retroactively, to purchase electric power from Eligible CHP Facilities.][9]

(b) Termination Rights of Seller. Seller has the right to terminate this Agreement on Notice:

[7] PG&E/SDG&E and the CHP parties propose $1,500. SCE proposes $2,500. The CHP parties' agreement to include payment for scheduling costs is expressly contingent on the resolution of pricing issues.

[8] PG&E/SDG&E and the CHP parties propose the "$2,000.00 or less" language, subject to the CHP parties express reservation noted in footnote 6 above. SCE proposes that the estimated amount of the SC Set-Up Fee be left blank in the form of the Agreement and inputted entered when the Agreement is executed.

[9] This Section is proposed by the IOUs.

(i) If Seller (or any venture in which Seller is a participant) and the Generating Facility are jointly selected by Buyer in a competitive solicitation. The termination of this Agreement will be effective as of midnight the day before the commencement of any delivery period for any energy, capacity or attributes from the Generating Facility which is selected by Buyer in such competitive solicitation; or

(ii) [If Seller's Site Host relocates its business outside the State of California or terminates its business operations in California; *provided*, *however*, that if Seller terminates in accordance with this Section 2.02(b)(ii), Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year from the effective date of such termination. The termination of this Agreement becomes effective five Business Days after Seller delivers such Notice.][10]

(c) Event of Default. In the event of an uncured Event of Default or an Event of Default for which there is no opportunity for cure permitted in this Agreement, the Non-Defaulting Party may, at its option, terminate this Agreement as set forth in Section 6.03 and, if the Non-Defaulting Party is Buyer, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one year following the date of such termination.

(d) End of Term. This Agreement terminates at midnight of (i) the Term End Date, or (ii) a termination date agreed to in writing by the Parties.

(e) Rights and Obligations Surviving Termination. The rights and obligations of the Parties that are intended to survive a termination of this Agreement are all such rights and obligations that this Agreement expressly provides survive such termination as well as those rights and obligations arising from either Parties' covenants, agreements, representations or warranties applicable to, or to be performed, at, before or as a result of the termination of this Agreement.

ARTICLE THREE. SELLER'S OBLIGATIONS

3.01 Conveyance of the Product. During the Term, Seller shall provide and convey the Product to Buyer in accordance with the terms of this Agreement, and Buyer shall have the exclusive right to the Product. Seller shall, at its own cost, take all reasonable actions and execute all documents or instruments that are reasonable and necessary to effectuate the use of the [Green Attributes,][11] Capacity Attributes and Resource Adequacy Benefits for Buyer's benefit throughout the Term.

3.02 Resource Adequacy. In accordance with Public Utilities Code section 2841(f), Seller grants, pledges, assigns and otherwise commits to Buyer the generating capacity of the Generating Facility to the extent necessary in order for Buyer to count such generating capacity to meet its

[10] This Section is proposed by PG&E/SDG&E and the CHP parties.
[11] The CHP parties reserve on the concept of providing Green Attributes subject to resolution of the pricing issue.

resource adequacy obligations. Seller shall comply with any demonstration required under Applicable Law in order for Buyer to exercise its rights under this Section 3.02.

3.03 Exclusive Rights. Notwithstanding anything to the contrary in this Agreement, as of the Effective Date and until the Term End Date, Seller may not use, provide or convey any of the Product to any Person other than Buyer.

3.04 Site Control. Within 60 days of the Effective Date and until the Term End Date, Seller shall have Site Control.

3.05 Permits. Seller shall obtain and maintain all Permits necessary for the Seller to Operate the Generating Facility and to deliver electric energy from the Generating Facility to the Delivery Point.

3.06 Interconnection. Seller shall, at its own cost, obtain and maintain all interconnection rights and an interconnection agreement and any related Governmental Authority approval(s) required to enable interconnection with Buyer's electric system and Parallel Operation of the Generating Facility.

3.07 CAISO Relationship. Seller shall comply with all applicable provisions of the CAISO Tariff, including securing and maintaining in full force all CAISO agreements, certifications and approvals required in order for the Generating Facility to comply with the CAISO Tariff.

3.08 Generating Facility Modifications. Seller shall provide at least 30 days advance Notice to Buyer before making any material modification to the Generating Facility, which Notice will include a description of any change in actual energy production of the Generating Facility and in the Site Host Load anticipated as a result of the modification. Notwithstanding the foregoing, Seller shall make no modification to the Generating Facility that would prevent Seller from complying with the terms of this Agreement.

3.09 Metering.

(a) CAISO-Approved Meter. Seller shall, at its own cost, install, maintain and test the CAISO-Approved Meter pursuant to the CAISO Tariff or other applicable metering requirements, and each CAISO-Approved Meter shall have net energy capability as required under Public Utilities Code Section 2840.2(b)(2).

(b) Check Meter. Buyer may, at its sole cost, furnish and install one Check Meter on the high voltage side of the substation associated with the Generating Facility or, if there is not enough space at such substation to install the Check Meter, any other location mutually agreeable to the Parties. The Check Meter shall be interconnected with Buyer's communication network to permit (i) periodic, remote collection of revenue quality meter data, and (ii) back-up real time transmission of operating-quality meter data through the Telemetry System. Buyer shall test and recalibrate the Check Meter at least once every Term Year. The Check Meter will be locked or sealed, and the lock or seal may only be broken by a Buyer representative. Seller has the right to be present whenever such lock or seal is broken. Buyer shall replace the Check Meter battery at least once every 36 months; *provided*, *however*, if the Check Meter battery fails, Buyer shall promptly replace such battery.

(c) Use of Check Meter for Back-Up Purposes. Buyer may compare the Check Meter data to the CAISO-Approved Meter data. If the deviation between the CAISO-Approved Meter data and the Check Meter data for any comparison is greater than 0.3%, Buyer shall provide Notice to Seller of such deviation and the Parties shall mutually arrange for a meter check or recertification of the Check Meter or CAISO-Approved Meter, as applicable. Each Party shall bear its own costs for any meter check or recertification. Testing procedures and standards for the Check Meter will be the same as for a comparable Buyer-owned meter. Seller shall have the right to have representatives present during all such tests.

3.10 Provision of Information. Seller shall promptly provide to Buyer all documents reasonably requested by Buyer relating to the Generating Facility (including site plan drawings and single-line diagrams), the administration of this Agreement, or in order for Buyer to comply with any discovery or data request for information from the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal.

3.11 Operation. Seller shall:

(a) Operate the Generating Facility in accordance with Prudent Electrical Practices;

(b) Comply with the requirements set forth in Exhibit C and Exhibit D;

(c) Use its commercially reasonable efforts to Operate the Generating Facility so that the Power Product conforms with the Forecast provided in accordance with Exhibit C;

(d) Pay the CAISO Charges for which it is responsible under Exhibit E;

(e) Use reasonable efforts to respond to any instruction issued by the CAISO or the Transmission Provider or delivered to Seller by Buyer in response to an Emergency;

(f) Maintain and provide electronically or in hard copy a copy of all relevant daily Operating records to Buyer within 20 days of a request by Notice from Buyer, including records showing (i) real and reactive power production, (ii) changes in Operating status, (iii) protective apparatus operations, and (iv) any unusual conditions found during inspections;

(g) Keep all Operating records to the extent required of an Eligible CHP Facility by any applicable CPUC or CEC order;

(h) At least 75 days before the Term End Date or as soon as practicable before the date of an early termination of this Agreement, (i) submit to the CAISO the name of the Scheduling Coordinator that will replace Buyer, and (ii) cause the Scheduling Coordinator that will replace Buyer to submit a letter to the CAISO accepting the designation as Seller's Scheduling Coordinator; and

(i) Comply with all NERC reliability standards and requirements applicable to the generator owner and generator operator of the Generating Facility, if any.

3.12 Fuel Supply. Seller shall supply all fuel required for the Power Product and any testing of the Generating Facility.

3.13 Power Product Curtailments at Request of Scheduling Coordinator, Transmission Provider, or CAISO. Seller shall promptly curtail the production of the Power Product upon receipt of a notice or instruction from Seller's Scheduling Coordinator, the Transmission Provider, or the CAISO; *provided*, *however*, that Buyer, in its role as Scheduling Coordinator, shall issue such an instruction only when Buyer is expressly directed to curtail production of the Power Product by the CAISO or where Buyer reasonably believes that curtailment of the Power Product is required to comply with (a) its maintenance requirements and operating orders, (b) a CAISO Declared Over-Generation Condition, or (c) an Emergency. Whenever practicable, Buyer will use commercially reasonable efforts to provide Seller reasonable advance notice of the possibility that a reduction or interruption of deliveries may be required.

3.14 Notice of Cessation or Termination of Service Agreements. Seller shall provide Notice to Buyer within one Business Day if there is a termination of, or cessation of service under, any agreement required in order for the Generating Facility to (a) interconnect with the Transmission Provider's electric system, (b) transmit and deliver electric energy to the Delivery Point, or (c) own and operate any CAISO-Approved Meter.

3.15 Buyer's Access Rights. Buyer has the right to examine the Site, the Generating Facility and the Operating records for any purpose connected with this Agreement upon providing Seller with reasonable advance Notice under the circumstances.

3.16 Planned Outages. Seller shall schedule and utilize all planned outages in accordance with the procedures and subject to the limitations set forth in Exhibit D.

3.17 Seller Ownership and Control of Generating Facility. Seller agrees, that, in accordance with FERC Order No. 697, upon request of Buyer, Seller shall submit a letter of concurrence in support of an affirmative statement by Buyer that the contractual arrangement set forth in this Agreement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller also agrees that it will not, in filings, if any, made subject to Order Nos. 652 and 697, claim that the contractual arrangement set forth in this Agreement conveys ownership or control of generation capacity from Seller to Buyer.

3.18 Regulation of Net Output of the Generating Facility. In its sole discretion, Buyer may require that Seller install, at Seller's sole cost, a device or equipment that will disable the Generating Facility from delivering electric energy at a rate [greater than 5,000 kWh per hour] [greater than or equal to 1,000 kWh per hour][12] of Metered Energy. At Buyer's request, Seller shall install such device before the Term Start Date or within 60 days if Buyer's request is made any time after the Term Start Date. Unless otherwise agreed to by the Parties, Buyer shall own, operate, and maintain such device at Seller's sole cost. Any such device shall be agreed upon by Seller and Buyer and must, in accordance with Prudent Electrical Practices, be suitable to the purpose for which it is installed and meet the Transmission Provider's interconnection requirements.

ARTICLE FOUR. BUYER'S OBLIGATION TO PAY

4.01 Obligation to Pay.

[12] PG&E/SDG&E and the CHP parties propose the 5,000 kWh limitation. SCE proposes the 1,000 kWh limitation.

(a) For Seller's full compensation under this Agreement, during the Term, Buyer shall make a monthly payment (a "Monthly Contract Payment") calculated in accordance with Exhibit B; *provided*, *however*, Buyer is not obligated to issue a payment to Seller until the amount due to Seller pursuant to this Agreement exceeds $5,000.00 after set-offs and adjustments in accordance with this Agreement. Buyer shall adjust each Monthly Contract Payment in accordance with the terms of this Agreement, including making adjustment for Scheduling Fees and any CAISO Charges.

(b) Subject to Section 4.01(a), Buyer shall provide a payment statement within 30 days after the last Business Day of each calendar month, which statement shall include Buyer's payment to Seller and a calculation thereof.

(c) If Buyer determines that a calculation of Metered Energy is incorrect as a result of an inaccurate meter reading or the correction of data by the CAISO, Buyer shall recompute the Metered Energy quantity for the period of the inaccuracy based on an adjustment of such inaccurate meter reading. Buyer shall then recompute any payment or payment adjustment affected by such inaccuracy. Any amount due from Buyer to Seller or Seller to Buyer, as the case may be, shall be made as an adjustment to a subsequent monthly statement that is calculated after Buyer's recomputation using corrected measurements. If the recomputation results in a net amount owed to Buyer after offsetting any amounts owing to Seller as shown on a subsequent monthly statement, any such additional amount still owing to Buyer shall be shown as an adjustment on Seller's statement until such amount is fully collected by Buyer.

(d) Buyer may deduct amounts that would otherwise be due to Seller under this Agreement from any amounts owing and unpaid by Seller to Buyer arising out of or related to any other agreement, tariff, obligation or liability pertaining to the Generating Facility.

(e) Except as otherwise provided for in this Agreement, if, within 90 days of receipt of Buyer's payment statement, Seller does not give Notice to Buyer of an error, then Seller shall be deemed to have waived any error in Buyer's statement, computation and payment and the statement shall be conclusively deemed correct and complete. If Seller timely identifies an error in Seller's favor and Buyer agrees that the identified error occurred, Buyer shall reimburse Seller for the amount of the underpayment caused by the error and add the underpayment to a subsequent monthly statement that is calculated. If Seller identifies an error in Buyer's favor and Buyer agrees that the identified error occurred, Seller shall reimburse Buyer for the amount of overpayment caused by the error and Buyer shall apply the overpayment to a subsequent statement that is calculated. If the recomputation results in a net amount still owing to Buyer after applying the overpayment, a subsequent statement shall show a net amount owing to Buyer.

(f) Notwithstanding anything to the contrary in this Agreement, if any payment statement shows amounts owed by Seller to Buyer, Buyer may, at its option, apply this net amount owing to Buyer in any subsequent monthly statements to Seller or invoice Seller for such amount, in which case Seller must pay the amount owing to Buyer within 20 days of receipt of such invoice.

(g) Notwithstanding anything to the contrary in this Agreement, for the entire period during which Seller fails to materially comply with any provision set forth in Exhibit C, Seller

shall be responsible for all CAISO Charges; *provided*, *however*, that if Seller complies fully with Exhibit C, Buyer shall pay all CAISO Charges (except those CAISO Charges for which Seller is responsible under Exhibit E) for up to 1 MW of deviation of Seller's forecast of electric energy from the Metered Energy, and Seller shall be responsible only for CAISO Charges attributable to such deviations in excess of 1 MW.

ARTICLE FIVE. FORCE MAJEURE

5.01 No Default for Force Majeure. Neither Party will be in default in the performance of any of its obligations set forth in this Agreement, except for obligations to pay money, when and to the extent failure of performance is caused by Force Majeure.

5.02 Requirements Applicable to the Claiming Party. If a Party, because of Force Majeure, is rendered wholly or partly unable to perform its obligations when due under this Agreement, such Party (the "Claiming Party") shall be excused from whatever performance is affected by the Force Majeure to the extent so affected. In order to be excused from its performance obligations under this Agreement by reason of Force Majeure:

(a) The Claiming Party, within 14 days after the initial occurrence of the claimed Force Majeure, must give the other Party Notice describing the particulars of the occurrence; and

(b) The Claiming Party must provide timely evidence reasonably sufficient to establish that the occurrence constitutes Force Majeure as defined in this Agreement.

The suspension of the Claiming Party's performance due to Force Majeure may not be greater in scope or longer in duration than is required by such Force Majeure. In addition, the Claiming Party shall use diligent efforts to remedy its inability to perform. When the Claiming Party is able to resume performance of its obligations under this Agreement, the Claiming Party shall give the other Party prompt Notice to that effect.

5.03 Termination. The Non-Claiming Party may terminate this Agreement on at least five (5) Business Days' prior Notice, in the event of Force Majeure which materially interferes with such Party's ability to perform its obligations under this Agreement and which extends for more than 365 consecutive days, or for more than a total of 365 days in any consecutive 540-day period.

ARTICLE SIX. EVENTS OF DEFAULT; REMEDIES

6.01 Events of Default. An "Event of Default" means the occurrence of any of the following:

(a) With respect to either Party (a "Defaulting Party"):

(i) Any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, if such misrepresentation or breach of warranty is not remedied within 10 Business Days after Notice from the Non-Defaulting Party to the Defaulting Party;

(ii) Except for an obligation to make payment when due, the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent

constituting a separate Event of Default or to the extent excused by a Force Majeure) if such failure is not remedied within 30 days after Notice of such failure is provided by the Non-Defaulting Party to the Defaulting Party, which Notice sets forth in reasonable detail the nature of the Event of Default;

(iii) A Party fails to make when due any payment (other than amounts disputed in accordance with the terms of this Agreement) due and owing under this Agreement and such failure is not cured within five Business Days after Notice is provided by the Non-Defaulting Party to the Defaulting Party of such failure;

(iv) A Party becomes Bankrupt; or

(v) A Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another Person and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee Person fails to assume all the obligations of such Party under this Agreement either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party.

(b) With respect to Seller:

(i) The total quantity of Metered Energy in any Term Year is less than 10% of the Expected Term Year Energy Production;

(ii) Seller delivers, Schedules, or attempts to deliver or Schedule at the Delivery Point for sale under this Agreement, electric energy that was not generated by the Generating Facility;

(iii) The Term Start Date does not occur within 18 months of the Effective Date, if Seller is a New Eligible CHP Facility, or within 6 months of the Effective Date, if Seller is an Existing Eligible CHP Facility; *provided*, *however*, that this 18-month or 6-month period shall be extended on a day-for-day basis for any delay caused solely by Buyer's failure to perform its obligation(s) under this Agreement or excused solely as a result of Force Majeure as to which Seller is the Claiming Party (subject to Section 5.03), as to which, in either case, Seller has notified Buyer of the new expected Term Start Date;

(iv) Termination of, or cessation of service under, any agreement necessary for the interconnection of the Generating Facility to the Transmission Provider's electric system or for metering the Metered Energy, and such service is not reinstated, or alternative arrangements implemented, within 120 days after such termination or cessation; or

(v) Seller materially fails to comply with any provision of Exhibit C and such failure is not cured within 30 days after Notice is provided by Buyer to Seller.

6.02 [Site Host Changes. Notwithstanding Section 6.01 above, with respect to Seller, an Event of Default shall not include (a) cessation of operation by the Site Host, or (b) the inability of Site Host to use the waste heat from the Generating Facility in a manner that is consistent with the requirements of the Act. If the Site Host ceases operation or is unable to use the waste heat from

the Generating Facility in a manner that is consistent with the Act for a period of 365 days or more, either Party may terminate this Agreement. If Seller terminates this Agreement pursuant to this Section 6.02, then Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) agrees to waive any right it may have under the Act to enter into any new agreement to sell energy, capacity, or attributes from the Generating Facility to Buyer or any other California investor-owned utility for a period of one following the effective date of such termination.][13]

6.03 Early Termination. If an Event of Default has occurred, there will be no opportunity for cure except as specified in Section 6.01. The Party not in default (the "Non-Defaulting Party") will have the right to (a) designate by no more than twenty (20) days' Notice to the Defaulting Party a date for the early termination of this Agreement (an "Early Termination Date"), (b) immediately suspend performance under this Agreement, and (c) pursue all remedies available at law or in equity against the Defaulting Party (including monetary damages), subject to the terms of this Agreement.

ARTICLE SEVEN. MISCELLANEOUS

7.01 Representations, Warranties and Covenants. On the Effective Date, each Party represents, warrants, and covenants to the other Party that:

(a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) The execution, delivery and performance of this Agreement 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 Applicable Laws;

(d) This Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms;

(e) There is not pending, or to its knowledge, threatened against it or, in the case of Seller, any of its Affiliates, any legal proceeding that could materially adversely affect its ability to perform under this Agreement;

(f) It is acting for its own account, and its decision to enter into this Agreement is based on its own judgment, not in reliance upon the advice or recommendations of the other Party and it is capable of assessing the merits of and understanding, and understands and accepts the terms, conditions and risks of this Agreement; and

(a) It has not relied on any promises, representations, statements or information of any kind that are not contained in this Agreement in deciding to enter into this Agreement.

[13] This Section is proposed by PG&E/SDG&E and the CHP parties.

7.02 Additional Representations, Warranties, and Covenants by Seller. Seller represents, warrants and covenants to Buyer that:

(a) It does not, and will not (i) convey, transfer, allocate, designate, award, report or otherwise provide any or all of the Product, or any portion thereof, or any benefits derived therefrom, to any party other than Buyer, or (ii) start-up or Operate the Generating Facility per instruction of or for the benefit of any third party, except in order to satisfy the Site Host Load, or as required by other Applicable Laws.

(b) Throughout the Term: (i) it or its subcontractors will own or lease and Operate the Generating Facility; (ii) it will deliver the Product to Buyer free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any Person; (iii) it will hold the rights to all of the Product; (iv) the Generating Facility will maintain its qualification as an Eligible CHP Facility; and (v) the Generating Facility will meet all applicable greenhouse gas emissions standards, as such standards may change from time to time.

(c) [Seller (or any entity over which Seller or any owner or manager of Seller exercises Control) is not delivering to Buyer more than 20MW of electric energy or capacity, in the aggregate, pursuant to one or more "Standard Contract for Eligible CHP Facilities with Net Output of [Less than 1 MW].[14]

7.03 Indemnity.

(a) Each Party as indemnitor shall defend, save harmless and indemnify the other Party and the directors, officers, employees, and agents of such other Party against and from any and all loss, liability, damage, Claim, cost, charge, demand, or expense (including any direct, indirect, or consequential loss, liability, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property including property of either Party arising out of or in connection with the negligence or willful misconduct of the indemnitor relating to its obligations under this Agreement. This indemnity applies notwithstanding the active or passive negligence of the indemnitee. However, neither Party is indemnified under this Agreement for its loss, liability, damage, Claim, cost, charge, demand or expense to the extent resulting from its own negligence or willful misconduct.

(b) Each Party releases and shall defend, save harmless and indemnify the other Party from any and all loss, liability, damage, Claim, cost, charge, demand or expense arising out of or in connection with any breach made by the indemnifying Party of its representations, warranties and covenants in Section 7.01 and Section 7.02. Notwithstanding anything to the contrary in this Agreement, if Seller fails to comply with the provisions of Section 7.10, Seller shall, at its own cost, defend, save harmless and indemnify Buyer, its directors, officers, employees, and agents, assigns, and successors in interest, from and against any and all loss, liability, damage, Claim, cost, charge, demand, or expense of any kind or nature (including any direct, indirect, or consequential loss, damage, Claim, cost, charge, demand, or expense, including reasonable attorneys' fees and other costs of litigation), resulting from injury or death to any Person or damage to any property,

[14] This Section is proposed by SCE.

including the personnel or property of Buyer, to the extent that Buyer would have been protected had Seller complied with all of the provisions of Section 7.10. The inclusion of this Section 7.03(b) is not intended to create any express or implied right in Seller to elect not to provide the insurance required under Section 7.10.

(c) Each Party shall defend, save harmless and indemnify the other Party against any taxes imposed by any Governmental Authority on or with respect to the Generating Facility, Monthly Contract Payments made by Buyer to Seller, or the Power Product before the Delivery Point, including ad valorem taxes and other taxes attributable to the Generating Facility, the Site or land rights or interests in the Site or the Generating Facility for which such indemnifying Party is responsible.

(d) [Seller shall indemnify Buyer for and against any penalty imposed upon Buyer to the extent caused by Seller's failure to fulfill its obligations as set forth in Sections 3.01 and 3.02.][15]

(e) All indemnity rights survive the termination of this Agreement for 12 months.

7.04 Assignment. Seller may not assign this Agreement or its rights under this Agreement without the prior written consent of Buyer, which consent may not be unreasonably withheld; *provided*, *however*, that Seller may, without the consent of Buyer (and without relieving Seller from liability hereunder), transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof to its Lender(s) in connection with any financing if (a) such Lender(s) assumes the payment and performance obligations provided under this Agreement with respect to Seller, (b) such Lender(s) agree in writing to be bound by the terms and conditions of this Agreement, and (c) Seller delivers such tax and enforceability assurance as Buyer may reasonably request.

[15] This Section is proposed by SCE.

7.05 Governing Law and Jury Trial Waiver. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER ARE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

7.06 Arbitration. Except for matters relating to specific performance, injunctive relief or other equitable remedies, the Parties agree to submit to arbitration any and all matters in dispute or controversy among them concerning the terms of this Agreement. Unless the Parties agree to alternative arrangements, the selection of arbitrators and the procedure shall be in accordance with the commercial arbitration rules then in effect of the Judicial Arbitration and Mediation Services, Inc. Any award rendered shall be final and conclusive upon the Parties and a judgment thereon may be entered in the highest court of the forum, state or federal, having jurisdiction. The expenses of the arbitration shall be borne equally by the Parties; *provided*, *however*, that each Party shall pay for and bear the costs of its own experts, evidence and counsel's fees. Notwithstanding the rules and procedures that would otherwise apply to the arbitration, and unless the Parties agree to a different arrangement, the place of the arbitration will be in [____], California.

{For PG&E, insert San Francisco; for SDG&E, insert San Diego; and for SCE, insert Los Angeles.}

7.07 Notices. All Notices shall be made in accordance with this Section 7.07 and Exhibit F. Notices (other than Forecasts and Scheduling requests) shall, unless otherwise specified in this Agreement, be in writing and may be delivered by hand delivery, first class United States mail, overnight courier service, electronic transmission or facsimile. Notices provided in accordance with this Section 7.07 are deemed given as follows: (a) Notice by facsimile, electronic transmission or hand delivery is deemed given at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise are deemed given at the close of business on the next Business Day; (b) Notice by overnight first class United States mail or overnight courier service is deemed given on the next Business Day after such Notice is sent out; and (c) Notice by first class United States mail is deemed given two Business Days after the postmarked date. Notices are effective on the date deemed given, unless a different date for the Notice to go into effect is stated in another section of this Agreement.

7.08 General.

(a) Except as may otherwise be provided in this Agreement, there is no warranty of merchantability or fitness for a particular purpose, and any and all implied warranties are disclaimed. 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. Unless expressly provided for in this Agreement, neither Party shall be liable for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages. This Agreement will not be construed against any Party as a result of the preparation, substitution, or other event of negotiation, drafting or execution thereof. Except to the extent provided for in this Agreement, no amendment or modification to this Agreement is enforceable unless reduced to a writing signed by all Parties.

(b) This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties relating to its subject matter.

(c) If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(d) Waiver by a Party of any default by the other Party will not be construed as a waiver of any other default.

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

(f) The word "or" when used in this Agreement includes the meaning "and/or" unless the context unambiguously dictates otherwise.

(g) Where days are not specifically designated as Business Days, they are calendar days. Where years are not specifically designated as Term Years, they are calendar years.

(h) This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(i) Whenever this Agreement refers to any law, tariff, government department or agency, regional reliability council, Transmission Provider, or credit rating agency, the Parties agree that the reference also refers to any successor to such law, tariff or organization.

(j) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission, an Adobe Acrobat file or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

(k) The headings used in this Agreement are for convenience and reference purposes only and will not affect its construction or interpretation. All references to "Sections" and "Exhibits" refer to the corresponding Sections and Exhibits of this Agreement. Unless otherwise specified, all references to "Sections" in Exhibits A through G refer to the corresponding Articles and Sections in the main body of this Agreement. Words having well-known technical or industry meanings have such meanings unless otherwise specifically defined in this Agreement.

7.09 Confidentiality. Neither Party may disclose any Confidential Information to a third party, other than: (a) to such Party's employees, Lenders, investors, attorneys, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential; (b) to potential Lenders with the consent of Buyer, which consent will not be unreasonably withheld; (c) to Buyer's Procurement Review Group, as defined in D.02-08-071, subject to any applicable limitations and subject to a protective order applicable to Buyer's Procurement Review Group; (d) with respect to Confidential Information, the CPUC, the CEC or the FERC, under seal for any regulatory purpose, including policymaking, but only provided that the confidentiality protections from the CPUC under Section 583 of the California Public Utilities Code or other statute, order or rule offering comparable confidentiality protection are in place before the communication of such Confidential Information; (e) in order to comply with any Applicable Law or any exchange, Control Area or CAISO rule, or order issued by a court or entity with competent jurisdiction over the disclosing party; and (f) in order to comply with any Applicable Law, including applicable regulation, rule, subpoena, or order of the CPUC, CEC, FERC, any court, administrative agency, legislative body or other tribunal, or any discovery or data request of the CPUC. In connection with requirements, requests or orders to produce documents or information in the circumstances provided in Section 7.09(f), each Party shall use reasonable efforts to (i) notify the other Party before disclosing the Confidential Information, and (ii) prevent or limit such disclosure.

7.10 Insurance.

(a) General Liability Coverage. Seller shall, at its own expense and at all times from the Effective Date until the Term End Date, maintain in effect the following insurance policies and minimum limits of coverage (and such additional coverage as may be required by Applicable Law), in each case with insurance companies authorized to do business in California having an A.M. Best's Insurance Rating of A minus: VII or better, and in each case specifying Buyer as an insured on the policy. The insurance required in this Section 7.10 may be provided by any combination of Seller's primary and excess liability policies.

(i) Workers' compensation insurance, with statutory limits as required by California;

(ii) Employer's liability insurance, with at least the following limits: (1) bodily injury by accident - $1,000,000 each accident; (2) bodily injury by disease - $1,000,000 policy limit; and (3) bodily injury by disease - $1,000,000 each employee;

(iii) Commercial general liability insurance, written on an "occurrence" (not a claims-made) basis, covering all operations by or on behalf of Seller arising out of or connected with this Agreement. This commercial general liability insurance must (1) bear a combined single limit per occurrence and annual aggregate of not less than $1,000,000, exclusive of defense costs, for all coverages, (2) contain standard

cross-liability or severability of interest provisions, and (3) contain no explosion, collapse, or underground exclusion;

(iv) Commercial automobile liability insurance, covering bodily injury and property damage with a combined single limit of not less than $1,000,000 per occurrence. This commercial automobile liability insurance must cover liability arising out of the use of all owned, non-owned and hired automobiles; and

(v) Excess liability insurance written on an "occurrence" (not "claims made") basis and providing coverage excess of the underlying employer's liability, commercial general liability, and commercial automobile liability insurance, on terms at least as broad as the underlying coverage with limits of not less than $4,000,000 per occurrence and in the annual aggregate.

(b) The insurance required in this Section 7.10 applies as primary insurance to, without a right of contribution from, any other insurance maintained by or afforded to Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, despite of any provision in Seller's insurance to the contrary. Carriers furnishing the required insurance must waive all rights of recovery from or subrogation against Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, employees and insurers. The insurance required in Section 7.10(a) must name Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents and employees additional insureds with respect to all third party liabilities arising out of Seller's construction, use or ownership of the Generating Facility.

(c) Within 30 days of the Effective Date, and within a reasonable time after coverage is renewed or replaced, Seller shall furnish to the Buyer certificates of insurance in forms reasonably acceptable to Buyer, establishing that Seller's policies provide the coverage and limits of insurance required under this Section 7.10 and that these policies will be in full force and effect as of the Effective Date, continuing until the end of the Term. Seller's insurance obtained in accordance with this Section 7.10 may only be terminated, expire or materially altered upon 30 days' prior Notice to Buyer.

(d) If any of the required insurance coverages contain aggregate limits applying to other operations of Seller outside of this Agreement, and such limits are diminished by any incident, occurrence, Claim, settlement or judgment against such insurance, Seller shall take immediate steps to restore such aggregate limits or shall provide other insurance protection for such aggregate limits. Governmental entities that have an established record of self-insurance may provide the required coverage through self insurance.

(e) If Seller fails to comply with any of the provisions of this Section 7.10, Seller shall, among other things and without restricting Buyer's remedies under the law or otherwise, at its own cost, defend, indemnify and hold harmless Buyer, its subsidiaries and parent company, and their respective officers, directors, shareholders, agents, and employees, from and against any and all liability, damages, losses, Claims, demands, actions, causes of action, costs, including attorney's fees and expenses, or any of them, resulting from the death or injury to any person or damage to any property to the extent that Buyer would have been protected had Seller complied with all of the provisions of this Section;.

7.11 Simple Interest Payments. Except as specifically provided in this Agreement, any outstanding and past due amounts owing and unpaid by either Party under the terms of this Agreement shall be eligible to receive a Simple Interest Payment calculated using the Interest Rate for the number of days between the date due and the date paid.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective authorized representatives as of the Effective Date.

[SELLER'S NAME],	**[BUYER'S NAME],**
a [Seller's business registration]	A California corporation
By:_____ Name:_____ Title:_____	By:_____ Name:_____ Title:_____

EXHIBIT A

Definitions

For purposes of this Agreement, the following terms and variations thereof have the meanings specified or referred to in this Exhibit A:

"Act" has the meaning set forth in the Recitals.

"Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this definition, "control" means the direct or indirect ownership of 50% or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Agreement" has the meaning set forth in the Preamble.

"Applicable Law" means all constitutions, treaties, laws, ordinances, rules, regulations, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to any Party, the Generating Facility or the terms of this Agreement.

"As-Available Contract Capacity" means the electric energy generating capacity that Seller provides on an as-available basis for the Power Product, as set forth in Section 1.03, as may be adjusted from time to time.

"Bankrupt" means with respect to any Person, such Person:

(a) Files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it (which petition is not dismissed within 90 days);

(b) Makes an assignment or any general arrangement for the benefit of creditors;

(c) Otherwise becomes bankrupt or insolvent (however evidenced);

(d) Has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or

(e) Is generally unable to pay its debts as they fall due.

"Business Day" means any day except a Saturday, Sunday, the Friday after the United States Thanksgiving holiday, or a Federal Reserve Bank holiday that begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice or payment or performing a specified action.

"Buyer" has the meaning set forth in the Preamble.

"CAISO" means the California Independent System Operator Corporation.

"CAISO-Approved Meter" means any revenue quality, electric energy measurement meter system(s), including all associated metering transformers and related appurtenances, as required by the CAISO (or, to the extent that the CAISO's metering requirement does not apply, Prudent Electrical Practices) and furnished by Seller, and which (a) is designed, manufactured and installed in accordance with the CAISO's metering requirements, or, to the extent that the CAISO's metering requirements do not apply, Prudent Electrical Practices, and (b) is a time-of-use meter capable of measuring the net electric energy output from the Generating Facility.

"CAISO-Approved Quantity" means the total quantity of electric energy the Buyer Schedules with the CAISO and the CAISO approves in its final schedule which is published in accordance with the CAISO Tariff.

"CAISO Controlled Grid" has the meaning set forth in the CAISO Tariff.

"CAISO Declared Over-Generation Condition" means a CAISO-declared condition on the CAISO Controlled Grid where the sum of the desired generation output of all of Scheduling Coordinators in the Control Area, absent mitigation, would be greater than the system load.
"CAISO Charges" means the debits, costs, fees, penalties, sanctions, interest or similar charges, including imbalance energy charges, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.
"CAISO Global Resource ID" means the number or name assigned by the CAISO to the CAISO-Approved Meter.
"CAISO Revenues" means the credits, fees, payments, revenues, interest or similar benefits, including imbalance energy payments, that are directly assigned by the CAISO to the CAISO Global Resource ID for the Generating Facility for, or attributable to, Scheduling or deliveries from the Generating Facility under this Agreement.
"CAISO Tariff" means the California Independent System Operator Corporation Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time to time and approved by the FERC.
"Capacity Attributes" means any and all current or future defined characteristics, certificates, tag, credits, ancillary service attributes, or accounting constructs, howsoever entitled, other than Resource Adequacy Benefits, attributed to or associated with the electricity generating capability of the Generating Facility.
"CEC" means the California Energy Commission.
"Check Meter" means the Buyer revenue-quality meter section or meter(s), which Buyer may require at its discretion, as set forth in Section 3.09(b), and will include those devices normally supplied by Buyer or Seller under the applicable utility electric service requirements.
"Claiming Party" has the meaning set forth in Section 5.02.
"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 before or after the termination of this Agreement.
"Confidential Information" means all oral or written communications exchanged between the Parties on or after the Effective Date relating to the implementation of this Agreement, including information related to Seller's compliance with operating and efficiency standards applicable to an Eligible CHP Facility. Confidential Information does not include (i) information which is in the public domain as of the Effective Date or which comes into the public domain after the Effective Date from a source other than from the other Party, (ii) information which either Party can demonstrate in writing was already known to such Party on a non-confidential basis before the Effective Date, (iii) information which comes to a Party from a bona fide third-party source not under an obligation of confidentiality, or (iv) information which is independently developed by a Party without use of or reference to Confidential Information or information containing Confidential Information.
"Control" means the direct or indirect ownership of 20% or more of the outstanding capital stock or other equity interests having ordinary voting power
"CPUC" means the California Public Utilities Commission.
"Defaulting Party" has the meaning set forth in Section 6.01(a).
"Delivery Point" has the meaning set forth in Section 1.05.
"Early Termination Date" has the meaning set forth in Section 6.03(a).
"Effective Date" has the meaning set forth in the Preamble.

"Eligible CHP Facility" means a facility, as defined by Public Utilities Code § 2840.2, subdivisions (a) and (b) that meet the guidelines established by the CEC pursuant to Public Utilities Code § 2843.
"Emergency" means an actual or imminent condition or situation which (a) is defined and declared by the CAISO or Transmission Provider, (b) jeopardizes the integrity or reliability of the CAISO Controlled Grid or Transmission Provider's electric system, (c) requires automatic or immediate manual action to prevent or limit loss of load or generation supply, or (d) poses a threat to public safety.
"Event of Default" has the meaning set forth in Section 6.01.
"Existing Eligible CHP Facility" means an Eligible CHP Facility that first commenced Operation on or after January 1, 2008 but before the Effective Date.
"Expected Term Year Energy Production" means the Metered Energy quantity expected to be produced by the Generating Facility during each Term Year, as set forth in Section 1.05.
"FERC" means the Federal Energy Regulatory Commission.
"Forced Outage" has the meaning set forth in the CAISO Tariff.
"Force Majeure" means any event or circumstance (that is not anticipated as of the Effective Date) to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome. Force Majeure does not include: (a) a failure of performance of any other Person, including any Person providing electric transmission service or fuel transportation to the Generating Facility, except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure; (b) failure to timely apply for or obtain Permits or other credits required to Operate the Generating Facility (provided, however, that failure or delay in the granting of permits, to the extent such failure or delay is not caused by action or inaction of Seller, qualifies as a Force Majeure for purposes of this Agreement); (c) breakage or malfunction of equipment (except to the extent that such failure was caused by an event that would otherwise qualify as a Force Majeure); or (d) a lack of fuel of an inherently intermittent nature such as wind, water, solar radiation or waste gas or waste derived fuel.
"Forecast" means the hourly forecast of the total electric energy production of the Generating Facility (in MWh) when the Generating Facility is not PIRP-eligible, net of the Site Host Load and Station Use, or (b) the available total generation capacity of the Generating Facility (in MW) when the Generating Facility is PIRP-eligible, net of the Site Host Load and Station Use.
"Generating Facility" means the Generating Unit(s) comprising Seller's power plant (as more particularly described in Section 1.02 and Exhibit G), including all other materials, equipment, systems, structures, features and improvements necessary to produce electric energy and thermal energy, excluding the Site, land rights and interests in land.
"Generating Unit" means one or more generating equipment combinations typically consisting of prime mover(s), electric generator(s), electric transformer(s), steam generator(s) and air emission control devices.
"Generation Operations Center" means the location of Buyer's real-time operations personnel.
"Governmental Authority" means (a) any federal, state, local, municipal or other government, (b) any governmental, regulatory or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (c) any court or governmental tribunal.

["Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as:

(1) Any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants;

(2) Any avoided emissions of carbon dioxide (CO_2), methane (CH_4), 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;[16]

(3) The reporting rights to these avoided emissions, such as Green Tag Reporting Rights.

Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy.

Green Attributes do not include:

(i) Any energy, capacity, reliability or other power attributes from the Project,

(ii) Production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation,

(iii) Fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or

(iv) Emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits.

If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.][17]

"Host Site" means the site at which the Site Host Load is consumed, including real property, facilities and equipment owned or operated by the Site Host or its Affiliates located at such site.

"Hour-Ahead Scheduling Deadline" means 30 minutes before the deadline established by the CAISO for the submission of schedules for the applicable hour.

"Interest Rate" means an annual rate equal to the rate published in The Wall Street Journal as the "Prime Rate" (or, if more than one rate is published, the arithmetic mean of such rates) as of the date payment is due plus two percentage points; *provided*, *however*, that in no event shall the Interest Rate exceed the maximum interest rate permitted by Applicable Laws.

"Lender" means any financial institutions or successors in interest or assignees that provides development, bridge, construction, permanent debt or tax equity financing or refinancing for the Generating Facility to Seller.

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

[17] The CHP parties reserve on the definition Green Attributes subject to resolution of the pricing issue.

"Metered Energy" means the total electric energy, expressed in kWh, in excess of Station Use and Site Host Load and measured by the CAISO-Approved Meter(s) or Check Meter(s), as applicable, at the Generating Facility for the specified Metering Interval.
"Metering Interval" means the smallest measurement time period over which data are recorded by the CAISO-Approved Meters or Check Meters, as applicable.
"Monthly Contract Payment" has the meaning set forth in Section 4.01(a).
"NERC" means the North American Electric Reliability Corporation.
"New Eligible CHP Facility" means an Eligible CHP Facility that commences Operation after the Effective Date.
"Non-Defaulting Party" has the meaning set forth in Section 6.03.
"Notice" means notices, requests, statements or payments provided in accordance with Section 7.07 and Exhibit F.
"Operate" means to provide all the operation, engineering, purchasing, repair, supervision, training, inspection, testing, protection, use management, improvement, replacement, refurbishment, retirement, and maintenance activities associated with operating the Generating Facility in order to produce the Power Product in accordance with Prudent Electrical Practices.
"Outage Schedule" has the meaning set forth in Section 2(a) of Exhibit D.
"Outage Schedule Submittal Requirements" describes the obligations of Seller to submit maintenance and planned outage schedules (as defined in the CAISO Tariff under WECC rules) to Buyer in accordance with Exhibit D.
"Parallel Operation" means the Generating Facility's electrical apparatus is connected to the Transmission Provider's system and the circuit breaker at the point of common coupling is closed. The Generating Facility may be producing electric energy or consuming electric energy at such time.
"Party" has the meaning set forth in the Preamble.
"Peak Months" means [___].

{Buyer Comment: For SCE and PG&E, the Peak Months are June, July, August and September. For SDG&E, the Peak Months are May, June, July, August and September.}

"Permits" means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or similar requirements imposed by any Governmental Authority, or the CAISO, in order to develop, construct, Operate, maintain, improve, refurbish or retire the Generating Facility or to Forecast or deliver the electric energy produced by the Generating Facility to Buyer.
"Person" means an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Authority.
"PIRP" (i.e., Participating Intermittent Resource Program) means the CAISO's intermittent resource program initially established pursuant to Amendment No. 42 of the CAISO Tariff in Docket No. ER02-922-000, or any successor program that Buyer determines accomplishes a similar purpose.
"Power Product" means (a) the As-Available Contract Capacity and (b) all electric energy produced by the Generating Facility, net of all Station Use and any and all of the Site Host Load.
"Power Rating" means the electrical power output value indicated on the generating equipment nameplate.
"Product" means the Power Product, Green Attributes,[18] Capacity Attributes and Resource Adequacy Benefits.
"Project" means the Generating Facility.
"Prudent Electrical Practices" means those practices, methods and acts that would be implemented and followed by prudent operators of electric generating facilities in the Western United States, similar to

[18] The CHP parties reserve on the concept of providing Green Attributes subject to resolution of the pricing issue.

the Generating Facility, during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time a decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety. Prudent Electrical Practices includes, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with the manufacturer's warranties, restrictions in this Agreement, and the requirement of Governmental Authorities, WECC standards, the CAISO and Applicable Laws. Prudent Electrical Practices shall include taking reasonable steps to ensure that: (a) equipment, materials, resources and supplies, including spare parts inventories, are available to meet the Generating Facility's needs; (b) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to Operate the Generating Facility properly and efficiently, and are capable of responding to reasonably foreseeable emergency conditions at the Generating Facility and Emergencies whether caused by events on or off the Site; (c) preventative, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long term and safe operation of the Generating Facility, and are performed by knowledgeable, trained and experienced personnel utilizing proper equipment and tools; (d) appropriate monitoring and testing are performed to ensure equipment is functioning as designed; (e) equipment is not operated in a reckless manner, in violation of manufacturer's guidelines or in a manner unsafe to workers, the general public or the Transmission Provider's electric system, or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt ampere reactive (VAR) loading, frequency, rotational speed, polarity, synchronization, and control system limits; and (f) equipment and components designed and manufactured to meet or exceed the standard of durability that is generally used for electric energy generation operations in the Western United States and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and emergency conditions.

"PPT" means Pacific Daylight time when California observes Daylight Savings Time and Pacific Standard Time otherwise.

"Real-Time Forced Outage" means a Forced Outage which occurs only after 5:00 p.m. PPT on the day before the Trading Day.

"Renewable Energy Credit" has the meaning set forth in Public Utilities Code Section 399.12(g), as may be amended from time to time or as further defined or supplemented by Applicable Law.

"Resource Adequacy Benefits" means the rights and privileges attached to the generating capacity of the Generating Facility that, in accordance with Public Utilities Code Section 2841(f), count toward satisfying Buyer's resource adequacy obligations.

"Schedule" means the action of the Scheduling Coordinator, or its designated representatives, of preparing a schedule based on Seller's forecast and notifying, requesting, and confirming the CAISO-Approved Quantity with the CAISO, the electric energy delivered from the Generating Facility.

"Scheduling Coordinator" means an entity certified by the CAISO for the purposes of undertaking the functions specified by CAISO Tariff Section 2.2.6, as amended by FERC from time-to-time.

"SC Set-Up Fee" has the meaning set forth in Section 1.07.

"Seller" has the meaning set forth in the Preamble.

"Simple Interest Payment" means a dollar amount calculated by multiplying the: (a) dollar amount on which the Simple Interest Payment is based; by (b) the Interest Rate; by (c) the result of dividing the number of days in the calculation period by 360.

"Site" means the real property on which the Generating Facility is located, as further described in Section 1.02 and Exhibit G.

"Site Control" means that Seller (a) owns the Site, (b) is the lessee of the Site under a lease, the term of which begins on or before the Term Start Date and extends at least through the Term End Date, (c) is the holder of a right-of-way grant or similar instrument with respect to the Site, or (d) is managing partner or other Person authorized to act in all matters relating to the control and Operation of the Site and Generating Facility.
"Site Host" means any Person purchasing or otherwise using the Site Host Load or thermal energy output from the Generating Facility.
"Site Host Load" means the electric energy and capacity produced by or associated with the Generating Facility that serves electrical loads (that are not Station Use) of Seller or one or more third parties pursuant to California Public Utilities Code Section 218(b).

"Station Use" means the electric energy produced by the Generating Facility that is used within the Generating Facility to power the lights, motors, control systems and other electrical loads that are necessary for Operation, including transformation losses to power such equipment and other necessary loads.
"Telemetry System" means a system of electronic components that interconnects the CAISO and the Generating Facility, all in accordance with the CAISO Tariff.
"Term" has the meaning set forth in Section 1.01.
"Term End Date" has the meaning set forth in Section 1.01.
"Term Start Date" has the meaning set forth in Section 1.01.
"Term Year" means a 12-month period beginning on the first day of the Term and each successive 12-month period thereafter.
"Trading Day" means the day in which Day-Ahead (as defined in the CAISO Tariff) trading occurs in accordance with the WECC Preschedule Calendar (as found on the WECC's website).
"Transmission Provider" means any Person responsible for the interconnection of the Generating Facility with the interconnecting utility's electrical system or the CAISO Controlled Grid or transmitting the Metered Energy on behalf of Seller from the Generating Facility to the Delivery Point.
"Web Client" has the meaning set forth in Section 2(a) of Exhibit D.
"WECC" means the Western Electricity Coordinating Council.

**** End of Exhibit A ****

EXHIBIT B

[This Exhibit B is left intentionally blank, and will be updated as necessary, along with Exhibit A and the body of the Agreement, upon resolution of the pricing issue.]

**** End of Exhibit B ****

EXHIBIT C

Seller's Forecasting Submittal and Accuracy Requirements

1. General Requirements. The Parties shall abide by the Forecasting requirements and procedures described below and shall agree upon reasonable changes to these requirements and procedures from time to time as necessary to:

   (a) Comply with the CAISO Tariff, as applicable;

   (b) Accommodate changes to their respective generation technology and organizational structure; and

   (c) Address changes in the Operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated Forecast and outage submissions.

2. Seller's Forecasting Submittal Requirements.

   (a) 30-Day Forecast.

   No later than 30 days before the Term Start Date (or, in the case of a New Eligible CHP Facility, no later than 30 days before the commencement of Parallel Operation), Seller shall provide Buyer with a Forecast for the 30-day period commencing on the Term Start Date (or, if applicable, Parallel Operation) using the Web Client.

   In the case of a New Eligible CHP Facility, if, after submitting the Forecast pursuant to this Section 2(a), Seller learns that Parallel Operation will occur on a date and time other than that reflected on the Forecast, Seller shall provide an updated Forecast reflecting the new Parallel Operation date at the earliest practicable time but no later than 5:00 p.m. PPT on the Wednesday before the new Parallel Operation date, if Seller has learned of the new Parallel Operation date by that time, but in no event less than three Business Days before the new Parallel Operation date.
   If the Web Client becomes unavailable, Seller shall provide Buyer with the Forecast by e-mail or by telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.
   The Forecast, and any updated Forecasts provided pursuant to this Section 2, shall:

   (i) Not include any anticipated or expected electric energy losses between the CAISO-Approved Meter and the Delivery Point; and

   (ii) Limit hour-to-hour Forecast changes to no less than 250 kWh during any period when the Web Client is unavailable. Seller shall have no restriction on hour-to-hour Forecast changes when the Web Client is available.

   (b) Weekly Update to 30-Day Forecast. Commencing on or before 5:00 p.m. PPT of the Wednesday before the first week covered by the Forecast provided pursuant to Section 2(a) of this Exhibit C, and on or before 5:00 p.m. PPT every Wednesday thereafter until the Term End Date, Seller shall update the Forecast for the 30-day period commencing on the Sunday following the weekly Wednesday Forecast update submission. Seller shall use the Web Client, if available, to supply this weekly update or, if the Web Client is not available, Seller shall provide Buyer with the weekly Forecast update by e-mailing or

telephoning Buyer's Generation Operations Center at the e-mail address or telephone number(s) listed in Exhibit F.

(c) Further Update to 30-Day Forecast. As soon as reasonably practicable and commensurate with Seller's knowledge, Seller shall provide Forecast updates related to Buyer's Scheduled daily, hourly and real-time deliveries from the Generating Facility for any cause, including changes in Site ambient conditions, a Forced Outage, and a Real-Time Forced Outage, which results in a material change to the Generating Facility's deliveries (whether in part or in whole). This updated Forecast pursuant to this Exhibit C must be submitted to Buyer via the Web Client by no later than:

(i) 5:00 p.m. PPT on the day before the Trading Day impacted by the change, if the change is known to Seller at that time;

(ii) The Hour-Ahead Scheduling Deadline, if the change is known to Seller at that time; or

(iii) If the change is not known to Seller by the timeframes indicated in (i) or (ii) immediately above, no later than 20 minutes after Seller becomes aware of the event which caused the expected energy production change.

Seller's updated Forecast must contain the following information:

(w) The beginning date and time of the event resulting in the availability of the Generating Facility and expected energy production change;

(x) The expected ending date and time of the event:

(y) The expected energy production, in MWh; and

(z) Any other information required by the CAISO as communicated to Seller by Buyer.

**** End of Exhibit C ****

EXHIBIT D

Outage Schedule Submittal Requirements

1. General Requirements. The Parties shall abide by the Outage Schedule Submittal Requirements described below and shall agree upon reasonable changes to these requirements and procedures from time to time, as necessary to (a) comply with the CAISO Tariff, (b) accommodate changes to their respective generation technology and organizational structure, and (c) address changes in the operating and Scheduling procedures of Seller, Buyer and the CAISO, including automated forecast and outage submissions.

2. Seller's Availability Forecasting Submittal Requirements. Seller shall submit maintenance and planned outage schedules in accordance with the following schedule:

   (a) No later than January 1st, April 1st, July 1st and October 1st of each Term Year, and at least 60 days before Parallel Operation, Seller shall submit to Buyer its schedule of proposed planned outages ("Outage Schedule") for the subsequent twenty four-month period using a Buyer-provided web-based system or an e-mail address designated by Buyer ("Web Client").

   (b) Seller shall provide the following information for each proposed planned outage: (i) Start date and time; (ii) End date and time; and (iii) Capacity online, in MW, during the planned outage.

   (c) Within 20 Business Days after Buyer's receipt of an Outage Schedule, Buyer shall notify Seller in writing of any request for changes to the Outage Schedule, and Seller shall, consistent with Prudent Electrical Practices, accommodate Buyer's requests regarding the timing of any planned outage.

   (d) Seller shall cooperate with Buyer to arrange and coordinate all Outage Schedules with the CAISO.

   (e) In the event a condition occurs at the Generating Facility which causes Seller to revise its planned outages, Seller shall provide Notice to Buyer, using the Web Client, of such change (including, an estimate of the length of such planned outage) as required in the CAISO Tariff after the condition causing the change becomes known to Seller.

   (f) Seller shall promptly prepare and provide to Buyer upon request, using the Web Client, all reports of actual or forecasted outages that Buyer may reasonably require for the purpose of enabling Buyer to comply with Section 761.3 of the California Public Utilities Code or any Applicable Law mandating the reporting by investor owned utilities of expected or experienced outages by electric energy generating facilities under contract to supply electric energy.

3. Restriction on Planned Outages. During the Peak Months, Seller may schedule and utilize no more than 12 hours of outages per Peak Month, and only during the non-peak hours of the Peak Months.

**** End of Exhibit D ***

EXHIBIT E
CAISO Charges

Subject to section 4.01(g), Buyer shall pay all CAISO Charges and receive all CAISO Revenues; *provided*, *however*, if, on or after the Term Start Date:

1. The CAISO implements or has implemented any sanction or penalty related to Scheduling, outage reporting or generator Operation, and any such sanctions or penalties are imposed on the Generating Facility or to Buyer as Scheduling Coordinator for the Generating Facility due solely to the actions or inactions of Seller in violation of this Agreement, then such sanctions or penalties will be Seller's responsibility;

2. Seller or any third party dispatches any portion of the As-Available Contract Capacity for the benefit of any party other than Buyer or a Site Host in respect of the Host Site, then Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges; or

3. There is a CAISO or Transmission Provider declared Emergency and Seller fails to meet Seller's obligations associated with any CAISO or Transmission Provider instruction or request (as may be communicated by Buyer as Scheduling Coordinator), as the case may be, to curtail output or reschedule a planned outage set to occur during an Emergency, then, in each case, Seller shall indemnify, defend, and hold Buyer harmless against any CAISO Charges associated with the failure to respond to such Emergency.

**** End of Exhibit E ****

EXHIBIT F
Notice List

[SELLER'S NAME]	[BUYER'S NAME]
All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:	All Notices are deemed provided in accordance with Section 7.07 if made to the address, facsimile numbers or e-mail addresses provided below:
Contract Sponsor: Attn: Street: City: Phone: Facsimile: E-mail:	
Reference Numbers: Duns: Federal Tax ID Number:	
Contract Administration: Attn: Phone: Facsimile: E-mail:	
Forecasting: Attn: Control Room Phone: Facsimile: E-mail:	
Day-Ahead Forecasting: Phone: Facsimile: E-mail:	
Real-Time Forecasting: Phone: Facsimile: E-mail:	
Payment Statements: Attn: Phone: Facsimile: E-mail:	

CAISO Charges and CAISO Sanctions: Attn: Phone: Facsimile: E-mail:	
Payments: Attn: Phone: Facsimile: E-mail:	
Wire Transfer: BNK: ABA: ACCT:	
Credit and Collections: Attn: Phone: Facsimile: E-mail:	
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: E-mail:	
Lender: Attn: Phone: Facsimile: E-mail:	

**** End of Exhibit F ****

EXHIBIT G

Generating Facility and Site Description

1. Generating Facility Description.

{Buyer Comment: Provide description of the Generating Facility equipment, systems, control systems and features, including a site plan drawing and a one-line diagram, and the generator nameplate(s).}

2. Site Description.

{Buyer Comment: Provide a legal description of the Site, including the Site map.}

**** End of Exhibit G ****

CERTIFICATE OF SERVICE
BY ELECTRONIC MAIL OR U. S. MAIL

I, the undersigned, state that I am a citizen of the United States and am employed in the City and County of San Francisco; that I am over the age of eighteen (18) years and not a party to the within cause; and that my business address is Pacific Gas and Electric Company, Law Department B30A, 77 Beale Street, San Francisco, CA 94105.

I am readily familiar with the business practice of Pacific Gas and Electric Company for collection and processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On the 30th day of June 2009, I caused to be served a true copy of:

SUPPLEMENTAL WORKING GROUP REPORT
ON SIMPLIFIED AB 1613 CONTRACT
SUBMITTED BY
PACIFIC GAS AND ELECTRIC COMPANY (U 39 E)

[XX] By Electronic Mail – serving the enclosed via e-mail transmission to each of the parties listed on the official service list for R.08-06-024 with an e-mail address.

[XX] By U. S. Mail – by placing the enclosed for collection and mailing, in the course of ordinary business practice, with other correspondence of Pacific Gas and Electric Company, enclosed in a sealed envelope, with postage fully prepaid, addressed to those parties listed on the official service list for R.08-06-024 without an e-mail address.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 30th day of June, 2009 at San Francisco, California.

/S/

ELIZABETH J. DIAMOND