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AMENDED AND RESTATED

LONG TERM POWER SALES AGREEMENT

BETWEEN

THE CITY AND COUNTY OF SAN FRANCISCO

AND

THE TURLOCK IRRIGATION DISTRICT

APRIL 2005

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1

The Agreement

Amended and Restated

Long Term Power Sales Agreement

Between

The City and County of San Francisco

And

The Turlock Irrigation District

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1 Amended and Restated

2
3 Long Term Power Sales Agreement

4
5 Between

6
7 The City and County of San Francisco

8
9 And

10
11 The Turlock Irrigation District

12
13
14
15 1. PARTIES

16
17 THIS AMENDED AND RESTATED AGREEMENT is made by and between
18 the CITY AND COUNTY OF SAN FRANCISCO, a California municipal
19 corporation, hereinafter called "City", acting through its
20 Public Utilities Commission and Board of Supervisors, and the
21 TURLOCK IRRIGATION DISTRICT, a California irrigation district,
22 hereinafter called "Turlock", acting through its Board of
23 Directors, hereinafter sometimes referred to individually as
24 "Party" and collectively as "Parties".

25
26
27
28
29 2. RECITALS

1 This contract is made with reference to the following
2 facts, among others:

3
4 2.1 City is the owner and operator of a certain water
5 supply and hydroelectric power system known as the Hetch Hetchy
6 Project, situated in the east central part of California;

7
8 2.2 Turlock owns and operates an electric generation,
9 transmission and distribution system and provides, distributes
10 and sells Power to consumers within and adjacent to its legally
11 defined boundaries;

12
13 2.3 Under the provisions of the Congressional grant known
14 as the Raker Act, Turlock and Modesto may purchase electric
15 energy from City;

16
17 2.4 The Parties previously entered into a power sales
18 agreement (as hereinafter defined, the "Prior Agreement");

19
20 2.5 Over the past several years disputes have arisen
21 between the Parties relating to the proper interpretation of
22 certain terms of the Prior Agreement including, but not limited
23 to, those relating to: (a) the rights and obligations of the
24 Parties under Section 25 of such Agreement, the procedures for
25 dispute resolution applicable thereto and City's notice of and
26 termination of such Agreement under the terms thereof; (b) the
27 amount of power to be sold at cost at the Class 1 rate; (c) the
28 capacity factor at which power was to be scheduled and
29 delivered; and (d) the determination of the Class 1 rate and the
30 monthly and the annual reconciliation with respect thereto
31 during the fiscal years or portions thereof occurring prior to
32 the fiscal year that commenced on July 1, 2003;

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2.6 The Parties engaged in various means to resolve such disputes, including participating in a non-binding arbitration proceeding and in negotiations aimed at amicably resolving such disputes and, as a result of such negotiations, the Parties entered into that certain Agreement to Implement dated December 23, 2004 (the "Implementation Agreement") and pursuant to the terms of which the Parties, among other things, agreed in principle to terms by which they would settle their disputes and a process and period during which they would engage in good faith efforts to incorporate the terms outlined therein into a definitive agreement;

2.7 The Implementation Agreement was duly authorized and approved by City in Ordinance 285-04 on December 14, 2004, and by the governing board of Turlock on September 28, 2004, and became effective by its terms upon execution by both Parties on December 23, 2004; and,

2.8 The Parties engaged in the process contemplated by the Implementation Agreement and as a result thereof City does hereby rescind its notice of termination and the Parties do hereby definitively amend and restate the Prior Agreement as set forth below.

3. AGREEMENT

1 For and in consideration of the foregoing and the mutual
2 covenants and conditions hereinafter set forth, the Parties
3 amend and restate the Prior Agreement as follows:
4
5

6 4. DEFINITIONS
7

8 Whenever used herein, including all appendices and exhibits
9 hereto, the following terms, when initially capitalized, shall
10 for the purpose of this Agreement have the following respective
11 meanings. The singular of a term shall include the plural and
12 the plural shall include the singular. References herein to
13 amounts of energy may be expressed in either kilowatthours (kWh)
14 or megawatthours (MWh) and to amounts of capacity may be
15 expressed in either kilowatts (kW) or megawatts (MW).
16

17 4.1 Active Day: The day the delivery of energy is to
18 occur.
19
20

21 4.2 Active Day Schedule: A schedule for delivery of
22 energy in each half-hour of an Active Day.
23

24 4.3 Additional Available Excess Energy: Modesto's
25 Allocation of Available Excess Energy which Modesto has not
26 agreed to purchase from City (i) one (1) Business Day prior to a
27 Preschedule Day with respect to an Active Day that occurs on or
28 before December 31, 2007, and (ii) prior to the time provided
29 for on the Scheduling Calendar by which City is required to
30 offer such Additional Available Excess Energy to Turlock.
31

1 4.4 Additional Available Excess Energy Schedule: The
2 schedule in half-hours for delivery of Additional Available
3 Excess Energy offered to Turlock for an Active Day.
4

5 4.5 Adjusted Base Active Day Schedule: A schedule
6 submitted by Turlock pursuant to Section 7.4.6 hereof.
7

8 4.6 Adjusted Delivered Class 1 Energy: The amount of
9 energy during the period of determination equal to (a) the sum
10 of (i) Adjusted Scheduled Class 1 Energy, and (ii) Scheduled
11 Shortfall Energy, and (b) decreased by the sum of (i) Scheduled
12 Overage Energy, (ii) Interrupted Class 1 Energy, and (iii)
13 Rejected Class 1 Energy.
14

15 4.7 Adjusted Scheduled Class 1 Energy: Qualified Half-
16 Hour Energy or Allocated Energy, whichever is less, during any
17 determination period.
18

19 4.8 Agreement: This AMENDED AND RESTATED LONG TERM POWER
20 SALES AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
21 THE TURLOCK IRRIGATION DISTRICT.
22

23 4.9 Airport Tenants: The tenants at the San Francisco
24 International Airport whose electric service is purchased from
25 City.
26

27 4.10 Allocated Energy: The amount of energy that results
28 from multiplying Turlock's Allocation by Available Energy during
29 any determination period.
30

31 4.11 Allocation Agreement: The agreement between the
32 Districts, dated May 28, 1982, entitled AGREEMENT ON THE

1 ALLOCATION OF HETCH HETCHY POWER BETWEEN MODESTO IRRIGATION
2 DISTRICT AND TURLOCK IRRIGATION DISTRICT, as it may be amended
3 from time to time, and pursuant to which the Districts have
4 agreed to, among other things, a procedure and methodology for
5 allocating between them Power they may be entitled to receive
6 from the Project, by determining the percentage of such power
7 that each agrees the other will be entitled to.

8

9 4.12 Annual Study: The annual load profiling study
10 Turlock has committed to perform as further defined in Section
11 10.4.2 (b) hereof.

12

13 4.13 Available Energy: Ninety-eight percent (98%) of the
14 amount of Project Energy that remains after City Municipal
15 Energy requirements are met in any period of determination.

16

17 4.14 Available Excess Energy: The amount of Excess Energy
18 that remains after reducing it by (a) the amount used by City
19 for the purposes set forth in Section 7.5.2, if the period of
20 determination is on or prior to December 31, 2007, or (b) the
21 amount used by City for the purposes set forth in Section 7.6.3
22 hereof, if the period of determination is on or after January 1,
23 2008.

24

25 4.15 Available Excess Energy Schedule: A schedule
26 submitted by Turlock that conforms to the requirements of
27 Section 11.5 and by which Turlock accepts or rejects City's
28 offer of Available Excess Energy.

29

30 4.16 Base Active Day Ramping Schedule: A Ramping Schedule
31 for an Active Day submitted by Turlock pursuant to Section
32 11.4.1 hereof.

1
2 4.17 Base Active Day Schedule: A schedule of Class 1
3 Energy offered to Turlock for an Active Day comprised of and
4 showing (a) Scheduled Class 1 Energy offered to Turlock pursuant
5 to Section 7.4.5 (b) (i) hereof, (b) increases to Scheduled Class
6 1 Energy, if any, to reflect Scheduled Shortfall Energy, and (c)
7 decreases to Scheduled Class 1 Energy, if any, to reflect
8 Scheduled Overage Energy, as the case may be.

9
10 4.18 Base Off-Peak Demand: Either (a) the amount of
11 Demand set forth at Column E on Table B-1 of Appendix B, if
12 during the Second Period, or (b) the amount of Demand that is
13 the result of the Base Off-Peak Energy for a month divided by
14 the Off-Peak Hours of that month, and rounded as the Parties may
15 mutually agree, if during the Third Period.

16
17 4.19 Base Off-Peak Energy: Either (a) the amount of
18 energy set forth at Column F on Table B-1 of Appendix B, if
19 during the Second Period, or (b) the amount of energy that is
20 the result of the Requested Monthly Class 1 Energy for a month
21 multiplied by the Off-Peak Percentage applicable to that month
22 and rounded as the Parties may mutually agree, if during the
23 Third Period.

24
25 4.20 Base On-Peak Demand: Either (a) the amount of
26 Demand set forth at Column C on Table B-1 of Appendix B, if
27 during the Second Period, or (b) the amount of Demand in MW that
28 is the result of the Base On-Peak Energy for a month divided by
29 the On-Peak Hours of that month, and rounded as the Parties may
30 mutually agree, if during the Third Period.

31

1 4.21 Base On-Peak Energy: Either (i) the amount of energy
2 set forth at Column D on Table B-1 of Appendix B, if during the
3 Second Period, or (ii) the amount of energy that is the result
4 of the Requested Monthly Class 1 Energy in a month multiplied by
5 the On-Peak Percentage applicable to that month and rounded as
6 the Parties may mutually agree, if during the Third Period.

7
8 4.22 Base Schedule: A half-hour schedule of the Base On-
9 Peak Demand during an On-Peak Period of a month and of the Base
10 Off-Peak Demand during an Off-Peak Period of a month.

11
12 4.23 Business Day: Any Preschedule Day as defined herein.

13
14 4.24 City: The City and County of San Francisco, a
15 California municipal corporation and the owner and operator of
16 the Hetch Hetchy Project.

17
18 4.25 City Municipal Demand: The rate of use of City
19 Municipal Energy, including losses to the Hetch Hetchy Bus,
20 during any determination period, expressed in kilowatts.

21
22 4.26 City Municipal Energy: The amount of Project Energy
23 used or to be used by City for pumping City's water supply and
24 for City's actual municipal purposes pursuant to Section 9 (1)
25 of the Raker Act, including losses to the Hetch Hetchy Bus, for
26 any determination period, expressed in kilowatthours, as the
27 context may require.

28
29 4.27 City Municipal Load: City Municipal Demand and City
30 Municipal Energy for any determination period.

1 4.28 City's Transmission Facilities: Those rights-of-way,
2 transmission lines, and appurtenant equipment, owned by City,
3 extending from the Hetch Hetchy Bus to certain points of
4 delivery to Districts and Norris Industries and to points of
5 interconnection with PG&E.

6
7 4.29 Class 1 Energy: The amount of Available Energy to be
8 used by either Turlock or Modesto, as the case may be, for
9 purposes that qualify for service pursuant to Section 9(1) of
10 the Raker Act and that is to be sold to them pursuant to Section
11 9 (1) of the Raker Act at a price that actually reimburses City
12 for developing and maintaining and transmitting such energy to
13 them.

14
15 4.30 Class 1 Energy Rate: The price for Class 1 Energy
16 for a Fiscal Year determined by City in accordance with Article
17 16 hereof and Appendix D hereto.

18
19 4.31 Control Area Operator: The entity responsible for
20 load and resource balancing and reliable operation of an
21 electric power system including, but not limited to, facilities
22 and entitlements, pursuant to NERC and WECC requirements.

23
24 4.32 Delivered Class 1 Energy: The amount of energy equal
25 to (a) the sum of Scheduled Class 1 Energy and Scheduled
26 Shortfall Energy, decreased by (b) the sum of (i) Scheduled
27 Overage Energy, (ii) Interrupted Class 1 Energy, and (iii)
28 Rejected Class 1 Energy, during the period of determination.

29
30 4.33 Demand: The rate of use of electrical energy, in
31 kilowatts (kW) or megawatts (MW), during any determination
32 period.

1
2 4.34 Districts: The Turlock Irrigation District and the
3 Modesto Irrigation District.
4

5 4.35 Equal Percentage Method: A method by which the on-
6 peak percentage is determined to be equal to the number of On-
7 Peak Hours in the month of determination divided by the total
8 number of hours in such month, and the off-peak percentage is
9 determined to be equal to one-hundred percent (100%) minus the
10 on-peak percentage determined for such month.
11

12 4.36 Excess Energy: The amount of Project Energy
13 determined by City (a) under Section 7.5.1 hereof, if the period
14 of determination is on or prior to December 31, 2007, or (b)
15 under 7.6.2 hereof if the period of determination is on or after
16 January 1, 2008.
17

18 4.37 Execution Date: The date on which this Agreement was
19 executed by the duly authorized representatives of both Parties,
20 as set forth below.
21

22 4.38 Final Base Active Day Schedule: Either (a) the Base
23 Active Day Schedule pursuant to Section 7.4.5, Section 7.4.7(b)
24 or Section 7.4.10(c) hereof, or (b) the Adjusted Base Active Day
25 Schedule if confirmed by City pursuant to Section 7.4.7 hereof,
26 or (c) the Base Active Day Ramping Schedule if confirmed by City
27 pursuant to Section 7.4.10 hereof, as the case may be.
28

29 4.39 Final Schedule: The final schedule to be provided
30 by City to its Scheduling Representative who, in turn, provides
31 it to the applicable Control Area Operator for an Active Day
32 which schedule incorporates, among other things, all of the

1 energy to be delivered to Turlock on an Active Day under (a) the
2 Final Base Active Day Schedule and the Available Excess Energy
3 Schedule, as adjusted to account for the energy Turlock has
4 committed to purchase under the Additional Available Excess
5 Energy Schedule on such Active Day, if during the Third Period,
6 or (b) the Final Base Firm Active Day Schedule, the Available
7 Excess Energy Schedule, as adjusted to account for the energy
8 Turlock has committed to purchase under the Additional Available
9 Excess Energy Schedule on such Active day, as determined in
10 accordance with Appendix B hereto, if during the Second Period.
11

12 4.40 Firm Class 1 Energy: The Class 1 Energy supplied or
13 to be supplied to Turlock each month during the Second Period in
14 the amounts shown at Column B of Appendix B, Table B-1.
15

16 4.41 First Half Year Study: The load profiling study
17 Turlock has committed to perform as further defined in Section
18 10.4.1 (a) hereof.
19

20 4.42 First Period: The period that commenced at 0000
21 hours February 14, 2004 and ended at 2400 hours on June 30,
22 2004.
23

24 4.43 Fiscal Year: The period commencing on July 1 of a
25 year and ending on June 30 of the following year.
26

27 4.44 Forced Outage: The removal from service of equipment
28 or facilities appurtenant thereto necessary for generation or
29 transmission of energy either due to failure or to prevent
30 imminent failure.
31

1 4.45 Governing Boards: City's Public Utilities Commission
2 and Board of Supervisors, as may be applicable, and Turlock's
3 Board of Directors.

4
5 4.46 Half-Hour Available Energy: The amount of Available
6 Energy, if any, in a half-hour during any period of
7 determination.

8
9 4.47 HE: The "hour ending" by reference to a 24 hour
10 day.

11
12 4.48 Hetch Hetchy Bus: The generator busses of the
13 hydroelectric generating facilities of the Project deemed to be
14 a common bus for purposes of this Agreement.

15
16 4.49 Hetch Hetchy Project: The hydroelectric generating
17 facilities including associated water storage and conveyance
18 facilities in the Tuolumne River watershed and associated
19 transmission facilities owned by City as now developed or as may
20 be developed in the future.

21
22 4.50 Initial Annual Study: The initial annual load
23 profiling study Turlock has committed to perform as further
24 defined in Section 10.4.2(a) hereof.

25
26 4.51 Interrupted Class 1 Energy: The amount of Class 1
27 Energy set forth on a Final Base Active Day Schedule, but
28 subsequently not supplied or delivered by City to Turlock on
29 such Active Day for reasons set forth in Section 11.7 hereof.

30
31 4.52 Modesto: The Modesto Irrigation District.

32

1 4.53 Modesto Agreement: Either (a) that certain Amended
2 and Restated Long Term Power Sales Agreement Between the City
3 and County of San Francisco and the Modesto Irrigation District
4 which by its terms became effective as of January 1, 2003 and
5 which will terminate as of 2400 hours on December 31, 2007 (the
6 "Existing Modesto Agreement"), and, thereafter, any successor
7 agreement or statement of intent whereby City agrees or offers
8 to supply Class 1 Energy to Modesto, or (b) if Modesto exercises
9 its option pursuant to Section 43 of the Existing Modesto
10 Agreement, then such amended and restated agreement that City
11 and Modesto enter into as a result thereof.
12

13 4.54 Modesto's Allocation: The percentage applicable to
14 Modesto under the Allocation Agreement which is in effect for
15 purposes of this Agreement pursuant to Section 7.1 hereof during
16 any period of determination.
17

18 4.55 Modesto's Class 1 Energy: The estimated schedule for
19 delivery of Class 1 Energy under the Modesto Agreement, before
20 any adjustment thereto is made for the equivalent of either
21 scheduled shortfall energy or scheduled overage energy.
22

23 4.56 NERC: The North American Electric Reliability
24 Council, a not-for-profit corporation formed under the laws of
25 the State of New Jersey, or its successor.
26

27 4.57 Norris Industries: Riverbank Army Ammunition Plant,
28 a resale customer of City located in Riverbank, California,
29 owned by the United States Department of Defense and operated by
30 Norris Industries or its successors.
31

1 4.58 Off-Peak Hours: The hours of a day which are not On-
2 Peak Hours.

3
4 4.59 Off-Peak Percentage: The result of one hundred
5 percent (100%) minus the On-Peak Percentage applicable to the
6 period of determination.

7
8 4.60 On-Peak Hours: The hours of HE 07 through HE 22 of
9 any day except Sunday and NERC designated holidays, as currently
10 in effect and as modified from time to time to reflect those
11 hours commonly recognized as on-peak hours and used by electric
12 utilities in the WECC.

13
14 4.61 On-Peak Percentage: The ratio of (i) the estimate of
15 the portion of Qualified Energy used during the On-Peak Hours of
16 a month as determined in the load profile study (or studies)
17 performed and delivered by Turlock in accordance with Section 10
18 hereof for such month, to (ii) the total estimate of the
19 Qualified Energy used during such month as determined in such
20 study (or studies), expressed as a percentage, unless the
21 context of a provision requires the use of a different
22 percentage, in which case the percentage so specified.

23
24 4.62 Overage Energy: The amount by which Delivered Class
25 1 Energy in a month exceeds Adjusted Delivered Class 1 Energy in
26 such month, as determined by City pursuant to Section 7.7
27 hereof.

28
29 4.63 PG&E: The Pacific Gas and Electric Company and its
30 lawful successors or assigns.

1 4.64 Points of Delivery: Those points at which City
2 delivers Power to Turlock and Turlock accepts delivery of Power
3 from City as identified in Section 12 hereof.
4

5 4.65 Power: Electric capacity, expressed in kilowatts
6 (kW) or megawatts (MW), or energy, expressed in kilowatthours
7 (KWh) or megawatthours (MWh), or both electric capacity and
8 energy, as the case may be.
9

10 4.66 Preschedule Day: A day on which organizations that
11 are members of the WECC customarily arrange their schedule for
12 delivery of energy in advance of an Active Day, including
13 variations to the prescheduling calendar published by WECC from
14 time-to-time to account for holidays, month-end days occurring
15 on weekends, and other variations.
16

17 4.67 Prior Agreement: That certain LONG TERM POWER SALES
18 AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE
19 TURLOCK IRRIGATION DISTRICT, which became effective by its terms
20 on April 1, 1988, as amended by those certain amendments adopted
21 by the Parties prior to February 13, 2004.
22

23 4.68 Project: The Hetch Hetchy Project.
24

25 4.69 Project Energy: Energy that City generates from the
26 Project during any period of determination measured at the Hetch
27 Hetchy Bus.
28

29 4.70 Prudent Utility Practice: Those practices, methods
30 and procedures, as modified from time to time, that are commonly
31 used by electric utilities to measure the loads of their
32 customer classes by statistical or other valid means, or to

1 design, construct, maintain and operate their electric power
2 facilities dependably, reliably, safely, efficiently and
3 economically, as determined by giving due regard to those
4 practices, methods and procedures that represent the state of
5 the art in the electric power industry, as applied in the State
6 of California or in the WECC area, whichever better represents
7 the application of the considerations above. Such practices,
8 methods and procedures are not limited to the optimum, but
9 rather to any within the scope of those which are currently in
10 effect and commonly used.

11

12 4.71 Qualified Energy: The amount of energy used by
13 Turlock or by customers of Turlock in a month for purposes that
14 qualify under Section 9(1) of the Raker Act, as metered by
15 Turlock at the points of utilization and multiplied by a factor
16 of 1.074, to account for losses between the points of
17 utilization and the Point of Delivery and rounded to the nearest
18 1,000 kilowatthours.

19

20 4.72 Qualified Half-Hour Energy: The amount of energy
21 that is determined by multiplying Requested Half-Hour Energy by
22 Qualified Energy and dividing the result by Requested Monthly
23 Class 1 Energy during any period of determination.

24

25 4.73 Qualifying Loads: The amount of energy used by
26 Turlock, or used by customers served by Turlock, for the
27 purposes that qualify under Section 9 (1) of the Raker Act.

28

29 4.74 Raker Act: That Act of Congress, 38 Stat. 242
30 (1913).

31

1 4.75 Ramp: To change the amount of energy to be scheduled
2 from one hour to the next during a day and which also may be
3 referred to herein as "Ramping".
4

5 4.76 Ramping Headroom: The flexibility of the Project to
6 accommodate Ramping, which flexibility may be affected or
7 eliminated by operational constraints such as water supply
8 conditions, adverse water quality, or Project outages.
9

10 4.77 Ramping Schedule: A type of schedule elected by
11 Turlock pursuant to (a) Section 11.4.2 hereof if during the
12 Third Period, or (b) Section 5.2 of Appendix B if during the
13 Second Period.
14

15 4.78 Rejected Class 1 Energy: The amount of energy equal
16 to the difference between (a) the amount of energy that City
17 offered Turlock in the Base Active Day Schedules during a month,
18 and (b) the amount of energy accepted by Turlock in the Adjusted
19 Base Active Day Schedules that were confirmed by City during
20 such month.
21

22 4.79 Requested Half-Hour Energy: The amount of Requested
23 Monthly Class 1 Energy in a month apportioned into (i) On-Peak
24 Hours, by dividing the Base On-Peak Energy by the total number
25 of half-hours in the On-Peak Hours of such month, and (ii) Off-
26 Peak Hours, by dividing the Base Off-Peak Energy by the total
27 number of half-hours in the Off-Peak Hours of such month.
28

29 4.80 Requested Monthly Class 1 Energy: The amount of
30 Class 1 Energy requested by Turlock for a month of the Third
31 Period, as more fully described in and meeting the requirements
32 of Section 7.4.4 hereof.

1
2 4.81 Scheduled Class 1 Energy: During any period of
3 determination either (a) Requested Half-Hour Energy, if Half-
4 Hour Available Energy is equal to or greater than the sum of
5 Requested Half-Hour Energy and the estimate of Modesto's Class 1
6 Energy in the same half-hour, or (b) Allocated Energy, if Half-
7 Hour Available Energy is less than the sum of Requested Half-
8 Hour Energy and the estimate of Modesto's Class 1 Energy in the
9 same half-hour.

10
11 4.82 Scheduled Overage Energy: The amount of Overage
12 Energy scheduled to be returned to City as set forth in the
13 Final Base Active Day Schedules for a month, as determined by
14 City pursuant to Section 7.7.5 or as agreed to by the Parties
15 under Section 7.7.7.

16
17 4.83 Scheduled Shortfall Energy: The amount of Shortfall
18 Energy scheduled to be delivered to Turlock as set forth in the
19 Final Base Active Day Schedules for a month, as determined by
20 City pursuant to Section 7.7.6 or as agreed to by the Parties
21 under Section 7.7.7.

22
23 4.84 Scheduling Calendar: The days and times by which
24 City and Turlock have agreed to exchange information in order
25 for City to arrive at a Final Schedule (a) as set forth at
26 Appendix A-1 hereof, if for an Active Day during the Third
27 Period, or (b) as set forth at Appendix A-2 hereof, if for an
28 Active Day during the Second Period.

29
30 4.85 Scheduling Representative: PG&E or any other legal
31 entity that City may choose to facilitate, administer or execute

1 energy transactions of any type including, but not limited to,
2 the intrastate or interstate sale or transmission of energy.

3
4 4.86 Second Period: The period that commenced at 0000
5 hours on July 1, 2004 and that ends at 2400 hours on December
6 31, 2005.

7
8 4.87 Shortfall Energy: The amount by which Adjusted
9 Delivered Class 1 Energy in a month exceeds Delivered Class 1
10 Energy in such month, as determined by City in the manner
11 provided for in Section 7.7 hereof.

12
13 4.88 Spinning Reserve: Available unloaded synchronized
14 generating capacity of the Project that is capable of being
15 loaded in ten (10) minutes.

16
17 4.89 Spinning Reserve Energy: The Project Energy
18 associated with Spinning Reserve.

19
20 4.90 Spinning Reserve Headroom: The flexibility of the
21 Project to provide Spinning Reserve, which flexibility may be
22 affected or eliminated by various operational constraints such
23 as water supply conditions, adverse water quality, or Project
24 outages.

25
26 4.91 Third Period: The period commencing at 0000 hours on
27 January, 1 2006 and ending on 2400 hours of June 30, 2015,
28 unless terminated earlier in which case ending on the date of
29 termination.

30
31 4.92 True-Up Energy: Either Shortfall Energy or Overage
32 Energy, as the case may be.

1
2 4.93 Turlock: The Turlock Irrigation District.

3
4 4.94 Turlock's Allocation: The percentage applicable to
5 Turlock under the Allocation Agreement which is in effect for
6 purposes of this Agreement pursuant to Section 7.1 hereof during
7 a period of determination.

8
9 4.95 Uncontrollable Forces: Those conditions or
10 circumstances described in Section 21.

11
12 4.96 WECC: The Western Electricity Coordinating Council
13 or its successor.

14
15 4.97 Year: A calendar year.

16
17
18 5. TERM

19
20 On the Execution Date this Agreement shall become effective
21 as of 0000 hours on February 14, 2004, and shall continue in
22 effect until 2400 hours on June 30, 2015, unless terminated
23 earlier in accordance with the terms hereof.

24
25
26 6. HETCH HETCHY PROJECT CAPACITY

27
28 The Parties acknowledge and agree that capacity of the
29 Project shall be 260,000 kilowatts for purposes of determining
30 the Class 1 Energy Rate and the Reserve Support Charge.

1 7. ALLOCATIONS AND SALES AND PURCHASES OF POWER

2
3 7.1 Allocation of Power

4
5 7.1.1 Pursuant to certain notices delivered to
6 City prior to the Execution Date and jointly signed by Turlock
7 and Modesto, Turlock and Modesto jointly notified City that
8 Turlock's Allocation and Modesto's Allocation are as follows:
9

10	<u>Effective Date</u>	<u>TURLOCK</u>	<u>MODESTO</u>
11	January 1, 2004	34.06%	65.94%
12	January 1, 2005	33.64%	66.36%
13	January 1, 2006	33.27%	66.73%
14	January 1, 2007	33.58%	66.42%
15	January 1, 2009	35.42%	64.58%

16
17 7.1.2 Turlock hereafter may change Turlock's
18 Allocation at any time by delivering a written notice to City
19 that is signed by the General Manager of Turlock and the Chief
20 Executive Officer of Modesto, in which the Districts jointly
21 state their respective allocations, the sum of which must equal
22 one hundred (100) percent, and the date on which the Districts
23 have agreed that such revised allocations are to become
24 effective as between them.
25

26 7.1.3 City shall use the allocations set forth in
27 Section 7.1.1 until it is notified of a change in such
28 allocations in the manner provided for in Section 7.1.2. Such
29 changes shall become effective for the purposes of this
30 Agreement on the first day of the month following the month in
31 which delivery to the City of the written notice described in
32 Section 7.1.2 occurred.

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7.1.4 City is not a party to the Allocation Agreement. City had no involvement in the negotiation of the Allocation Agreement and is not in any way an arbitrator or enforcer of the Allocation Agreement. If any schedule submitted by Turlock exceeds the Turlock Allocation for Power or other services under this Agreement, City shall promptly notify Turlock. If Turlock has not adjusted its schedule by the date and time required for completion of City's applicable schedule, City shall adjust Turlock's schedule to equal Turlock's Allocation and so notify Turlock.

7.1.5 Turlock shall resolve with Modesto all issues related to Turlock's Allocation.

7.1.6 The Parties understand and agree that during a period of determination that occurs during the Third Period that:

(a) Half-Hour Available Energy may be less than the sum of Requested Half-Hour Energy and the estimate of Modesto's Class 1 Energy in the same half-hour; and

(b) in such event and during such periods City determines Allocated Energy hereunder using Turlock's Allocation to determine the amount of Half-Hour Available Energy to be offered to Turlock in a half-hour; and

(c) upon joint written request of Turlock and Modesto, City agrees, for no additional consideration, to undertake to negotiate amendments to this Agreement and the Modesto Agreement to become effective no earlier than January 1,

1 2008, solely to provide that at such times as are described in
2 subsection (a) hereof that City will offer Turlock and Modesto
3 respectively, a percentage of Half-Hour Available Energy pro
4 rata to Requested Half-Hour Energy and estimated Modesto Class 1
5 Energy; provided that the sum of such Turlock and Modesto
6 percentages shall equal one-hundred per cent (100%) of Half-Hour
7 Available Energy in any period of determination, and provided
8 further that such amendments will not result in City incurring
9 materially greater costs or risks than City otherwise would have
10 incurred under the terms of this Agreement in the absence of
11 such amendments.

12

13 7.2 Sales and Purchases of Power in Different Periods

14

15 7.2.1 The Parties have provided for sales and
16 purchases of energy, capacity and other services, the
17 provision of Spinning Reserve and the supply and return of
18 Spinning Reserve Energy which, in each case, vary as to
19 availability, type, quantity, scheduling and other
20 characteristics during the three different periods herein
21 provided for below.

22

23 7.2.2 The sale, purchase, scheduling and
24 delivery of energy, capacity and other services during each
25 of the three periods herein provided for below shall be
26 made or, if any occurred after 2400 hours on February 13,
27 2004 and prior to the Execution Date, shall be deemed to
28 have been made, pursuant to the terms of this Agreement.

29

30 7.2.3 Sales and purchases hereunder shall be
31 made under the terms and conditions and at the rates and
32 charges provided for in this Agreement.

1
2 7.3 First and Second Period Sales and Purchases

3
4 7.3.1 The sale, purchase, scheduling and delivery
5 of energy, capacity and other services made during the First
6 Period and made or to be made during the Second Period shall be
7 under the terms and conditions set forth in Appendix B hereto,
8 except as expressly provided in Section 7.3.2 hereof.

9
10 7.3.2 The provision of Spinning Reserve and the
11 supply and delivery by City and the return by Turlock of
12 Spinning Reserve Energy during the Second Period shall be made
13 under the terms and conditions set forth in Section 8 hereof.

14
15 7.4 Third Period Sales and Purchases

16
17 7.4.1 The sale, purchase, scheduling and delivery
18 of Scheduled Class 1 Energy, Available Excess Energy, and
19 Additional Available Excess Energy during the Third Period shall
20 be made under the terms and conditions set forth herein below.

21
22 7.4.2 The provision of Spinning Reserve and the
23 supply and delivery by City and the return by Turlock of
24 Spinning Reserve Energy during the Third Period shall be made
25 under the terms and conditions set forth in Section 8 hereof.

26
27 7.4.3 City shall provide Turlock with City's
28 preliminary estimates of Available Energy in the half-hours of a
29 month ten (10) business days prior to the beginning of each
30 month of the Third Period. City shall not take into account the
31 amount of Shortfall Energy when estimating Available Energy.

1 7.4.4 Turlock may request that City supply it with
2 Class 1 Energy during each month of the Third Period and, if
3 Turlock chooses to make such a request, it shall do so by:

4
5 (a) determining its Requested Monthly Class
6 1 Energy by reference to (i) its Qualifying Loads as previously
7 reported by it to City during the same month(s) of prior years',
8 and (ii) its estimate of the increase in Qualifying Loads that
9 it expects to experience for the month to which the request
10 applies, and (iii) Prudent Utility Practice; and,

11
12 (b) delivering to City written notice of
13 its Requested Monthly Class 1 Energy (such notice herein
14 referred to as a "Request") on or before the day that that is ten
15 (10) business days prior to the beginning of the month to which
16 its Request applies and by no later than the time provided
17 therefor in the Scheduling Calendar; and

18
19 (c) delivering to City, together with such
20 Request (i) a report, which shall be provided in writing and, if
21 Turlock finds it practicable, also shall be provided in a format
22 capable of being imported electronically into a spreadsheet
23 format, of its meter readings of Qualified Energy for the month
24 preceding such Request including therewith copies of work papers
25 and other supporting documentation utilized by it in calculating
26 such Qualified Energy and, promptly thereafter corrections to
27 such meter readings, if any, and (ii) a calculation of the On-
28 Peak Percentage and the Off-Peak Percentage that it has
29 determined applicable to the month for which such Request is
30 made.

1 7.4.5 If timely made in accordance with the
2 requirements of Section 7.4.4, City shall respond to Turlock's
3 Request by:

4
5 (a) providing Turlock with a non-binding
6 estimate of the Class 1 Energy that City expects to be able to
7 offer Turlock during the half-hours of the month to which such
8 Request applies, on or before the day that is five (5) business
9 days after receipt of such Request; and

10
11 (b) thereafter, and on or before the day
12 that is two (2) business days prior to the Preschedule Day for
13 an Active Day and by the time provided therefor in Scheduling
14 Calendar, by also providing Turlock with:

15
16 (i) a Base Active Day Schedule that
17 sets forth the Scheduled Class 1 Energy that City offers to sell
18 and deliver to Turlock during each half-hour of an Active Day
19 based on City's determination of (1) Project Energy, (2) City
20 Municipal Energy, (3) Available Energy, (4) Allocated Energy,
21 and (5) Requested Half-Hour Energy;

22
23 (ii) notice of City's determination of
24 the availability of Ramping Headroom and Spinning Reserve
25 Headroom; and

26
27 (iii) notice of the Available Excess
28 Energy City offers to sell and deliver to Turlock during each
29 half-hour of an Active Day.

30
31 7.4.6 Turlock shall accept or reject City's offer
32 of Scheduled Class 1 Energy as set forth on City's Base Active

1 Day Schedule on or before the business day prior to a
2 Preschedule Day for an Active Day and by no later than the time
3 provided therefor in the Scheduling Calendar, by delivering an
4 Adjusted Base Active Day Schedule to City in which Turlock
5 rejects any or all of the half-hour offers of Scheduled Class 1
6 Energy, provided, however, that if Turlock does not timely
7 deliver an Adjusted Base Active Day Schedule to City, Turlock
8 shall be deemed to have accepted City's offer of Scheduled Class
9 1 Energy as set forth on City's Base Active Day Schedule.

10
11 7.4.7 City shall notify Turlock of City's
12 confirmation or rejection of Turlock's Adjusted Base Active Day
13 Schedule on the same day and by no later than the time provided
14 therefor in the Scheduling Calendar, provided, however, that:

15
16 (a) if City rejects such Adjusted Base
17 Active Day Schedule it shall promptly notify Turlock in writing
18 of the reasons that such schedule does not conform to the
19 provisions herein;

20
21 (b) Turlock shall be deemed to have accepted
22 City's offer of Scheduled Class 1 Energy as set forth on City's
23 Base Active Day Schedule; and,

24
25 (c) if City does not confirm or reject such
26 Adjusted Base Active Day Schedule within the time provided
27 therefor in the Scheduling Calendar, then City shall be deemed
28 to have accepted such schedule.

29
30 7.4.8 Turlock may subsequently elect to submit a
31 Base Active Day Ramping Schedule if:

1 (a) City has notified Turlock pursuant to
2 Section 7.4.5(b) (ii) hereof that Ramping Headroom is available;
3 and

4 (b) Turlock has accepted City's Base Active
5 Day Schedule pursuant to Section 7.4.6 hereof; and

6
7 (c) Turlock delivers such Base Active Day
8 Ramping Schedule to City on or before the business day prior to
9 a Preschedule Day and by no later than the time provided
10 therefor in the Scheduling Calendar.

11
12 7.4.9 On or before the day that is one (1)
13 business day prior to the Preschedule Day for an Active Day
14 and by the time provided therefor in Scheduling Calendar,
15 Turlock shall accept or reject City's offer of Available
16 Excess Energy in whole or in part by providing City an
17 Available Excess Energy Schedule provided, however, that if
18 Turlock does not timely submit such a Schedule it shall be
19 deemed to have rejected City's offer of such Available
20 Excess Energy.

21
22 7.4.10 City shall notify Turlock of City's
23 confirmation or rejection of Turlock's Base Active Day Ramping
24 Schedule and Turlock's Available Excess Energy Schedule on the
25 same day and by no later than the time provided therefor in the
26 Scheduling Calendar; and

27
28 (a) if confirmed by City, the Scheduled
29 Class 1 Energy on the Base Active Day Ramping Schedule submitted
30 by Turlock shall be the amount of Class 1 Energy that City shall
31 schedule to sell and deliver to the Points of Delivery and that

1 Turlock shall schedule to accept and purchase at the Points of
2 Delivery on an Active Day; and

3
4 (b) if confirmed by City, the Available
5 Excess Energy on the Available Excess Energy Schedule submitted
6 by Turlock shall be the amount of Available Excess Energy that
7 City shall schedule to sell and deliver to the Points of
8 Delivery and that Turlock shall schedule to accept and purchase
9 at the Points of Delivery on an Active Day; or

10
11 (c) if Turlock's Base Active Day Ramping
12 Schedule is rejected by City, (i) City shall promptly provide
13 Turlock the reasons in writing that such schedule does not
14 conform to the provisions herein, and (ii) the Scheduled Class 1
15 Energy as set forth on City's Base Active Day Schedule, shall be
16 the amount of Class 1 Energy that City shall schedule to sell
17 and deliver to the Points of Delivery and that Turlock shall
18 schedule to accept and purchase at the Points of Delivery on an
19 Active Day; and

20
21 (d) if Turlock's Available Excess Energy
22 Schedule is rejected by City, City shall promptly provide
23 Turlock the reasons in writing that such schedule does not
24 conform to the provisions herein; and

25
26 (e) if City does not confirm or reject such
27 Ramping Schedule within the time provided therefor in the
28 Scheduling Calendar, then City shall be deemed to have accepted
29 such schedule.

30
31 7.4.11 City shall offer to sell and deliver
32 Additional Available Excess Energy to Turlock on an Active Day

1 by providing Turlock with notice, by means of a recorded
2 telephone call, on or before the day that is one (1) business
3 day before a Preschedule Day and by the time provided therefor
4 in Scheduling Calendar, of the amount of such Additional
5 Available Excess Energy that has become available for sale in
6 each half-hour of an Active Day.

7
8 7.4.12 Turlock may accept, in whole and not in
9 part, City's offer of Additional Available Excess Energy by
10 providing City with notice, by means of a recorded telephone
11 call, of its acceptance of such offer within one (1) hour of
12 receipt of such offer from City.

13
14 7.5. Determination of Excess Energy, Available Excess
15 Energy and Additional Available Excess Energy
16 Through Calendar Year 2007
17

18 7.5.1 During the period from July 1, 2004 through
19 December 31, 2007, City shall determine Excess Energy in a half-
20 hour to be the amount of energy that remains after City (a) (i)
21 determines the amount of Project Energy that it expects to
22 generate in a half-hour based on its forecast of operating,
23 water supply and water quality conditions, (ii) reduces it by
24 the amount of energy City schedules to meet the requirements of
25 City Municipal Energy, and (iii) multiplies the result by a
26 factor of .98; and (b) reduces the energy remaining after
27 performing the calculations in the foregoing subsection by the
28 sum of (i) the estimate of Modesto's Class 1 Energy, increased
29 by City to reflect the equivalent of scheduled shortfall energy,
30 if any, to be supplied by City to Modesto in such half-hour, and
31 decreased by City to reflect the equivalent of scheduled overage
32 energy, if any, to be returned by Modesto to City in such half-

1 hour and (ii) Turlock's Firm Class 1 Energy in such half-hour,
2 if the period of determination occurs on or before December 31,
3 2005, or Class 1 Energy in such half-hour as set forth in the
4 Final Base Active Day Schedule if the period of determination
5 occurs on or after January 1, 2006, as the case may be.

6
7 7.5.2 Turlock acknowledges and agrees that from
8 July 1, 2004 through December 31, 2007 City shall have the right
9 to use and schedule up to one-half of such Excess Energy to
10 serve the requirements of the Airport Tenants, as increased by
11 City to account for appropriate transmission line losses.

12
13 7.5.3 City shall offer to sell Available Excess
14 Energy (a) to Modesto, in an amount equal to the result of
15 Modesto's Allocation multiplied by Available Excess Energy; and
16 (b) to Turlock, in an amount equal to the result of Turlock's
17 Allocation multiplied by Available Excess Energy in the manner
18 and at the time set forth in Section 7.4.9.

19
20 7.5.4 City shall also offer to sell Additional
21 Available Excess Energy to Turlock at such time and in the
22 manner set forth in Section 7.4.11.

23
24 7.5.5 Turlock acknowledges and agrees that City
25 shall have no obligation to sell to Turlock Available Excess
26 Energy or Additional Available Excess Energy City which Turlock
27 does not agree to purchase in the manner required by Section
28 7.4.9 and Section 7.4.12, respectively.

29
30 7.6 Determination of Excess Energy and Available
31 Excess Energy After Calendar Year 2007

1 7.6.1 During the period commencing on January 1,
2 2008 and thereafter during the remaining term of this Agreement
3 City shall determine Excess Energy and Available Excess Energy
4 in the manner set forth herein.

5
6 7.6.2 City shall determine Excess Energy in a
7 half-hour to be the amount of energy that remains after City
8 (a) (i) determines the amount of Project Energy that City expects
9 to generate in a half-hour based on its forecast of operating,
10 water supply and water quality conditions, (ii) reduces it by
11 the amount of energy City schedules to meet the requirements of
12 City Municipal Energy, and (iii) multiplies the result by a
13 factor of .98; and (b) reduces the energy remaining after
14 performing the calculation in the foregoing subsection by the
15 sum of (i) the estimate of Modesto's Class 1 Energy increased by
16 City to reflect the equivalent of scheduled shortfall energy, if
17 any, to be supplied by City to Modesto in such half-hour, and
18 decreased by City to reflect the equivalent of scheduled overage
19 energy, if any, to be returned by Modesto to City in such half-
20 hour, and (ii) Class 1 Energy as set forth in the Final Base
21 Active Day Schedule.

22
23 7.6.3 Turlock acknowledges and agrees that City
24 shall have the right to use and schedule fifty percent (50%) of
25 the first 100 MW of such Excess Energy for any purpose permitted
26 by law including, but not limited to, serving all of the
27 requirements of the Airport Tenants and Norris Industries, as
28 increased by City to account for appropriate transmission line
29 losses.

30
31 7.6.4 City shall offer to sell Available Excess
32 Energy to Turlock, in an amount equal to Turlock's Allocation

1 multiplied by Available Excess Energy in the manner and at the
2 time set forth in Section 7.4.9.

3
4 7.6.5 Turlock acknowledges and agrees that City
5 shall have no obligation to sell to Turlock Available Excess
6 Energy City is required to offer Turlock hereunder which Turlock
7 does not agree to purchase in the manner required by Section
8 7.4.9.

9
10 7.7 Determination and Treatment of True-Up Energy During
11 the Third Period

12
13 7.7.1 Commencing with the month of February 2006,
14 and, thereafter, for each month of the Third Period, City shall
15 determine the amount of Overage Energy or Shortfall Energy for
16 the preceding month in the manner set forth below and shall
17 provide such determination, together with a copy of the
18 schedules referenced below upon which its determination was
19 based, to Turlock within five (5) business days after City's
20 receipt of Turlock's report of Qualified Energy for that month
21 pursuant to Section 7.4.4 (c) (i).

22
23 7.7.2 City shall determine (a) Overage Energy in a
24 month to be the amount by which the sum of Adjusted Delivered
25 Class 1 Energy in the half-hours of a month is less than the sum
26 of Delivered Class 1 Energy in the half-hours of the same month;
27 and (b) Shortfall Energy in a month to be the amount by which
28 the sum of Adjusted Delivered Class 1 Energy in the half-hours
29 of a month exceeds the sum of Delivered Class 1 Energy in the
30 half-hours of the same month.

1 (a) if the Parties agree to a return of all
2 or a portion of such Overage Energy in the balance of the month
3 of determination, then City will (i) determine a level schedule
4 that will equate to the portion of Overage Energy agreed to be
5 returned, and (ii) such schedule shall become a component of
6 Scheduled Overage Energy in the balance of such month, and (iii)
7 for tracking of balances, such schedule shall be accounted for
8 as part of Scheduled Overage Energy for such month; and,
9

10 (b) Overage Energy not returned pursuant to
11 subsection (a) shall be returned in the month following the
12 month in which such determination was made, as limited by
13 sufficient Available Energy, and City (i) will determine a level
14 schedule for the amount of Overage Energy to be returned, and
15 (ii) such schedule shall become a component of Scheduled Overage
16 Energy for such month, and (iii) for tracking of balances, such
17 schedule shall be accounted for as part of Scheduled Overage
18 Energy for such month; and,
19

20 (c) Overage Energy not returned pursuant to
21 subsections (a) and (b) hereof shall be returned to the maximum
22 extent possible in the next succeeding month, as limited by
23 sufficient Available Energy, and any amount not so returned in
24 such next succeeding month shall be returned to the maximum
25 extent possible during the next succeeding month (or months), as
26 limited by sufficient Available Energy, until the remaining
27 balance of such Overage Energy is eliminated, and City (i) will
28 determine a level schedule for each such month for the amount of
29 Overage Energy to be returned, and (ii) each such schedule shall
30 become a component of Scheduled Overage Energy in the month of
31 return, and (iii) for tracking of balances, each such schedule

1 shall be accounted for as part of Scheduled Overage Energy for
2 the month of return.

3
4 7.7.6 Shortfall Energy shall be delivered by City
5 to Turlock when City estimates that there is sufficient
6 Available Energy to do so, and

7
8 (a) if the Parties agree to a delivery of
9 all or a portion of such Shortfall Energy in the balance of the
10 month of determination, then City will (i) determine a level
11 schedule that will equate to the portion of Shortfall Energy
12 agreed to be delivered, and (ii) such schedule shall become a
13 component of Scheduled Shortfall Energy in the balance of such
14 month, and (iii) for tracking of balances, such schedule shall
15 be accounted for as part of Scheduled Shortfall Energy for such
16 month; and,

17
18 (b) Shortfall Energy not delivered pursuant
19 to subsection (a) shall be delivered in the month following the
20 month in which such determination was made, as limited by
21 sufficient Available Energy, and City (i) will determine a level
22 schedule for the amount of Shortfall Energy to be delivered, and
23 (ii) such schedule shall become a component of Scheduled
24 Shortfall Energy for such month, and (iii) for tracking of
25 balances, such schedule shall be accounted for as part of
26 Scheduled Shortfall Energy for such month; and,

27
28 (c) Shortfall Energy not delivered pursuant
29 to subsections (a) and (b) hereof shall be delivered to the
30 maximum extent possible in the next succeeding month, as limited
31 by sufficient Available Energy, and any amount not so delivered
32 in such next succeeding month shall be delivered to the maximum

1 extent possible during the next succeeding month (or months), as
2 limited by sufficient Available Energy, until the remaining
3 balance of such Shortfall Energy is eliminated, and City (i)
4 will determine a level schedule for each such month for the
5 amount of Shortfall Energy to be delivered, and (ii) each such
6 schedule shall become a component of Scheduled Shortfall Energy
7 in the month of delivery, and (iii) for tracking of balances,
8 each such schedule shall be accounted for as part of Scheduled
9 Shortfall Energy for the month of delivery.

10
11 7.7.7 Shortfall Energy or Overage Energy for a
12 month may be subsequently adjusted during the annual
13 reconciliation that City performs for each month of a Fiscal
14 Year to correct for discrepancies or errors, if any, in the
15 monthly meter data of Qualified Energy that Turlock subsequently
16 notified City of under Section 7.4.4 (c) (i). The Parties intend
17 and agree that for annual reconciliation purposes such
18 adjustments shall be limited to discrepancies or errors Turlock
19 delivered City notice of within a period of twelve (12) months
20 of the meter reading to which the notice relates. City shall use
21 the methodology for determining Overage Energy or Shortfall
22 Energy described in Section 7.7.2, and the Overage Energy or
23 Shortfall Energy that results from such annual reconciliation,
24 if any, shall be returned by Turlock or supplied by City as
25 provided in Section 7.7.5 and Section 7.7.6.

26
27 7.7.8 The outstanding amounts of Shortfall Energy
28 and Overage Energy shall be netted by the City and any remaining
29 balances shall be accounted for and subsequently scheduled
30 pursuant to Section 7.7.5 or Section 7.7.6.

31
32 7.7.9 A representative authorized by a Party

1 pursuant to Section 11.3 hereof by agreement with a
2 representative authorized by the other Party pursuant to Section
3 11.3 hereof may modify the manner in which Shortfall Energy is
4 to be delivered, or Overage Energy is to be returned, upon
5 mutual agreement.

6
7 7.7.10 The amount of Scheduled Overage Energy not
8 returned or Scheduled Shortfall Energy not delivered for reasons
9 of Uncontrollable Forces or those set forth in Section 11.7
10 shall be carried forward and subsequently returned or delivered
11 in the manner provided therefor in Section 7.7.6 or Section
12 7.7.7, as the case may be.

13
14
15 8. SPINNING RESERVE SERVICE

16
17 8.1 Spinning Reserve

18
19 8.1.1 City shall determine, in its sole discretion,
20 if Spinning Reserve Headroom is available, and shall notify
21 Turlock of such determination within the time and in the manner
22 provided for in (a) Appendix B, if during the Second Period; and
23 (b) in Section 7.4.5 (b) (ii) hereof, if during the Third Period.

24
25 8.1.2 If City has notified Turlock that Spinning
26 Reserve Headroom is available, City shall make no more or less
27 than 5 MW of Spinning Reserve available to Turlock in each hour
28 except as otherwise provided in Section 8.2.2 hereof.

29
30 8.2 Request for Supply of Spinning Reserve Energy

1 8.2.1 If City has notified Turlock that Spinning
2 Reserve Headroom is available pursuant to Section 8.1, then
3 during the Active Day to which such notice relates Turlock may
4 request, by means of a recorded telephone call, that City supply
5 and deliver no more or less than 5 MW of Spinning Reserve Energy
6 during an hour of such Active Day when Turlock is experiencing a
7 "Turlock system contingency" as defined herein below provided,
8 however, that Turlock may not make such a request for more than
9 a total of (a) three (3) such hours during the six (6) month
10 period from July 1 and through December 31, 2004, and (b) six
11 (6) such hours during each calendar year thereafter during the
12 remaining term of this Agreement.

13
14 8.2.2 Upon receipt of a request permitted under
15 Section 8.2.1, City shall supply and deliver 5 MW of Spinning
16 Reserve Energy to Turlock in the hour or hours to which the
17 request applies, provided, however, that if the request applies
18 to an hour (or hours) after 2400 hours on December 31, 2007, and
19 City determines that in the absence of such request City would
20 not have supplied Modesto with the estimate of Modesto's Class 1
21 Energy under the Modesto Agreement and Turlock with its
22 Requested Half-Hour Energy, then in such hour (or hours), City
23 shall only be required to make available to Turlock, Turlock's
24 Allocation of the 5 MW of Spinning Reserve and to supply and
25 deliver to Turlock, Turlock's Allocation of the 5 MW of Spinning
26 Reserve Energy, and provided, further, that if the sum of
27 Turlock's Allocation of 5 MW of Spinning Reserve Energy and
28 Modesto's Class 1 Energy exceeds 5 MWh in any such hour (or
29 hours), then City may further reduce the amount of Spinning
30 Reserve Energy to be supplied and delivered to Turlock in such
31 hour (or hours) by the amount necessary to limit City's total
32 supply to Modesto and Turlock in such hour (or hours) to 5 MWh.

1
2 8.2.3 For purposes of Section 8.2.1, a "Turlock
3 system contingency" shall be deemed to exist during an hour of
4 an Active Day when: (a) Turlock has an initial loss of a
5 resource in excess of 15 MW; (b) Turlock's spinning reserve
6 falls below, or Turlock anticipates its spinning reserve will
7 fall below, WECC MORC (Minimum Operating Reliability Criteria)
8 requirements for spinning reserve; or (3) Turlock anticipates
9 the need to curtail load.

10
11 8.3 Supply and Return of Spinning Reserve

12
13 8.3.1 City shall supply and deliver Spinning Reserve
14 Energy to the Points of Delivery in the hours or hours of the
15 Active Day to which the request applies.

16
17 8.3.2 Spinning Reserve Energy delivered by City to
18 Turlock in an hour, shall be returned by Turlock to City:

19
20 (a) within a period of not less than seventy-
21 two (72) hours of the delivery thereof if City determines there
22 is sufficient Available Generation to do so, or on the next
23 Active Day in which City determines that there is sufficient
24 Available Generation to do so, or as otherwise mutually agreed
25 by the Parties; and,

26
27 (b) in like hours (e.g., an On-Peak Hour, if
28 City delivered Spinning Reserve Energy to Turlock during an On-
29 Peak Hour); and.

30

1 (c) by an adjustment to a Base Active Day
2 Schedule, Turlock's Adjusted Base Active Day Schedule, or a Base
3 Active Day Ramping Schedule, if during the Third Period; or
4

5 (d) by an adjustment to a Firm Base Active
6 Day Ramping Schedule, or a Firm Base Active Day Schedule, if
7 during the Second Period.
8
9

10 8.4 Annual Request

11

12 Turlock may request that City meet with Turlock to
13 discuss whether City would supply Turlock with 5 MW of Spinning
14 Reserve Energy beyond a third hour during the partial calendar
15 year described in Section 8.2.1 (a), or a sixth hour during each
16 of the calendar years described in Section 8.2.1 (b), as the
17 case may be. Turlock may make such request of City once during
18 each of such calendar years (or partial calendar year), and at
19 any time during each such calendar year (or partial calendar
20 year). Promptly after receiving such request, City shall meet
21 with Turlock in order to discuss Turlock's request, whether
22 City, in its sole discretion, is willing to provide such energy
23 and, the terms and conditions on which City may be willing to do
24 so.
25

26 8.5 Acknowledgments

27

28 8.5.1 Each Party acknowledges and agrees that it has
29 relinquished and waived any right or entitlement it may have to
30 claim that Spinning Reserve Energy that may be requested or
31 returned by Turlock by is or should be treated as Class 1 Energy
32 either under the terms of this Agreement or under the Raker Act.

1
2 8.5.2 The Parties further acknowledge and agree that
3 Spinning Reserve Energy supplied in an hour (or hours) of an
4 Active Day may result in Turlock accepting delivery of more than
5 the On-Peak Base Energy during an On-Peak Hour (or Hours) of
6 such day than it would have otherwise been entitled to receive
7 in the Final Base Active Day Schedule for such Active Day.
8

9 8.5.3 The Parties further acknowledge and agree that
10 notwithstanding the foregoing provisions of this Section 8, at
11 no time shall City be required to make Spinning Reserve
12 available to Turlock, or to supply or deliver Spinning Reserve
13 Energy to Turlock if City determines that it would have to
14 purchase either such product or service from a third party in
15 order to do so.
16
17

18 9. TURLOCK'S RIGHTS TO USE CITY'S TRANSMISSION FACILITIES
19

20 9.1 Turlock shall have a right to use Turlock's
21 Allocation of excess capacity of City's Transmission Facilities.
22 This right is limited to the uses which do not adversely affect
23 delivery of energy to satisfy City's obligations to City
24 Municipal Load, Districts, Airport Tenants, Norris Industries,
25 and delivery of Hetch Hetchy Project Energy to other City
26 customers.
27

28 9.2 City shall be the sole judge of the availability of
29 excess capacity in City Transmission Facilities, consistent with
30 Prudent Utility Practice; provided, Turlock's use of such excess
31 capacity in City's Transmission Facilities shall not be
32 unreasonably denied.

1
2 9.3 Turlock shall provide City with advance written
3 notice requesting use of such excess capacity in City's
4 Transmission Facilities. City shall deliver any Power scheduled
5 for delivery to Turlock utilizing such excess capacity and such
6 deliveries shall be reduced for transmission losses to the
7 Points of Delivery pursuant to Section 13.

8
9 9.4 If City plans to upgrade, rebuild, or add to City's
10 Transmission Facilities, City shall consult with Turlock about
11 its possible participation in such project. All terms and
12 conditions of use and costs associated with Turlock's
13 participation shall be negotiated by the Parties in a separate
14 agreement.

15
16 9.5 City shall allow Turlock to establish additional
17 interconnections with City's Transmission Facilities as the
18 Parties may agree. Such agreement will not be unreasonably
19 withheld. City shall not be required to bear any cost
20 associated with such additional interconnections.

21
22 9.6 If City believes that adverse impacts may result to
23 transmission systems of third parties from Turlock's
24 interconnection with and/or additional use of excess capacity in
25 City's Transmission Facilities, Turlock shall make all required
26 arrangements with such third parties, consistent with Prudent
27 Utility Practice, and bear all costs associated with such
28 interconnection or use.

29
30 9.7 City shall allow Turlock to construct new
31 transmission lines on the existing right of way for City's
32 transmission system; provided, that City agrees that such use by

1 Turlock is not inconsistent with (i) City's rights and present
2 or future use of such right of way and (ii) applicable federal
3 and state laws, including, specifically, the Raker Act. All
4 terms and conditions of use and costs associated with Turlock's
5 use of such right of way shall be negotiated by the Parties in a
6 separate agreement.

7
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9 10. LOAD DATA AND LOAD PROFILING

10
11
12

10.1 Intent and Purpose of Load Profiling Studies

13 10.1.1 During the Third Period the Parties intend
14 the schedules for delivery of Class 1 Energy to be based upon
15 the studies provided for herein below profiling Turlock's
16 Qualifying Loads. The Parties intend to use such studies to
17 determine the amount of Requested Monthly Class 1 Energy that
18 may be scheduled for delivery during the On-Peak Hours and Off-
19 Peak Hours of the month in which the request is made. In the
20 absence of the timely performance, completion and delivery of
21 such studies in accordance with the requirements set forth
22 herein and, except as expressly provided for below, City shall
23 determine the schedules for the delivery of Class 1 Energy using
24 an Equal Percentage Method for the On-Peak Percentage and Off-
25 Peak Percentage.

26
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29

30 10.2 Interval Meters

31

1 10.2.1 Turlock shall install metering equipment on
2 a statistically valid sample size of each of its Qualifying Load
3 customer groups (hereinafter such meters referred to as "Load
4 Research Meters"). Such metering equipment (a) shall be
5 furnished, serviced and maintained by Turlock, (b) shall include
6 "interval recording" metering equipment for the measurement of
7 the amounts of real power; and, (c) shall be designed to record
8 continuously deliveries of kilowatts and kilowatthours in
9 integrated 60-minute or less intervals.

10
11 10.2.2 Turlock shall be responsible for making
12 arrangements to read all Load Research Meters periodically.
13 Turlock shall maintain recordings of all such interval recording
14 meters for a period of sixty (60) months, including recordings
15 of 30-minute intervals if the Load Research Meters are capable
16 of recording 30-minute intervals. Turlock shall provide a copy
17 of such recordings to City promptly at such times as City may
18 request and, if practicable, shall also provide a copy of such
19 recordings to City in a format capable of being imported
20 electronically into a spreadsheet format.

21
22 10.3 Required Methodology and Procedure

23
24 10.3.1 Any load profile study required herein shall
25 be performed by Turlock in accordance with the procedures
26 described below.

27
28 10.3.2 Turlock shall develop a methodology for
29 performing a study to determine the monthly load profiles of
30 each of its Qualifying Load customer groups. Such methodology
31 shall be based on such means, practices and techniques that are
32 in accordance with Prudent Utility Practice for a study of this

1 type and shall use the interval data recorded and collected from
2 the metering equipment described in Section 10.2 hereof.

3
4 10.3.3 Turlock shall provide City with a written
5 description of the methodology Turlock intends to use and shall
6 provide City with not less than three (3) Business Days to
7 review and comment on such methodology in advance of performing
8 a study. Turlock shall notify City promptly of any changes to
9 such methodology that Turlock thereafter may desire to make from
10 time to time and each time Turlock makes such a change it shall
11 afford City with not less than three (3) Business Days to
12 comment thereon.

13
14 10.3.4 Upon completion of a study, Turlock shall
15 provide City with a written description of the results of such
16 study including (a) the On-Peak Percentage and Off-Peak
17 Percentage that Turlock has determined is supported by such
18 study, and (b) the results sorted by statistically valid samples
19 of the Qualifying Load customer groups. Thereafter, Turlock
20 shall promptly provide City with such information, data or
21 documentation in connection with such study as City may
22 reasonably request, provided, however, that Turlock shall not be
23 required to provide City with confidential information
24 identifiable by customer except pursuant to a confidentiality
25 agreement between Turlock and City.

26
27 10.4 Initial and Annual Load Profiling Studies

28
29 10.4.1 Turlock shall use its best efforts to
30 perform, complete and deliver to City an initial study in
31 accordance with Section 10.3 hereof (a) of each of the months of
32 January through June 2005 (the "First Half-Year Study"), by

1 September 30, 2005; and, (b) of each of the months July through
2 December 2005 (the "Second Half-Year Study"), by March 31, 2006.

3
4 10.4.2 Turlock shall perform, complete and deliver
5 to City in accordance with Section 10.3 hereof (a) an initial
6 study of all the months of calendar year 2006, on or before
7 April 30, 2007 (the "Initial Annual Study"); and (b) on or
8 before April 30th of each calendar year thereafter, a study of
9 all the months of the preceding calendar year (each such study,
10 an "Annual Study").

11
12 10.5 Effect of Studies on Base Active Day Schedules

13
14 10.5.1 If Turlock delivers the First Half-Year
15 Study to City (a) on or before November 15, 2005, the Base
16 Active Day Schedules for the months of January through June 2006
17 and for the months of January through June 2007 shall be
18 determined using an On-Peak Percentage and Off-Peak Percentage
19 derived from such Study for the months covered by such Study, or
20 (b) on or before June 30, 2006, the Base Active Day Schedules
21 for the months of January through June 2007 shall be determined
22 using an On-Peak Percentage and Off-Peak Percentage derived from
23 such Study for the months covered by such Study.

24
25 10.5.2 If Turlock delivers the Second Half-Year
26 Study to City (a) on or before May 15, 2006, the Base Active Day
27 Schedules for the months of July through December 2006 shall be
28 determined using an On-Peak Percentage and Off-Peak Percentage
29 derived from such Study for the months covered by such Study and
30 the Base Active Day Schedules for the months of July through
31 December 2007 shall be determined using an On-Peak Percentage
32 and Off-Peak Percentage derived from such Study for the months

1 covered by such Study unless Turlock has timely delivered the
2 Initial Annual Study, in which case the On-Peak Percentage and
3 Off-Peak Percentage shall be derived from the average of
4 applicable percentages for the same month of the Second Half-
5 Year Study and Initial Annual Study, or (b) on or before
6 December 31, 2006, the Base Active Day Schedules for the months
7 of July through December 2007 shall be determined using an On-
8 Peak Percentage and Off-Peak Percentage derived from such Study
9 for the months covered by such Study unless Turlock has timely
10 delivered the Initial Annual Study, in which case the On-Peak
11 Percentage and Off-Peak Percentage shall be derived from the
12 average of applicable percentages for the same month from the
13 Second Half-Year Study and the Initial Annual Study.

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10.5.3 If, notwithstanding its best efforts to do
so, Turlock fails to deliver the First Half-Year Study to City
(a) by November 15, 2005, the Base Active Day Schedules for the
months of January through June 2006 shall be determined using an
On-Peak Percentage of sixty-five percent (65%) and an Off-Peak
Percentage of thirty-five percent (35%); and (b) by June 30,
2006, the Base Active Day Schedules for the months of January
through June 2007 shall be determined using the Equal Percentage
Method until the beginning of any such months that is forty-five
days after Turlock performs, completes and delivers the First
Half-Year Study in accordance with Section 10.4.1 or the Initial
Annual Study to City in accordance with Section 10.4.2 (a)
hereof and then the Two-Year On-Peak Percentage and Two-Year
Off-Peak Percentage derived pursuant to Section 10.6.1 for the
remaining months of calendar year 2007 and the remaining months
of the Fiscal Year ending on June 30, 2008.

1 10.5.4 If, notwithstanding its best efforts to do
2 so, Turlock fails to deliver the Second Half-Year Study to City
3 (a) by May 15, 2006, the Base Active Day Schedules for the
4 months of July through December 2006 shall be determined using
5 an On-Peak Percentage of sixty-five percent (65%) and an Off-
6 Peak Percentage of thirty-five percent (35%); and (b) by
7 December 31, 2006, the Base Active Day Schedules for the months
8 of July through December 2007 shall be determined using the
9 Equal Percentage Method until the beginning of any of such
10 months that is forty-five days after Turlock performs, completes
11 and delivers the Second Half-Year Study in accordance with
12 Section 10.4.1 or the Initial Annual Study to City in accordance
13 with Section 10.4.2 (a) hereof and, thereafter, the Two-Year On-
14 Peak Percentage and Two-Year Off-Peak Percentage derived
15 pursuant to Section 10.6.1 for the remaining months of calendar
16 year 2007 and the remaining months of the Fiscal Year ending on
17 June 30, 2008.

18

19 10.6 Rolling Average Methodologies

20

21 10.6.1 Beginning with the first month after
22 December 2006 that is forty-five (45) days after Turlock has
23 performed, completed and delivered to City under Section 10.4
24 hereof a load profiling study and until Section 10.6.2 is in
25 effect then:

26

27 (a) the Base On-Peak Energy in a month shall
28 be determined by multiplying the two-year average On-Peak
29 Percentage (as defined herein below, the "Two-Year On-Peak
30 Percentage") for the month of determination by the Requested
31 Monthly Class 1 Energy for such month, and (ii) the Base Off-
32 Peak Energy in a month shall be determined for a month by

1 multiplying the two-year average Off-Peak Percentage (as defined
2 herein below, the "Two-Year Off-Peak Percentage") for the month
3 of determination by the Requested Monthly Class 1 Energy for
4 such month. The Two-Year On-Peak Percentage and the Two-Year
5 Off-Peak Percentage shall be determined by calculating the
6 simple average of the applicable percentages for the month of
7 determination derived from the load profile studies for such
8 month in the immediately preceding two (2) available like
9 months. If percentages are not available from a load profile
10 study for any given month of the last two (2) available like
11 months then the missing on-peak percentage and the missing off-
12 peak percentage for such month shall be determined by using the
13 Equal Percentage Method.

14

15 10.6.2 Beginning with the first month after
16 December 2007 that is forty-five (45) days after Turlock has
17 performed, completed and delivered to City under Section 10.4
18 hereof a load profiling study then:

19

20 (a) the Base On-Peak Energy in a month shall
21 be determined by multiplying the three-year average On-Peak
22 Percentage (as defined herein below, the "Three-Year On-Peak
23 Percentage") for the month of determination by the Requested
24 Monthly Class 1 Energy for such month, and (ii) the Base Off-
25 Peak Energy in a month shall be determined for a month by
26 multiplying the three-year average Off-Peak Percentage (as
27 defined herein below, the "Three-Year Off-Peak Percentage") for
28 the month of determination by the Requested Monthly Class 1
29 Energy for such month. The Three-Year On-Peak Percentage and
30 the Three-Year Off-Peak Percentage shall be determined by
31 calculating the simple average of the applicable percentages for
32 the month of determination derived from the load profile

1 studies for such month in each of the immediately preceding
2 three (3) available like months. If percentages are not
3 available from a load profile study for any given month of the
4 last three (3) available like months then the missing on-peak
5 percentage and the missing off-peak percentage for any such
6 month shall be determined by using the Equal Percentage Method.

7
8 10.6.3 Either Party may request the other Party to
9 agree to an adjustment of the foregoing two-year average or
10 three-year average in order to accurately account for
11 identifiable changes or trends in Turlock's Qualifying Loads and
12 such agreement shall not be unreasonably withheld by the Party
13 to whom the request has been made if the Party making the
14 request can demonstrate that such changes have occurred and that
15 such trends are likely to occur with reasonable certainty.

16
17 10.7 Conditions Precedent to Ramping

18
19 10.7.1 Turlock may not submit a Ramping Schedule
20 during the months of January to June of 2006 until the beginning
21 of any such month that is at least forty-five (45) days after it
22 has completed and delivered to City the First Half-Year Study.

23
24 10.7.2 Turlock may not submit a Ramping Schedule
25 during the months of July to December of 2006 until the
26 beginning of any such month that is at least forty-five (45)
27 days after it has completed and delivered to City the Second
28 Half-Year Study.

29
30 10.7.3 Turlock may not submit a Ramping Schedule
31 during any month of calendar year 2007, or during any month of
32 any calendar year thereafter until the beginning of a month that

1 is at least forty-five (45) days after it has completed and
2 delivered a load profile study in accordance with Section 10.3
3 hereof for such month in a preceding year.

4
5
6 11. SCHEDULING OF ENERGY DELIVERIES

7
8 11.1 Scheduling During Second Period and Third Period

9
10 11.1.2 All schedules for the delivery of energy to
11 Turlock during the Second Period shall be developed in
12 accordance with Appendix B hereto and the terms and protocols
13 set forth below.

14
15 11.1.3 All schedules for the delivery of energy to
16 Turlock during the Third Period shall be developed in accordance
17 with Section 7 hereof and the terms and protocols set forth
18 below.

19
20 11.2 Scheduling Calendar and Protocols

21
22 11.2.1 The Parties will use their best efforts to
23 work together cooperatively and in good faith in scheduling
24 energy for delivery under the terms of this Agreement.

25
26 11.2.2 The Parties intend schedules to be developed
27 and finalized in the manner provided for by the terms of this
28 Agreement and on such days and at such times as are set forth on
29 the Scheduling Calendar.

30
31 11.2.3 The Scheduling Calendar reflects the intent
32 of the Parties to adopt the current practice of electric

1 utilities in the State of California and of members of the WECC
2 to establish their schedules on a Preschedule Day in accordance
3 with the prescheduling calendar published by the WECC as the
4 same may be modified by the WECC from time to time and,
5 therefore, the Parties also intend and agree to modify the
6 Scheduling Calendar from time to time to incorporate such
7 modifications as have been made by the WECC to the WECC
8 prescheduling calendar.

9
10 11.2.4 The Scheduling Calendar also reflects the
11 intent of the Parties to exchange certain notices, information
12 and types of schedules at specific times on certain days prior
13 to a Preschedule Day. The times set forth in the Scheduling
14 Calendar were negotiated and agreed to by the Parties in order
15 (a) to allow each Party sufficient time to plan for and manage
16 its resources efficiently, economically and reliably; and (b) to
17 account for the different types of products and services
18 provided for under the terms of this Agreement; and (c) to allow
19 each of them adequate time to respond to offers that may be made
20 or may be required to be made by the terms of this Agreement and
21 confirmations or rejections of various types of schedules that
22 may be permitted by the terms of this Agreement; (d) to account
23 for the time by which each Party may be required by its
24 applicable contracts or tariffs to provide its final schedule(s)
25 for an Active Day to third parties; and (e) to account for the
26 time by which City is required to provide its Final Schedule to
27 its Scheduling Representative so that City may avoid incurring
28 any costs, fees or expenses for scheduling changes after such
29 Final Schedule is submitted.

30
31 11.3 Permitted Deviations and Authorized Representatives
32

1 11.3.1 City and Turlock understand and agree that
2 it may be necessary or desirable to deviate from certain
3 scheduling provisions from time to time and that it would be
4 burdensome to amend this Agreement each time that the Parties
5 agreed that a deviation was necessary or desirable. Therefore,
6 each Party has agreed to designate representatives who are
7 authorized to agree on its behalf to (i) deviations from the
8 Scheduling Calendar, (ii) deviations from provisions relating to
9 the scheduling of Class 1 Energy (including Ramping), Spinning
10 Reserve Energy, Available Excess Energy or Additional Available
11 Excess Energy, or (iii) a modification under Section 7.7.9.
12 Each Party shall deliver a written notice identifying the
13 representatives who it has so authorized to the other Party.
14 Only those representatives that have been so designated by a
15 Party shall have the authority to agree to any deviation from
16 the foregoing scheduling provisions or such modification.

17
18 11.3.2 No deviations from the foregoing scheduling
19 provisions or modification shall be effective or be implemented
20 until after the authorized representative to whom the request
21 for a deviation was made has received such request in writing
22 and delivered a confirmation thereof in writing, by facsimile or
23 otherwise, to the requesting representative, provided, however,
24 that if the requesting representative establishes that
25 extenuating circumstances prevent the delivery of such an
26 advance written request, a voice recording of such request and
27 the confirmation of party to whom the request was made may be
28 substituted therefor, if the requesting Party thereafter
29 delivers an explanation, in writing, of the extenuating
30 circumstances that prevented such delivery, a summary of the
31 request and confirmation, together with a copy of such voice

1 recording to the Party to whom the request was made no later
2 than the following Business Day.

3
4 11.3.3 Any deviation from the foregoing scheduling
5 provisions or modification that the authorized representatives
6 may agree to from time-to-time shall not establish a precedent
7 or a course of dealing or a course of conduct for any subsequent
8 deviation that may be requested.

9
10 11.3.4 The authorized representatives may not agree
11 to a deviation from the requirements hereinabove set forth.

12
13 11.4 Ramping Schedule Elections and Criteria

14
15 11.4.1 Turlock may submit a Base Active Day Ramping
16 Schedule for an Active Day if:

17 (a) Turlock has satisfied the conditions
18 precedent set forth in Section 10.7 hereof applicable to such
19 Active Day; and

20 (b) City has notified Turlock that Ramping
21 Headroom is available on such Active Day; and

22 (c) Turlock notifies City of the Ramping
23 election it has made pursuant to Section 11.4.2 hereof and its
24 Base Active Day Ramping Schedule meets the criteria of set forth
25 in Section 11.4.3 hereof.

26
27 11.4.2 Turlock may elect to Ramp based on Ramping
28 Schedule A, Ramping Schedule B, or Ramping Schedule C criteria
29 as set forth in Section 11.4.3 hereof and its election, once

1 made, shall be binding on it for each remaining Active Day of
2 the same month in which it is permitted to submit a Base Active
3 Day Ramping Schedule.

4
5 11.4.3 Turlock may Ramp a Base Active Day Schedule
6 for an Active Day by adjusting such Schedule in accordance with:

7 (a) Section 11.4.4 hereof, if Turlock has
8 elected to Ramp using Ramping Schedule A;

9 (b) Section 11.4.5 hereof, if Turlock has
10 elected to Ramp using Ramping Schedule B; or

11 (c) Section 11.4.6 hereof, if Turlock has
12 elected to Ramp using Ramping Schedule C.

13
14 11.4.4 Turlock may Ramp using Ramping Schedule A
15 for any Active Day except Sundays or NERC holidays:

16 (a) by increasing by not more or less than
17 5 MW the amount scheduled in any two of the three Off-Peak Hours
18 of HE05, HE06 or HE23, and by increasing by not more or less
19 than 6 MW, the amount scheduled in the remaining Off-Peak Hour;
20 and

21 (b) by decreasing by not more or less than
22 1 MW the amount scheduled in each of the On-Peak Hours of HE 07
23 through HE22, so that the total On-Peak Demand for an Active Day
24 as set forth in the unadjusted schedule is not exceeded.

25

1 11.4.5 Turlock may Ramp using Ramping Schedule B
2 for any Active Day except Sundays and NERC holidays:

3 (a) during the months of October through
4 April (i) by increasing by not more or less than 2 MW the amount
5 scheduled in the Off-Peak Hour of HE05 and by increasing by not
6 more or less than 3MW the amount scheduled in the Off-Peak Hour
7 of HE06 and HE23, and (ii) by decreasing by not more or less
8 than 3MW the amount scheduled in On-Peak Hour HE07 and by not
9 more or less than 2MW the amount scheduled in On-Peak Hour HE08
10 and by not more or less than 3MW the amount scheduled in On-Peak
11 Hour HE 22, so that the total amount of the increases in such
12 Off-Peak Hours equals the total amount of the decreases in such
13 On-Peak Hours; and

14 (b) during the months of May through
15 September (i) by increasing by not more or less than 4 MW the
16 amount scheduled in HE05 and by increasing by not more or less
17 than 6 MW the amount scheduled in each of the Off-Peak Hours of
18 HE06 and HE23, and (ii) by decreasing by not more or less than
19 6MW the amount scheduled in the On-Peak Hour of HE07 and by not
20 more or less than 4MW the amount scheduled in the On-Peak Hour
21 HE08 and by not more or less than 6MW the amount scheduled in
22 the On-Peak Hour HE22, so that the total amount of the increases
23 in such Off-Peak Hours equals the total amount of the decreases
24 in such On-Peak Hours.

25

26 11.4.6 Turlock may Ramp using Ramping Schedule C
27 for any Active Day except Sundays or NERC holidays:

28 (a) during the months of October through
29 April (i) by increasing by not more or less than 4MW the amount

1 scheduled in each of the Off-Peak Hours, and (ii) by decreasing
2 by not more or less than 2MW the amount scheduled in each On-
3 Peak Hour, so that the total amount of the increases in such
4 Off-Peak Hours equals the total amount of the decreases in such
5 On-Peak Hours; and

6 (b) during the months of May to September
7 (i) by increasing by not more or less than 9MW the amount
8 scheduled in each of the Off-Peak Hours, and (ii) by decreasing
9 by not more or less than 5MW the amount scheduled in each On-
10 Peak Hours of HE07 through HE13 and HE 22, and (iii) by
11 decreasing by not more or less than 4MW the amount scheduled in
12 each of the On-Peak Hours of HE14 through HE21, so that the
13 total amount of the increases in such Off-Peak Hours equals the
14 total amount of the decreases in such On-Peak Hours.

15

16 11.5 Available Excess Energy Schedule Criteria

17

18 11.5.1 If Turlock agrees to purchase Available
19 Excess Energy offered to it by City on an Active Day then it
20 shall accept such offer in whole or in part by timely providing
21 City an Available Excess Energy Schedule that meets the
22 following criteria:

23 (a) during each of the On-Peak Hours of HE16
24 through HE19 Turlock shall schedule Available Excess Energy
25 offered to it in either (i) a constant MW of the total amount of
26 the Available Excess Energy offered to it in such hours, or (ii)
27 a constant percentage of the total amount of the Available
28 Excess Energy offered to it in such hours; and

29 (b) during each of the On-Peak Hours of HE07
30 through HE15 and HE20 through HE22 Turlock shall schedule

1 Available Excess Energy offered to it in an amount that is not
2 less than the lower of (i) the average of the total amount of
3 Available Excess Energy (in MW) scheduled by it under subsection
4 (a)(i), or (ii) the constant percentage scheduled under
5 subsection (a)(ii) multiplied by the total amount of Available
6 Excess Energy offered to it in such hours; and

7 (c) during each of the Off-Peak hours of
8 HE16 through HE19 of Active Days that are Sundays and NERC
9 holidays, Turlock shall schedule Available Excess Energy offered
10 to in the same manner as is provided for in subsection (a)
11 hereof; and

12 (d) during each of the Off-Peak Hours of
13 HE07 through HE15 and HE20 through HE22 of Active Days that are
14 Sundays and NERC holidays, Turlock shall schedule Available
15 Excess Energy offered to it in the same manner as is provided
16 for in subsection (b); and

17 (e) during each of the Off-Peak Hours of
18 HE23 through HE06, Turlock shall schedule Available Excess
19 Energy offered to it in such hours in either (i) a constant MW
20 of such amount, or (ii) a constant percentage of such amount.

21

22 11.6 Additional Available Excess Energy Schedule

23 If Turlock agrees to purchase Additional Available
24 Excess Energy offered to it by City on an Active Day pursuant to
25 Section 7.4.12 hereof then it shall be deemed to have accepted
26 the schedule for delivery of such Additional Available Excess
27 Energy communicated to it by City at the time such offer was
28 made to it by City under Section 7.4.11.

29

1 11.7 Interruptions of Scheduled Deliveries

2
3 11.7.1 City may interrupt and shall be excused from
4 any obligation to supply or deliver Firm Class 1 Energy that has
5 been scheduled for delivery or Spinning Reserve Energy requested
6 by Turlock at any time during the Second Period, to the extent
7 that its failure to supply or deliver such Firm Class 1 Energy
8 or Spinning Reserve Energy shall be due to Uncontrollable
9 Forces.

10
11 11.7.2 City may interrupt and shall be excused from
12 any obligation to supply or deliver (a) Available Excess Energy
13 or Additional Available Excess Energy that has been scheduled
14 for delivery at any time during the Second Period, or (b)
15 Scheduled Class 1 Energy, Scheduled Shortfall Energy, Available
16 Excess Energy or Additional Available Excess Energy that has
17 been scheduled for delivery, or Spinning Reserve Energy that has
18 been requested by Turlock at any time during the Third Period,
19 to the extent that its failure to supply or deliver any such
20 Energy shall be due to:

21
22 (a) either the Project or the City's
23 Transmission Facilities not being available because of a Forced
24 Outage for which sufficient notice could not have been given to
25 allow the outage to be factored into the prescheduling process;
26 or

27 (b) a determination by City, made in its
28 sole judgment and discretion, that supplying or delivering such
29 Energy or continuing delivery of such energy would adversely
30 impact the City's ability either to provide water supply or to
31 meet applicable standards of water quality followed or
32 established by City; or

1
2 (c) Uncontrollable Forces.
3

4 11.7.3 City may not interrupt the supply and
5 delivery of any energy scheduled for delivery hereunder in order
6 to sell such energy at a higher price.
7

8 11.7.4 City shall notify Turlock as far in advance
9 as is practicable of an impending interruption and if not
10 practicable then promptly after the occurrence of any
11 interruption, and shall provide Turlock with (a) a description
12 of the specific cause of the interruption, if known; and (b) the
13 time the interruption started, and (c) the expected duration of
14 the interruption.
15
16

17 12. POINTS OF DELIVERY
18

19 12.1 Second Period
20

21 The Points of Delivery during the Second Period shall
22 be at those points known as the Oakdale 115 kilovolt bus, the
23 Westley 230 kilovolt tap, and such other points as the Parties
24 may agree in writing to establish. For purposes of this section
25 the Westley 230 kilovolt tap is the point at which the Tesla-
26 Parker and Walnut-Los Banos 230 kilovolt circuits of Districts
27 are interconnected with PG&E's Tesla-Los Banos 230 kilovolt
28 circuits, at or near Westley, California.
29
30
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32

1 12.2 Third Period.

2
3 12.2.1 The Point of Delivery during the Third
4 Period shall be that point known as the Oakdale 115 kilovolt bus
5 located at the Turlock Oakdale Substation.
6

7 12.2.2 City shall transmit energy over those City
8 Transmission Facilities interconnecting City and Turlock and
9 shall deliver energy scheduled for delivery to Turlock hereunder
10 to the Point of Delivery, and Turlock shall arrange for and be
11 responsible for the receipt of and for transmission service at
12 and from the Point of Delivery.
13

14 12.2.3 If delivery can not be made by City to, or
15 received by Turlock at, the Point of Delivery, then Turlock (or
16 a representative it has authorized and designated under Section
17 11.3.1 hereof) may request that energy scheduled for delivery to
18 Turlock hereunder be delivered by City to Turlock at an
19 alternate point of delivery, and City shall deliver such energy
20 to such alternate point of delivery if Turlock (a) makes
21 arrangements for transmission and delivery to an alternate point
22 of delivery that City (or its Scheduling Representative) is
23 interconnected with or authorized to deliver to; and (b) agrees,
24 in advance, to reimburse City for all third-party costs, fees,
25 expenses, penalties or other charges associated with the
26 transmission and delivery of such energy to such alternate point
27 of delivery in excess of those City would have incurred if
28 delivery had been made at the Point of Delivery; and (c) agrees,
29 in advance, that any transformation or transmission losses
30 associated with the delivery of such energy to an alternate
31 point of delivery in excess of those losses that would have

1 occurred if delivery had been made at the Point of Delivery
2 shall be for Turlock's account.

3
4

5 12.2.4 Notwithstanding the foregoing, City shall
6 not be obligated to make deliveries to an alternate point of
7 delivery to the extent (i) City determines that it would impair
8 City's ability to meet its obligations to City Municipal Load,
9 or (ii) it would impair City's ability to meet its obligations
10 to Modesto, Airport Tenants, Norris Industries, other City
11 customers or to third parties, but only to the extent such
12 obligations were established prior to satisfaction of all the
13 conditions of Section 12.2.3 hereof.

14
15

16 13. LOSSES

17

18 Losses associated with Turlock's use of excess capacity in
19 City's Transmission Facilities shall be calculated on an
20 incremental basis.

21
22

23 14. CHARACTERISTICS OF ELECTRIC SERVICE AND METERING

24

25 14.1 Power to be delivered and received pursuant to this
26 Agreement shall be three phase, alternating current, at a
27 nominal frequency of sixty (60) hertz. Nominal voltage at the
28 Oakdale Point of Delivery (herein referred to as "Oakdale")
29 shall be 115 kilovolts, and during the First Period and the
30 Second Period at the Westley Tap shall be 230 kilovolts.

31

1 14.2 Turlock and City shall each use best efforts to
2 provide reactive power and operate their respective systems so
3 that at all times the total delivery of Power by City to Turlock
4 as measured at Oakdale shall be between ninety-eight (98)
5 percent lagging and ninety-eight (98) percent leading power
6 factor.

7
8 14.3 Metering equipment at Oakdale shall be furnished,
9 serviced, tested and maintained by Turlock and shall include
10 "in" and "out" metering equipment for the measurement of the
11 amounts of both real and reactive power, and such backup
12 metering facilities as may be mutually agreed upon by the
13 Parties. Such metering equipment shall be designed to prevent
14 reverse registration and to measure and record continuously
15 deliveries of kilowatts and kilovars (integrated 30-minute
16 intervals), kilowatthours and kilovarhours.

17
18 14.4 Turlock shall be responsible for making arrangements
19 to read all meters at Oakdale on the first Business Day of each
20 billing period or at such other times as agreed by the Parties
21 and to submit a copy of all readings to City for its records.
22 City shall be afforded reasonable opportunity to be present at
23 such times that such meters are read. Turlock will service and
24 maintain storage media on all recording meters, and will make
25 data from such storage media available to City, promptly, upon
26 request and, if available, in a format capable of being imported
27 electronically into a spreadsheet format.

28
29 14.5 If City so agrees, Turlock shall have the right to
30 designate PG&E as its agent to read, test and maintain all
31 meters at Oakdale. In such event, PG&E shall assume and perform
32 the duties and obligations of Turlock in connection therewith.

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14.6 Meters at Oakdale shall be sealed and the seals shall be broken only upon occasions when such meters are to be inspected, tested or adjusted, and representatives of City shall be afforded reasonable opportunity to be present upon such occasions. Meters at Oakdale shall be tested at intervals of not less than once every twelve (12) months and at any reasonable time upon request therefor by either Party. Any metering equipment at Oakdale found to be defective or inaccurate shall be repaired and readjusted or replaced. If such meter fails to register or if the measurement made by such meter during a test varies by more than two (2) percent from the measurement made by the standard meter used in the test, an adjustment to correct all meter records of measurements made by such inaccurate meter shall be made for a period starting from the date the meter registration became in error, if Turlock can determine such date. The two (2) percent accuracy shall be understood to be the average of the metered accuracies at ten (10) percent of rated load and at one hundred (100) percent of rated load tested at unity power factor. If the date when the error in registration began cannot be determined, it shall be assumed that the error has existed for a period of either (a) six (6) months, (b) half of the time elapsed since the meter was installed, or (c) half of the time elapsed since the previous test, whichever period is shortest. If necessary the corrections may be estimated from the best information available for the period of defect or inaccuracy. If necessary the corrections may be estimated from the best information available for the period of defect or inaccuracy.

1 14.7 Turlock shall own all metering equipment at the
2 Points of Delivery, including the primary instrument
3 transformers with associated wiring.
4

5 14.8 The Parties shall each be responsible to provide
6 equipment at the Points of Delivery capable of transmitting
7 (i.e., telemetering) data to their respective energy control
8 centers if the Parties desire such data. Turlock shall allow
9 City to access its inter-control area meter at Oakdale via
10 telephone so that City can download stored hourly MW and MVAR
11 flows. Turlock shall also provide MW and MVAR meter readings in
12 real-time (as they occur) should City request. The specific
13 means of communicating the real-time data shall be mutually
14 agreed upon. The Parties further agree that their technical
15 representatives will meet within thirty (30) days of City's
16 request to discuss the specific details as to how the data will
17 be provided to the City. Within ninety (90) days of such
18 request, Turlock shall provide City with an estimate of the
19 costs and a timetable to implement the provision of the
20 requested real time data. The purchasing, installation,
21 maintenance, service or repairs of City equipment provided to or
22 purchased by Turlock under this provision shall be subject to a
23 separate agreement as to invoicing, payment and operational
24 control.
25
26

27 15. ACCOUNTING AND BILLING

28
29 15.1 Monthly Billing Statements

30
31 15.1.1 City shall bill Turlock monthly for energy
32 sold and other services supplied by City and purchased by

1 Turlock hereunder during a month at the rates and charges set
2 forth in Section 16 and for reserve support as provided for in
3 Section 16.5, and shall deliver to Turlock a billing statement
4 therefor on or before the fifteenth (15th) day of the succeeding
5 month, or as soon thereafter as possible.

6
7 15.1.2 With each billing statement, City shall
8 provide Turlock with a copy of the documentation and information
9 supporting such statement.

10
11 15.1.3 If the amounts of energy and other services
12 supplied during a month cannot be determined accurately by City
13 at the time it is preparing its monthly billing statement, City
14 shall use its best estimates in preparing the bill and when
15 final, accurate and complete billing information becomes
16 available, City shall promptly prepare and submit an adjusted
17 billing statement to Turlock for such month.

18
19 15.1.4 For purposes of this Section billing
20 statements shall be deemed to be delivered by City and received
21 by Turlock three (3) days after deposit thereof, First Class
22 postage pre-paid, in the United States Mail.

23
24 15.2 Monthly Payment

25
26 15.2.1 Turlock shall pay to City, in immediately
27 available funds, all undisputed amounts within a period of
28 thirty (30) days of receipt of each billing statement.

29
30 15.2.2 Turlock shall have the option to either pay
31 disputed amounts or withhold payment of such disputed amounts,
32 provided however, Turlock shall at a minimum pay City such

1 amounts billed for payment of Firm Class 1 Energy during a month
2 of the Second Period and Class 1 Energy during a month of the
3 Third Period. Turlock's payment for such quantities shall not
4 constitute acceptance of such quantities as being correct or
5 appropriate. If Turlock disputes a bill, it shall provide City
6 with a written explanation of the specific basis for its dispute
7 on the same day that it makes payment to City hereunder.

8
9 15.2.3 Billing disputes and the charges associated
10 with late payments (or refunds) shall be determined and resolved
11 by the Parties in accordance with Section 17 hereof.

12
13 15.2.4 Payments hereunder are deemed to be received
14 on the day transferred by wire with confirmation, or three (3)
15 days after a Party deposits the same, First Class postage pre-
16 paid, in the United States mail.

17
18
19 16. RATES

20
21 16.1 First Period Class 1 Energy Rate

22
23 The Provisional Class 1 Rate (as such term is defined
24 in Appendix D hereto) for Class 1 Energy delivered to Turlock
25 during the First Period as specified in Section 7.2.2, shall be
26 \$17.99 per MWh and such rate shall be subject to reconciliation
27 and adjustment by City in accordance with the procedures set
28 forth in Appendix D.

29
30 16.2 Second Period Firm Class 1 Energy Rate

1 The Provisional Class 1 Rate (as such term is defined
2 in Appendix D hereto) for Firm Class 1 Energy delivered to
3 Turlock (a) from July 1, 2004 through June 30, 2005 shall be
4 \$15.17 per MWh and such rate shall be subject to reconciliation
5 and adjustment by City in accordance with the procedures and
6 methodology set forth in Appendix D, and (b) from July 1, 2005
7 through December 31, 2005 shall be the rate established pursuant
8 to Section 16.3 hereof.

9
10 16.3 Third Period Class 1 Energy Rate

11
12 16.3.1 The rate for Delivered Class 1 Energy
13 delivered to Turlock during a month of the Third Period shall be
14 the Class 1 Energy Rate determined by City in accordance with
15 the procedures and methodology set forth in Appendix D hereto
16 and as set forth in City's notice pursuant to Section 16.3.2
17 hereof which is applicable to the month in which such energy was
18 delivered.

19
20 16.3.2 On or before May 1 of each Year during the
21 term of this Agreement, City shall notify Turlock, in writing,
22 of the Class 1 Energy Rate to be effective for the Fiscal Year
23 beginning on July 1 of such Year. Together with such notice,
24 City shall deliver to Turlock copies of work papers and other
25 supporting documentation City utilized in determining such Rate.

26
27 16.4 Available and Additional Excess Energy Rate

28
29 16.4.1 The hourly rate for Available Excess Energy
30 or Additional Available Excess Energy delivered to Turlock in an
31 hour during the term of this Agreement shall be the Excess
32 Energy Rate determined by City in the manner set forth below.

1
2 16.4.2 The Excess Energy Rate for Available Excess
3 Energy or Additional Available Excess Energy delivered to
4 Turlock during:

5
6 (a) an On-Peak Hour, shall be the greater of
7 (i) one dollar (\$1.00) per MWh, or (ii) the amount by which
8 seventy percent (70%) of the "Firm On-Peak" price per MWh
9 reported by Dow Jones in the "Dow Jones NP15 Electricity Price
10 Index" applicable to the period of determination exceeds one
11 dollar (\$1.00); and

12
13 (b) an Off-Peak Hour, shall be the greater
14 of (i) one dollar (\$1.00) per MWh, or (ii) the amount by which
15 seventy percent (70%) the "Firm Off-Peak" price per MWh reported
16 in the "Dow Jones NP15 Electricity Price Index" applicable to
17 the period of determination exceeds one dollar (\$1.00).

18
19 16.4.3 In the event that Dow Jones ceases
20 publication and reporting of such "Firm On-Peak" or "Firm Off-
21 Peak" pricing information for NP-15, then (a) the Parties shall
22 immediately attempt to reach agreement with respect to an
23 equivalent successor index, and (b) City shall continue to
24 charge, for an interim period, the Excess Energy Rate in effect
25 on the day immediately prior to such cessation of such
26 publication until the day that an equivalent successor index is
27 agreed to by the Parties, or a final decision resolving the
28 Parties' dispute with respect thereto is issued under Section
29 23, and (c) the Excess Energy Rate shall be retroactively
30 redetermined for all hours of the interim period in the manner
31 provided for in Section 16.4.2, and (d) based thereon City shall
32 determine the amounts that Turlock should have paid for

1 Available Excess Energy and Additional Available Excess Energy
2 delivered to it during the interim period, and (e) if Turlock
3 has overpaid for Available Excess Energy or Additional Excess
4 Energy during the interim period, City shall promptly refund the
5 overpayment to Turlock, together with interest thereon computed
6 in the manner provided for in Section 17.1 hereof, or (f) if
7 Turlock has underpaid for Available Excess Energy or Additional
8 Excess Energy during the interim period, Turlock shall promptly
9 pay the amount of the underpayment to City, together with
10 interest thereon computed in the manner provided for in Section
11 17.1 hereof.

12
13 16.5 Reserve Support Charge

14
15 16.5.1 During the Second Period, Turlock shall pay
16 City on a monthly basis to reimburse City for a portion of
17 City's capacity reserve costs, provided that the maximum payment
18 of the Districts during any Year shall be \$700,000. The charge
19 for any month shall be a unit charge in dollars per kilowatt
20 month equal to the total capacity reserve costs paid by City to
21 PG&E for such month divided by the capacity of the Project as
22 stated in Section 6.

23
24 16.5.2 Turlock's payment to City shall be equal to
25 Turlock's On-Peak Demand for each month as set forth on Column C
26 of Table B-1 of Appendix B hereto, multiplied by the above
27 determined unit charge. During any month when the total
28 payments by the two Districts for said reserve support charge
29 would bring the total for such Year to more than \$700,000, such
30 reserve charge by the Districts for said month shall be
31 proportionately reduced such that the \$700,000 annual payment is
32 not exceeded and shall not be levied for any subsequent month of

1 such Year.. Further, rates determined pursuant to Appendix D
2 shall not include any reserve support costs.

3
4 16.5.3 The Class 1 Energy Rate determined by City
5 pursuant to Appendix D shall not include any reserve support
6 costs, and neither the reserve support charge nor the expenses
7 it is intended to recover shall, as a result of this Agreement,
8 be deemed to be the type of costs contemplated by Section 9(1)
9 of the Raker Act.

10
11 16.5.4 City shall not charge Turlock a reserve
12 support charge for capacity reserve costs incurred by City in
13 any month during the First Period or the Third Period of this
14 Agreement.

15
16
17 17. BILLING DISPUTES

18
19 17.1 Any refund or amount due under this Agreement which
20 is not timely paid pursuant to Section 15.2 shall accrue
21 interest at an annual rate compounded monthly from the date
22 payment is due until the date payment is made. The interest
23 rate applicable to any refund or amount due during a given
24 period shall be the lesser of (a) the daily "Bank prime loan"
25 rate reported by the Federal Reserve System in Statistical
26 Release H.15, or its successor, which is in effect during such
27 period, or (b) the maximum interest rate permitted by law, such
28 interest computed monthly for each month or fractional period
29 thereof. Interest which is accrued but unpaid as of the first
30 day of a calendar month shall be added to the total amount due
31 as of that day and thereafter bear interest in the same manner
32 as the principal due under the bills.

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17.2 If Turlock has disputed the amount due under any bill rendered by City pursuant to Section 15.1 Turlock shall either pay the disputed amount or withhold payment of such disputed amount pursuant to the provisions of Section 15.2. City and Turlock shall meet, or otherwise discuss as mutually agreed, within fifteen (15) days after City's receipt of Turlock's explanation pursuant to Section 15.2.2, or by mutual agreement on the earliest possible date thereafter, to attempt to agree on any adjustment that may be appropriate. If the Parties do not agree within this fifteen (15) day period, as it may be extended by mutual agreement, the Parties shall resolve such disputes pursuant to Section 23 of this Agreement. Upon resolution of the dispute, refunds due Turlock or payments due the City will be made with interest calculated from the date the payment or refund was due to the date the refund or payment of the disputed amount occurs at the interest rate specified in Section 17.1.

17.3 If either party is not notified of any error in a bill within (3) years from the payment due date of the bill, such bill shall be deemed to be correct, without recourse by either Party.

18. COVENANTS OF TURLOCK

18.1 Turlock agrees that no Power sold to it under this Agreement shall be resold to any private person or corporation for purposes contrary to the provisions of the Raker Act. Turlock shall have the right and option to sell Power for resale if Turlock's total monthly load exceeds its amount of Available Energy taken in such month.

1
2 18.2 Turlock warrants that the quantity of Requested
3 Monthly Class 1 Energy shall be determined in compliance with
4 the applicable provisions of the Raker Act both as to purposes
5 of use and location of consumer's point of utilization and, when
6 requested by City, Turlock shall demonstrate such compliance to
7 City.

8
9 18.3 Turlock warrants that City shall not be liable for
10 any disputes arising between Turlock and Modesto regarding the
11 Allocation Agreement.

12
13 18.4 Turlock agrees to grant to City such permits for
14 installation, operation and maintenance of structures and
15 equipment on Turlock's real property and such rights of access
16 as may be required for the purposes of this Agreement.

17
18
19 19. COVENANTS OF CITY

20
21 19.1 City agrees to grant to Turlock such permits for
22 installation, operation and maintenance of structures and
23 equipment on City's real property and such rights of access as
24 may be required for the purposes of this Agreement.

25
26 19.2 City agrees to maintain and operate City's
27 transmission and generation facilities consistent with Prudent
28 Utility Practice.

29
30 19.3 City shall use its best efforts to install, operate
31 and maintain such equipment as is necessary to provide to

1 Turlock a continuous exchange of information regarding the
2 City's generation and transmission facilities and loads.

3
4 19.4 City shall provide Turlock copies of all rate tariffs
5 and agreements between City and third Parties which may affect
6 the rates and terms and conditions of this Agreement.

7
8
9 20. RESPONSIBILITY

10
11 Each Party shall at its own risk and expense, in accordance
12 with Prudent Utility Practice, maintain and keep in good and
13 safe condition and carefully operate its own property and
14 facilities used in delivering, metering or receiving Power
15 hereunder.

16
17
18 21. UNCONTROLLABLE FORCES

19
20 21.1 Neither Party shall be considered to be in default in
21 the performance of any of its obligations under this Agreement
22 when a failure of performance shall be due to Uncontrollable
23 Forces. Except to the extent expressly provided to the contrary
24 in Section 21.3 hereof, the term Uncontrollable Forces shall
25 mean any cause beyond the control of the Party affected,
26 including but not restricted to, failure or threat of failure of
27 facilities for storage of water, generation or transmission of
28 Power, including the failure of PG&E transmission facilities or
29 the transmission facilities of others, flood, earthquake,
30 tornado, storm, fire, lightning, epidemic, war, riot, civil
31 disturbance, or disobedience, labor dispute, labor or material
32 shortage, sabotage, restraint by court order or order of, a

1 governmental agency or authority, and action or non-action by,
2 or inability to obtain the necessary authorizations or approvals
3 from any governmental agency or authority, other than the
4 Parties or their Governing Boards, which by exercise of due
5 diligence such Party could not reasonably have been expected to
6 avoid and which by exercise of due diligence it has been unable
7 to overcome.

8
9 21.2 Nothing contained herein shall be construed so as to
10 require a Party (i) to settle any strike or labor dispute in
11 which it may be involved or (ii) to agree to any terms or
12 conditions of financing or obtaining authorizations or approvals
13 which that Party deems unreasonable or burdensome.

14
15 21.3 Uncontrollable Forces which would excuse the Parties
16 from fulfilling their obligations hereunder during the Second
17 Period shall not include:

18
19 (a) Inadequacy of water for generation of electric
20 energy caused by a drought;

21
22 (b) Failure of Project facilities for storage of
23 water, generation or transmission of Power, except for cases
24 whereby a portion of Project facilities are damaged or
25 destroyed, or shut down in accordance with Prudent Utility
26 Practice to prevent imminent and substantial damage or
27 destruction; provided, however, that in such cases City's
28 obligations shall be excused but only to the extent provided for
29 in subsection (c) below;

30
31 (c) Failure of PG&E facilities or the facilities of
32 others to deliver Turlock's Firm Class 1 Energy to the Point of

1 Delivery; provided, however, that (i) such obligations may be
2 excused but only to the extent that PG&E or such other entity
3 providing energy or transmission service curtailed or
4 interrupted such transmission service for reasons beyond its
5 control and City could not obtain alternate energy at the Point
6 of Delivery, alternate transmission services, or alternate means
7 of delivering Energy after exercising due diligence; and (ii)
8 provided, further, that in the event Project facilities are
9 damaged or destroyed as provided in subsection (b) hereof and a
10 failure of PG&E facilities or the facilities of others occurs as
11 hereinabove provided, then the Parties agree that Project Energy
12 shall be used (1) first, to meet the requirements of City
13 Municipal Energy, and (2) second, to meet the Class 1 Energy
14 requirements of the Districts under the Raker Act, and (3) that
15 if, after meeting the requirements of City Municipal Energy,
16 there is not sufficient remaining Project Energy to meet the
17 total Class 1 Energy needs of the Districts, then such remaining
18 Project Energy shall be proportioned between the Districts on
19 the basis of their respective shares of the total of their Class
20 1 Energy needs; and (iii) provided, further, that in the event
21 superseding state or federal governmental authorities act to
22 control such allocation then the allocation to be used by City
23 shall be consistent with such state or federally established
24 priorities.

25
26 21.4 If either Party is unable to fulfill any of its
27 obligations under this Agreement by reason of Uncontrollable
28 Forces, such Party shall give written notice as expeditiously as
29 possible of such fact to the other Party and shall exercise due
30 diligence to remove such inability with all reasonable dispatch.
31 In such event, the Parties shall diligently and expeditiously

1 determine how they may equitably proceed to carry out the
2 objectives of this Agreement.

3
4
5 22. INSURANCE AND LIABILITY

6
7 22.1 During the term of this Agreement, each Party shall
8 submit certification of self insurance or evidence of coverage
9 obtained from commercial carriers, in a form acceptable to the
10 other Party, describing the levels of coverage for Workers'
11 Compensation, comprehensive general liability insurance,
12 comprehensive automobile liability insurance and aircraft
13 liability insurance. Such certification or evidence of coverage
14 shall be supplied annually.

15
16 22.2 Responsibilities of the Parties

17
18 22.2.1 Each Party shall take full responsibility
19 for performance of its obligations under this Agreement and
20 shall bear all losses and damages directly resulting from such
21 performance. Each Party shall indemnify, hold harmless and
22 assume the defense of the other Party, its governing board, the
23 members of its governing board and its officers, agents and
24 employees from all claims, loss, damage, injury, and liability
25 of any and every kind resulting from injuries to or death of
26 persons, including employees of either Party, arising out of or
27 resulting from performance or nonperformance of this Agreement
28 or any action undertaken in furtherance of this Agreement by the
29 indemnifying Party or its agents, employees or contractors,
30 except to the extent that any such claim, loss, damage, injury
31 or liability is proximately caused by the willful misconduct of
32 the indemnified Party, its governing board, the members of its

1 governing board and its officers, agents, employees or
2 contractors.

3
4 22.2.2 Indemnification provided above shall not
5 apply in any instances of sole willful misconduct of a Party,
6 its Governing Board and its members, officers, representatives,
7 agents or employees.

8
9 22.2.3 A Party's obligations under this Section to
10 indemnify and hold harmless the other Party shall not be limited
11 to the amount of insurance proceeds, if any, received by the
12 Party being indemnified.

13
14 22.2.4 Each Party shall be responsible for
15 protecting its facilities from possible damage by reason of
16 electrical disturbances or faults caused by the operation,
17 faulty operation, or nonoperation of the other Party's
18 facilities, and such other Party shall not be liable for any
19 such damages so caused.

20
21
22 23. RESOLUTION OF DISPUTES AND ARBITRATION

23
24 23.1 It is the intent of the Parties that best efforts
25 will be used to settle all disputes arising under this Agreement
26 as a matter of normal business. Failing such resolution the
27 procedures set forth under this Section 23 shall be utilized,
28 subject to the provisions of Section 17, if appropriate.

29
30 23.2 The Party initiating a dispute shall submit its
31 written notice to the other stating completely the nature of the
32 dispute and the specific grounds therefore.

1
2 23.2.1 Upon receipt of the written notice of
3 dispute specified in Section 23.2, the Parties shall meet within
4 15 days to attempt, in good faith, to resolve such dispute.

5
6 23.2.2 If the Parties are unable, within five days
7 of the initial meeting, to resolve such dispute, each Party
8 shall prepare a written statement setting forth its
9 understanding of the nature of the dispute and the reasons for
10 the position taken. Copies of the written statements shall be
11 submitted to a management team consisting of the General Manager
12 of City's Public Utilities Commission and Turlock's General
13 Manager within 15 days of the initial meeting.

14
15 23.2.3 If the disputing Party fails to deliver its
16 written statement within the time specified in Section 23.2.2,
17 such Party shall be deemed to have waived all present and future
18 claims with respect of such dispute.

19
20 23.3 The management team and their advisors shall meet
21 within five days of receipt of each Party's written statement to
22 attempt to resolve the dispute.

23
24 23.3.1 The management team shall use best efforts
25 to attempt to resolve the dispute to the satisfaction of the
26 Parties within 30 days of receipt of the written statements.
27 The Parties may agree to extend the time periods set forth in
28 Section 23.3 and 23.3.1.

29
30 23.3.2 If the management team fails to resolve any
31 dispute within the period provided in Section 23.3.1, either
32 Party may commence arbitration under Section 23.4.

1
2 23.3.3 If the disputing Party fails to commence
3 arbitration in within fifteen days after the end of the 30-day
4 period stated in Section 23.3.1, the disputing Party shall be
5 deemed to have waived all present and future claims with respect
6 to such dispute.

7
8 23.4 The Parties agree that all disputes arising under
9 this Agreement that have not been resolved after conclusion of
10 the procedures set forth in Sections 23.2 and 23.3 shall be
11 settled through binding arbitration as provided in this Section
12 23.4 providing such arbitration is commenced in accordance with
13 Section 23.3.2.

14
15 23.4.1 Except as otherwise provided in this Section
16 23.4, the arbitration shall be governed by the Commercial
17 Arbitration Rules of the American Arbitration Association (AAA)
18 from time to time in force. Notwithstanding such rules (1)
19 discovery shall be permitted and the provisions of California
20 Code of Civil Procedures Section 1283.05, are incorporated by
21 reference herein except that the Parties shall not use
22 interrogatories as a means of discovery and (2) if such rules
23 and provisions as herein modified shall conflict with the laws
24 of the State of California then in force, that law shall govern.

25
26 23.4.2 Either Party may commence arbitration by
27 serving written notice on its intent to commence arbitration
28 upon the other Party within 15 days after the end of the 30-day
29 period provided in Section 23.3.1. Such Party shall be termed
30 the "Initiating Party." Should either Party fail to commence
31 arbitration within this time period, the Parties shall be deemed

1 to have waived all present and future claims with respect to
2 such dispute.

3
4 23.4.3 The written notice shall express the Party's
5 intent to institute arbitration under this Agreement and shall
6 in adequate detail set forth the nature of the dispute, the
7 issue to be arbitrated, the Party's position thereon and the
8 remedy sought be such arbitration.

9
10 23.4.4 Within 21 days of the receipt of the notice
11 commencing arbitration and statement of the dispute and proposed
12 remedy required under Section 23.4.3, the other Party shall
13 serve a written response upon the Initiating Party stating its
14 understanding of the issues in dispute, its position thereon,
15 the reasons supporting its position and its proposed remedy.
16 The statements required under Section 23.4.3 and 23.4.4 shall
17 constitute the submittal statement.

18
19 23.4.5 Within 30 days after delivery of the
20 Initiating Party's written notice to commence arbitration, the
21 Parties shall meet for the purpose of selecting three impartial
22 arbitrators. In the event the Parties are unable to agree on
23 the selection of three arbitrators at such meeting, they shall,
24 within 15 calendar days of such meeting, request the American
25 Arbitration Association (or a similar organization if the
26 American Arbitration Association should not at that time exist)
27 to provide a list of five impartial arbitrators from which to
28 select the necessary remaining arbitrators. Within 30 days
29 after the date of receipt of such list, the Parties shall take
30 turns striking names from said list until three arbitrators have
31 been selected. The arbitrators selected shall be available to
32 serve and shall be skilled and experienced in the field of the

1 dispute and no person shall be eligible for appointment as an
2 arbitrator who is a director, officer or employee of either of
3 the Parties or is otherwise interested in the matter to be
4 arbitrated. Within ten days after such selection, the Parties
5 shall submit to the arbitrators the written notice and submittal
6 statements prepared pursuant to Sections 23.4.3 and 23.4.4.

7
8 23.4.6 Within 10 calendar days after the selection
9 of the arbitrators, the Parties shall meet with the arbitrators
10 to establish a schedule for discovery, initial hearing, the time
11 for the arbitrators to issue a decision after the close of
12 hearing and the rules for consideration and presentation of the
13 arbitrators' decision.

14
15 23.4.7 The Parties may settle at any time before
16 the issuance of the arbitrator's decision.

17
18 23.4.8 The decision of the arbitrators shall accept
19 one Party's proposal and shall include findings with respect to
20 the issues involved in the dispute. The arbitrators' shall make
21 their decision in accordance with Prudent Utility Practice and
22 applicable standards of law. An agreement of any two of the
23 arbitrators to accept a Party's position shall constitute the
24 decision of the arbitrators. The arbitrators may not grant any
25 remedy or relief which is inconsistent with this Agreement. The
26 arbitrators shall specify the time within which the Parties
27 shall comply with the decision. In no event shall the
28 arbitrators' decision contain findings on issues not contained
29 in or grant a remedy beyond that sought in the submittal
30 statement.

1 23.4.9 The decision of the arbitrators may be
2 enforced by any court or agency having jurisdiction over the
3 Party against whom the decision is rendered.

4
5 23.4.10 Should a Party fail to respond to the
6 schedule established under Section 23.4.4 in a timely manner,
7 that Party shall be deemed to have waived all present and future
8 claims with respect to such dispute. Such schedule may be
9 modified by agreement of the Parties.

10
11 23.4.11 The arbitrators shall have no authority,
12 power or jurisdiction to alter, amend, change, modify, add to,
13 or subtract from any of the provisions of this Agreement, nor to
14 consider any issues arising other than from the language in and
15 authority derived from this Agreement.

16
17 23.4.12 The Parties agree that the decision of the
18 arbitrators shall be binding upon both Parties and that the
19 Parties shall take whatever action is required to comply with
20 the accepted proposal.

21
22 23.4.13 Any and all expenses, excluding attorney's
23 fees, associated with the arbitration shall be borne by the
24 nonprevailing Party except that if a resolution of the dispute
25 is reached before the arbitrators issue an award, such expenses
26 shall be borne by the Party which commenced the arbitration.
27 Each Party shall bear its own attorney's fee.

28
29 23.4.14 Should any Party fail to abide by the
30 decision of the arbitrators, the other Party may immediately
31 seek relief in law or equity as may be appropriate. In such
32 event, the prevailing Party shall be entitled to any damages, if

1 any, caused by the non-prevailing Party's failure to abide by
2 the arbitrators' decision, and expenses caused by the
3 enforcement of the arbitrators' decision, including, but not
4 limited to, attorney fees.

5
6
7 24. TERMINATION

8
9 24.1 This Agreement shall terminate as of July 1, 2015,
10 unless it is terminated earlier by the agreement of the Parties
11 or by either Party pursuant to this Section 24 or Section 25.
12 Termination shall be a remedy of last resort for material breach
13 of this Agreement, to be exercised only after the Parties have
14 exhausted all other remedies provided for in this Agreement.

15
16 24.2 After termination pursuant to this Section 24 or
17 Section 25, all rights provided under this Agreement shall
18 terminate, and neither Party shall claim or assert any
19 continuing right to receive performance of the other Party's
20 obligation under this Agreement. Notwithstanding the foregoing,
21 any such termination of this Agreement shall not release either
22 Party from any liability under this Agreement, whether of
23 indemnity or otherwise, which had accrued or which arises out of
24 any claim, other than for Power or services provided under this
25 Agreement, that had accrued at the time of termination. Any
26 right to the payment of money for transactions occurring prior
27 to the termination shall continue, and the provisions of Section
28 17 shall continue to apply to such right to the payments of
29 money.

30
31 24.3 Upon termination or expiration of this Agreement (a)
32 the respective rights and obligations of the Parties with

1 respect to the purchase, sale or delivery of energy from the
2 Project shall be governed by the Raker Act, and (b) each Party
3 agrees for the benefit of the other Party that it shall not
4 thereafter assert that this Agreement was, or was intended to,
5 lessen, affect or impair in any manner the rights, benefits or
6 privileges of the other Party acquired or existing through or by
7 means of the Raker Act. Notwithstanding the provisions of
8 Section 24.2 hereof, the Parties specifically intend and agree
9 that this Section 24.3 shall survive any termination and shall
10 be and remain binding on the Parties upon expiration of this
11 Agreement.

12
13

14 25. PROTECTION CLAUSE

15

16 25.1 Neither Party to this Agreement shall initiate,
17 cause, support or engage in any attempts to frustrate the terms
18 and conditions or purposes of this Agreement or the Raker Act to
19 the extent the attempt would affect the terms and conditions of
20 this Agreement or the Raker Act.

21

22 25.2 The Parties shall jointly defend this Agreement and
23 the Raker Act against any acts, attempts, orders or decisions -
24 judicial, legislative, regulatory or administrative - that would
25 adversely affect the basic terms and conditions of this
26 Agreement.

27

28 25.3 If any subsequent judicial, regulatory, legislative
29 or administrative act, decision or order precludes either Party
30 from substantially realizing the benefits of this Agreement, the
31 Parties shall use their best efforts to amend this Agreement to
32 the end that the mutual benefits of this Agreement will be

1 realized by both Parties throughout the term of this Agreement.
2 If, after diligent and good faith effort by both Parties, this
3 Agreement cannot be so amended to prevent the substantial
4 deprivation of the benefits of this Agreement to either Party,
5 then at any time after one (1) year after the occurrence of the
6 action which causes such substantial deprivation provided such
7 action is still in effect at the time, either Party shall have
8 the right to terminate this Agreement upon advance written two
9 and one-half (2 ½) years notice.

10
11 25.4 In the event of a dispute as to how best to amend
12 this Agreement pursuant to Section 25.3, either Party may, at
13 any time, refer the matter to the management team for resolution
14 pursuant to the terms of Section 23.2 and 23.3. If the
15 management team fails to reach an agreement the matter shall be
16 referred to arbitration pursuant to section 23.4 provided,
17 however, (a) that such arbitration shall be nonbinding, (b) the
18 arbitrators shall have the authority to issue a decision reached
19 in accordance with the standards of Section 23.4.8 but not
20 necessarily based entirely on either Party's proposal and (c)
21 Sections 23.4.9 through 23.4.14 shall not apply. If the
22 decision of the arbitrators is not acceptable to both Parties
23 and they do not otherwise agree how to amend this Agreement,
24 either Party may seek relief in a court of competent
25 jurisdiction.

26
27
28 26. SEVERABILITY

29
30 Except as provided pursuant to Section 25, in the event
31 that any of the terms, covenants or conditions of this Agreement
32 or the application of any such term, covenant or condition shall

1 be held invalid as to any person or circumstance by any court
2 having, or by the Secretary of the Department of Interior to the
3 extent that the Secretary has jurisdiction in these matters, all
4 other terms, covenants or conditions of this Agreement and their
5 application shall not be affected thereby, but shall remain in
6 force and effect unless a court holds that the provisions are
7 not separable from all other provisions of this Agreement.

8
9
10 27. WAIVER OF RIGHTS

11
12 Any waiver at any time by a Party of its rights with
13 respect to a default or any other matter arising in connection
14 with this Agreement shall not be deemed a waiver with respect to
15 any subsequent default or matter.

16
17
18 28. THIRD PARTY RIGHTS

19
20 This Agreement is for the sole benefit of the Parties and
21 shall not be construed as granting rights to any person other
22 than the Parties other than such provisions affecting the
23 Districts as provided herein or imposing obligations on any
24 party or granting rights to any person other than a Party.

25
26
27 29. GOOD FAITH

28
29 Each Party shall use its best efforts and work diligently
30 and in good faith to carry out the obligations imposed by this
31 Agreement.

1
2 30. DILIGENCE
3

4 Whenever any act is required to be performed under the
5 terms of this Agreement and the manner in which such act is to
6 be performed is not otherwise specifically detailed, then such
7 act shall be performed in a diligent and timely manner in
8 accordance with Prudent Utility Practice.
9

10
11 31. TIME IS OF THE ESSENCE
12

13 Time is of the essence with reference to all provisions of
14 this Agreement.
15

16
17 32. APPLICABLE LAWS
18

19 Except as otherwise required by law, this Agreement is made
20 under and shall be deemed to be governed by the laws of the
21 State of California or the laws of the United States, as
22 applicable.
23

24
25 33. EXAMINATION OF RECORDS
26

27 Authorized representatives of each Party will be permitted
28 upon reasonable notice and at reasonable times to visit the
29 offices of the other Party and to examine and copy all records
30 and papers pertaining to this Agreement, provided that any
31 records and papers which are exempt from disclosure shall be

1 properly safeguarded by each Party so as to ensure their
2 continued exempt status.

3
4
5 34. DELIVERY OF DOCUMENTS AND DATA

6
7 Each Party agrees, upon request by the other Party, to
8 make, execute and deliver any and all documents and data
9 reasonably required to implement this Agreement.

10
11
12 35. QUARTERLY RECONCILIATION OF AVAILABLE ENERGY

13
14 35.1 Commencing with the first quarter of calendar year
15 2008 and quarterly thereafter during the term of this Agreement,
16 Available Energy shall be reconciled by City in accordance with
17 provisions of Appendix F hereto.

18
19 35.2 A copy of such reconciliation, together with notice
20 of the applicable remedy, if any, that City elects with respect
21 to the quarter of determination shall be provided to Turlock
22 within the time and in the manner provided in Appendix F.

23
24 35.3 The payment of monies due and the supply and
25 scheduling of energy in respect of any such quarterly
26 reconciliation shall be made or supplied by City or Turlock, as
27 the case may be, within the time and in the manner provided
28 therefor in Appendix F.

29
30 35.4 City shall provide Turlock promptly, on a non-binding
31 basis, such estimates City may prepare from time to time in the

1 normal course of business of expected Project Energy and
2 expected City Municipal Energy for future months.

3
4
5 36. RELATIONSHIP OF THE PARTIES

6
7 The covenants, obligations, and liabilities of each Party
8 are intended to be several and not joint or collective and
9 nothing herein contained shall be construed to create an
10 association, joint venture, trust, or partnership, or to impose
11 a trust or partnership covenant, obligation or liability on or
12 with regard to either Party. Each Party shall be individually
13 responsible for its own covenants, obligations, and liabilities
14 under this Agreement. Neither party shall be under the control
15 of or shall be deemed to control the other Party. Neither Party
16 shall be the agent of or have the right or power to bind the
17 other Party without its express written consent, except as
18 expressly provided in this Agreement.

19
20
21 37. ASSIGNMENT

22
23 37.1 All covenants and agreements contained in this
24 Agreement shall inure to the benefit of City and Turlock and
25 their respective successors and assigns; provided, that neither
26 Party may transfer or assign its interest or rights under this
27 Agreement without written permission of the other Party, which
28 such written permission shall not be unreasonably refused. No
29 such permission shall be required in the case of the transfer or
30 assignment of a Party's interests or rights or the assignment of
31 the security interest therein to the following:

1 (i) any trustee or secured party, as security
2 for bonds or other indebtedness, present or future, and such
3 trustee or secured party may, if so empowered, sell or otherwise
4 realize upon such security in foreclosure or other suitable
5 proceedings, possess or take control thereof or cause a receiver
6 to be appointed with respect thereto and otherwise succeed to
7 all interests and rights of the Party making the assignment;

8
9 (ii) any entity acquiring all or substantially
10 all the property of the Party making the transfer; or

11
12 (iii) any entity into which or with which the
13 Party making the transfer may be merged, consolidated or
14 affiliated.

15
16 37.2 Notwithstanding the provisions of Section 36.1,
17 neither Party may transfer or assign its rights or obligations
18 for the purchase or sale of Power unless such transfer or
19 assignment does not violate the terms and conditions of the
20 Raker Act.

21
22
23 38. AMENDMENT

24
25 38.1 Except as provided for expressly herein, neither this
26 Agreement nor any terms hereof may be amended, supplemented,
27 waived or modified except by an instrument in writing executed
28 by the City's General Manager of Public Utilities and Turlock's
29 General Manager.

30
31 38.2 Any amendment, supplement or modifications to any
32 appendix to this Agreement shall not constitute an amendment of

1 the Agreement. Such amendments, supplements or modifications
2 shall become effective upon approval by the City's General
3 Manager of Public Utilities and Turlock's General Manager.

4
5
6 39. EXTENT OF AGREEMENT

7
8 This Agreement represents the entire and integrated
9 agreement between City and Turlock and supersedes all prior
10 negotiations, representations or agreements, either written or
11 oral, unless specifically incorporated into this Agreement by
12 writing contained herein.

13
14
15 40. CONSTRUCTION

16
17 Ambiguities in the wording of this Agreement shall not be
18 construed for or against either Party arbitrarily but shall be
19 construed in the manner which most accurately reflects the
20 intent of the Parties at the time of execution of this Agreement
21 and is otherwise consistent with the nature of the obligations
22 of the Parties with respect to the matter being construed.

23
24
25 41. CAPTIONS

26
27 All indexes, titles, subject headings, section titles and
28 similar items are provided for the purpose of reference and
29 convenience and are not intended to affect the meaning of the
30 contents or scope of this Agreement.

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42. PUBLICITY

In all media releases and reports that are issued or prepared for this Project, City and Turlock shall use reasonable efforts to mention both Parties.

43. NOTICES

Any notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by first class United States mail, postage prepaid, to:

TO CITY:

General Manager
Public Utilities Commission
City and County of San Francisco
1155 Market Street
San Francisco, California 94103

TO TURLOCK:

General Manager
Turlock Irrigation District
333 East Canal Drive
P.O. Box 949
Turlock, California 95381-0949

1
2 The names and addresses of the above recipients may be
3 changed by appropriate notice from one Party to the other.
4
5

6
7 44. MUTUAL RELEASE
8

9 Concurrent with the execution of this Agreement, the
10 Parties agree to release and settle all claims each Party may
11 have against the other arising from or related to the Prior
12 Agreement by entering into and executing a mutual release
13 agreement substantially in the form attached hereto at Appendix
14 E.
15
16

17 45. RECISSION OF NOTICE
18

19 City hereby rescinds that certain notice of termination of
20 the Prior Agreement hand delivered by it to Turlock on August
21 13, 2001.
22
23


24 46. EXECUTION IN COUNTERPARTS
25

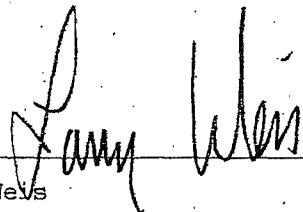
26 The Parties agree that this Agreement may be executed in
27 counterparts, each of which shall be deemed an original, but all
28 of which together shall constitute one and the same instrument.
29
30

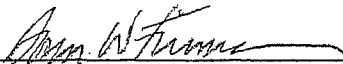
31 [Remainder of page intentionally left blank.]

1 IN WITNESS WHEREOF, the Parties have caused this Agreement
2 to be executed in triplicate by their respective officer's
3 thereunto duly authorized on this 18th day of April 2005.

4 PUBLIC UTILITIES COMMISSION TURLOCK IRRIGATION DISTRICT
OF THE CITY AND COUNTY OF
SAN FRANCISCO

5 By 
Susan Leal
GENERAL MANAGER
PUBLIC UTILITIES COMMISSION

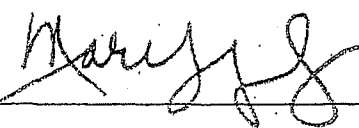
By 
Larry Wells
GENERAL MANAGER/CEO

6 APPROVED AS TO FORM:
City Attorney

By _____
Donn W. Furman
Deputy City Attorney

7 Authorized by Public Utilities
Commission

8 Resolution No.: 05-0055

Adopted: APR 14 2005

9 Attest:

MARY JUNG
Secretary

2

Appendix A

APPX X A-1
SCHEDULING CALENDAR
(THIRD PERIOD)

		Preschedule Day**	Active Day
* 2 days before Preschedule Day	* 1 day before Preschedule Day	F	M
2 days before Preschedule Day	1 day before Preschedule Day	M	Tu
2 days before Preschedule Day	1 day before Preschedule Day	Tu	W
2 days before Preschedule Day	1 day before Preschedule Day	W	Th
2 days before Preschedule Day	1 day before Preschedule Day	Th	F
2 days before Preschedule Day	1 day before Preschedule Day	Th	Sa
2 days before Preschedule Day	1 day before Preschedule Day	F	Su
CCSF → TID 2:30 PM: Base Active Day Schedule Notice of Ramping Headroom and Spinning Reserve Headroom Notice and Offer of Available Excess Energy	TID → CCSF 11:00 AM: Adjusted Base Active Schedule -- or -- Notice of Ramping Schedule Election and -- and -- Base Active Day Ramping Schedule -- and -- Available Excess Energy Schedule	CCSF → Scheduling Representative 10:30 AM: Final Schedule	
	CCSF → TID 12:00 PM: Confirm or Reject: Adjusted Base Active Day Schedule -- or -- Base Active Day Ramping Schedule	CCSF → TID 11:00 AM: Final Schedule with confirmation of Turlock's components	
	CCSF → TID 1:30 PM: Additional Available Excess Energy Schedule***		
	TID → CCSF 2:30 PM, or within 2 hours of receipt of Additional Available Excess Energy Schedule, if earlier: Accept or reject Additional Available Excess Energy Schedule.		
	CCSF → TID 3:00 PM: Confirm or Reject Available Excess Energy Schedule		

* Reference is to a Business Day.

** Typical Preschedule Days are illustrated. See Section 11.2.3 of the Agreement.

*** Applicable only through December 31, 2007.

APPE X A-2
SCHEDULING CALENDAR
(SECOND PERIOD)

		Preschedule Day**	Active Day
* 2 days before Preschedule Day	* 1 day before Preschedule Day	F	M
2 days before Preschedule Day	1 day before Preschedule Day	M	Tu
2 days before Preschedule Day	1 day before Preschedule Day	Tu	W
2 days before Preschedule Day	1 day before Preschedule Day	W	Th
2 days before Preschedule Day	1 day before Preschedule Day	Th	F
2 days before Preschedule Day	1 day before Preschedule Day	Th	Sa
2 days before Preschedule Day	1 day before Preschedule Day	F	Su
CCSF → TID 2:30 PM: Base Firm Active Day Schedule Notice of Ramping Headroom and Spinning Reserve Headroom Notice and Offer of Available Excess Energy	TID → CCSF 11:00 AM: Notice of Ramping Schedule Election -- and -- Base Firm Active Day Ramping Schedule -- and -- Available Excess Energy Schedule	CCSF → Scheduling Representative 10:30 AM: Final Schedule	
	CCSF → TID 12:00 PM: Confirm or Reject Base Firm Active Day Ramping Schedule	CCSF → TID 11:00 AM: Final Schedule with confirmation of Turlock's components	
	CCSF → TID 1:30 PM: Additional Available Excess Energy Schedule		
	TID → CCSF 2:30 PM, or within 2 hours of receipt of Additional Available Excess Energy Schedule, if earlier: Accept or reject Additional Available Excess Energy Schedule		
	CCSF → TID 3:00 PM: Confirm or Reject Available Excess Energy Schedule		

* Reference is to a Business Day.

** Typical Preschedule Days are illustrated. See Section 11.2.3 of the Agreement.

3

Appendix B

APPENDIX B

FIRST PERIOD AND SECOND PERIOD
SALES, PURCHASES, AND SCHEDULING

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1... DEFINED TERMS

Whenever used in this Appendix B, terms initially capitalized shall have the meanings set forth below and if not defined herein shall have the meanings ascribed to them in Section 4 of the Agreement. In all cases the singular of a term shall include the plural and the plural shall include the singular.

1.1 Base Firm Active Day Schedule: A schedule for delivery of Firm Class 1 Energy on an Active Day determined by reference to the values for Base On-Peak Demand, Base Off-Peak Demand, Base On-Peak Energy and Base Off-Peak Energy set forth at Table B-1 applicable to the month and year of the Second Period in which the determination is to be made.

1.2 Base Firm Active Day Ramping Schedule: A Ramping Schedule submitted by Turlock for an Active Day pursuant to Section 5.1 hereof.

1.3 Final Base Firm Active Day Schedule: The Base Firm Active Day Ramping Schedule if confirmed by City pursuant to Section 4.3 (b) hereof and if not so confirmed, then the Base Firm Active Day Schedule.

1 2. FIRST PERIOD SALES AND PURCHASES

2
3 2.1. Class 1 Energy Supplied

4
5 The Parties acknowledge and agree that during the
6 First Period City supplied and delivered the following amounts
7 of Class 1 Energy to Turlock:
8

Month and Days (2004)	Quantity
February 14-29	4,905,750 KWh
March 1-31	10,187,400 KWh
April 1-30	10,488,000 KWh
May 1-31	13,800,800 KWh
June 1-30	17,097,600 KWh

9
10
11 2.2. Adjustments to Class 1 Energy Supplied

12
13 The Parties further acknowledge and agree that they
14 have reconciled to their mutual satisfaction any disputes or
15 differences between them relating to Turlock's estimate of and
16 subsequently reported use of Class 1 Energy and City's estimate
17 of and subsequently supplied amounts of Class 1 Energy during
18 the First Period, and that as a result of such reconciliation:
19

20 (a) Turlock agreed to and returned to City
21 the amount of 489,600 KWh with respect to the over delivery of
22 Class 1 Energy that occurred in July 2004 by reducing its Firm
23 Class 1 Energy for the second month of the Second Period (August
24 2004) by that amount;

1
2 (b) City agreed to and supplied Turlock
3 with the additional amount of 1,098,200 KWh with respect to the
4 under delivery of Class 1 Energy that occurred in May 2004 by
5 increasing Turlock's Firm Class 1 Energy in the first month of
6 the Second Period (July 2004) by that amount;

7
8 (c) Turlock agreed to and paid City a Class
9 1 Energy Rate of \$0.01799 for Class 1 Energy delivered; and

10
11 (d) The foregoing rate for energy shall be
12 accounted for, adjusted, and reconciled by City in determining
13 the Class 1 Energy Rate in the manner provided in Appendix D of
14 the Agreement.

15
16 2.3 First Period Acknowledgement

17
18 The Parties acknowledge and agree that with respect
19 to the First Period, the foregoing fully satisfies and
20 discharges any obligation of City to supply or deliver or any
21 right or obligation of Turlock to request and purchase Class 1
22 Energy under Section 9 (1) of the Raker Act and any right or
23 obligation of City to receive payments for service in the First
24 Period other than through reconciliation in accordance with the
25 procedures set forth in Appendix D.

26
27 3. SECOND PERIOD SALES, PURCHASES AND SCHEDULING

28
29 3.1 The sale, purchase, scheduling and delivery of Firm
30 Class 1 Energy, Available Excess Energy, Additional Available
31 Excess Energy, Spinning Reserve, and Spinning Reserve Energy

1 during the Second Period shall be made under the terms and
2 conditions set forth below.

3

4 3.2 City shall supply from the Project (or from purchases
5 it makes from third parties) and shall schedule and deliver such
6 Firm Class 1 Energy to Turlock in the manner provided in Section
7 4 hereof, and Turlock shall purchase such Firm Class 1 Energy at
8 the rates and charges set forth in Section 16 of the Agreement.

9

10 3.4 City shall provide reserves and services to support
11 Turlock's Firm Class 1 Energy and Turlock shall pay for such
12 reserves and services in accordance with Section 16 of the
13 Agreement.

14

15 3.5 City may offer to make Spinning Reserve available to
16 Turlock and may offer to supply and deliver Spinning Reserve
17 Energy to Turlock and, in either case, shall do so at such times
18 and on the terms and conditions set forth in Section 8 of the
19 Agreement and Turlock shall accept Spinning Reserve Energy at
20 the Points of Delivery and shall return Spinning Reserve Energy
21 to City within the time and in the manner provided for in
22 Section 8.3 of the Agreement.

23

24 3.6 City may offer to sell and deliver Available Excess
25 Energy and Additional Available Excess Energy to Turlock and
26 shall do so at such times and on the terms and conditions set
27 forth in Section 4 hereof, and Turlock purchase such Available
28 Excess Energy and such Additional Available Excess Energy as
29 delivered to it at the rates provided therefor in Section 16 of
30 the Agreement.

31

1 3.7 All energy to be sold to Turlock during the Second
2 Period shall be scheduled in accordance with Section 4 hereof
3 and energy so scheduled shall be delivered by City to Turlock
4 and shall be purchased and accepted by Turlock at the Points of
5 Delivery.

6
7 3.8 The Parties acknowledge and agree that with respect
8 to the Second Period (a) City's commitment to supply Firm Class
9 1 Energy to Turlock in the amounts and on the terms hereinabove
10 provided satisfies and discharges any obligation of City to
11 supply and deliver, and any right of Turlock to request and
12 purchase, Class 1 Energy, and (b) there shall be no Overage
13 Energy or Shortfall Energy.

14
15 4. SCHEDULING OF ENERGY DURING THE SECOND PERIOD

16 4.1 Ten (10) business days prior to the beginning of
17 a month:

18
19 (a) City shall provide Turlock with City's
20 preliminary estimates of Available Excess Energy in the
21 half-hours of the following month; and

22
23 (b) Turlock shall provide City with a report,
24 which shall be provided in writing and, if Turlock finds it
25 practicable, also shall be provided in a format capable of
26 being imported electronically into a spreadsheet format, of
27 its meter readings of Qualified Energy for the preceding
28 month, together with copies of the workpapers and other
29 supporting documentation utilized by Turlock in calculating

1 such Qualified Energy and, promptly thereafter corrections
2 to such meter readings, if any.

3

4 4.2 Two (2) business days prior to the Preschedule
5 Day for an Active Day and by no later than the time
6 provided therefor in the Scheduling Calendar, City shall
7 provide Turlock with:

8

9 (a) a Base Firm Active Day Schedule; and

10

11 (b) notice of City's determination of the
12 availability of Ramping Headroom and Spinning Reserve
13 Headroom; and

14

15 (c) City's determination of and offer to sell
16 Available Excess Energy to Turlock in each half-hour of an
17 Active Day.

18

19 4.3 One (1) business day prior to the Preschedule
20 Day for an Active Day and by no later than the time
21 provided therefor in the Scheduling Calendar, Turlock:

22

23 (a) may elect to submit a Base Firm Active
24 Day Ramping Schedule if City has notified Turlock that
25 Ramping Headroom is available; and

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(b) shall accept or reject City's offer of Available Excess Energy in whole or in part by providing City an Available Excess Energy Schedule, provided, however, that if Turlock does not timely submit such a Schedule it shall be deemed to have rejected City's offer of such Available Excess Energy.

4.4 City shall notify Turlock of City's confirmation or rejection of Turlock's Base Firm Active Day Ramping Schedule and Turlock's Available Excess Energy Schedule on the same day and by no later than the time provided therefor in the Scheduling Calendar; and

(a) if confirmed by City, the Firm Class 1 Energy set forth on Base Firm Active Day Ramping Schedule shall be the amount of Class 1 Energy that City shall schedule to sell and deliver to the Points of Delivery and that Turlock shall schedule to accept and purchase at the Points of Delivery on an Active Day; and

(b) if confirmed by City, the Available Excess Energy on the Available Excess Energy Schedule submitted by Turlock shall be the amount of Available Excess Energy that City shall sell and deliver to the Points of Delivery and that Turlock shall schedule to accept and purchase at the Points of Delivery on an Active Day; or

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(c) if Turlock's Base Firm Active Day Ramping Schedule is rejected by City, (i) City shall promptly provide Turlock the reason in writing that such schedule does not conform to the provisions herein, and (ii) the Firm Class 1 Energy as set forth on City's Base Firm Active Day Schedule shall be the amount of Class 1 Energy that City shall schedule to sell and deliver and that Turlock shall schedule to accept and purchase at the Points of Delivery on an Active Day; or

(d) if Turlock's Available Excess Energy Schedule is rejected by City, City shall promptly provide Turlock the reasons therefor in writing that such schedule does not conform to the provisions herein; and

(e) if City does not confirm or reject each such schedules within the time provided therefor in the Scheduling Calendar, the City shall be deemed to have accepted such schedules.

4.5 City shall offer to sell and deliver Additional Available Excess Energy to Turlock on an Active Day by providing Turlock with notice, by means of a recorded telephone call, on or before the close of business that is one (1) business day before a Preschedule Day and by the time provided therefor in the Scheduling Calendar, of the amount such Additional Available Excess Energy that has

1 become available for sale in each half-hour of an Active
2 Day.

3

4 4.6 Turlock may accept, in whole and not in part,
5 City's offer of Additional Available Excess Energy by
6 providing City with notice, by means of a recorded
7 telephone call, of its acceptance of such offer by no later
8 than the time provided therefor in the Scheduling Calendar,
9 or within two (2) hours of receipt of such offer from City,
10 whichever is earlier.

11

12 5. Ramping Schedule Elections and Criteria

13

14 5.1 Turlock may submit a Base Firm Active Day Ramping
15 Schedule for an Active Day if:

16 (a) City has notified Turlock that Ramping
17 Headroom is available on such Active Day; and

18 (b) Turlock notifies City of the Ramping
19 election it has made pursuant to Section 5.2 hereof and its
20 Base Firm Active Day Ramping Schedule meets the criteria
21 set forth in Section 5.3 hereof.

22

23 5.2 Turlock may elect to Ramp based on Ramping
24 Schedule A, Ramping Schedule B, or Ramping Schedule C
25 criteria as set forth in Section 5.3 hereof and its
26 election, once made, shall be binding on it for each Active
27 Day of a month in which it is permitted to submit a Base
28 Firm Active Day Ramping Schedule.

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5.3 Turlock may Ramp a Base Firm Active Day Schedule by electing to adjust such Schedule in accordance with:

(a) Section 11.4.4 of the Agreement, if Turlock elects to Ramp using Ramping Schedule A;

(b) Section 11.4.5 of the Agreement, if Turlock elects to Ramp using Ramping Schedule B; or

(c) Section 11.4.6 of the Agreement, if Turlock elects to Ramp using Ramping Schedule C.

5.4 Scheduling Calendar and Protocols

The provisions of Section 11.2 of the Agreement are incorporated herein by reference.

5.5 Permitted Deviations and Authorized Schedulers

The provisions of Section 11.3 of the Agreement are incorporated herein by reference.

5.6 Interruptions of Scheduled Deliveries

The provisions of Section 11.7 of the Agreement applicable to the Second Period are incorporated herein by reference.

1 6. FURTHER ACKNOWLEDGMENTS WITH RESPECT TO SECOND PERIOD

2
3 6.1 The Parties acknowledge and agree that for the period
4 commencing at 0000 hours on July 1, 2004 and ending on 2400
5 hours of the Execution Date that all sales, purchases,
6 scheduling and delivery of Firm Class 1 Energy, Available Excess
7 Energy, Additional Available Excess Energy, Spinning Reserve,
8 and Spinning Reserve Energy that occurred between them were
9 conducted in accordance with their respective rights and
10 obligations and were in compliance with the terms and conditions
11 hereinabove set forth.
12

13 6.2 The Parties further acknowledge and agree that they
14 have accounted for, settled and resolved to their mutual
15 satisfaction all transactions between them under the terms of
16 that certain Letter Agreement Regarding Purchase and Sale of
17 Firm Energy During the Months of July through December 2004 or
18 Implementation of Amended and Restated LTPSA dated September 28,
19 2004, as amended on December 15, 2004, and as further amended on
20 February 24, 2005, (herein the "Letter Agreement"), and that
21 with respect thereto:
22

23 (a) during the period from July 1, 2004 through
24 October 2, 2004, Turlock purchased energy and that in connection
25 with such purchases City agreed to reimburse Turlock as follows:
26
27
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1

Period (2004)	Energy (MWh)	Credit (Dollars)
July	11,576.20	547,171.27
August	13,659.95	625,393.76
September 1 through October 2	15,490.10	565,037.87
Period Total	40,726.25	1,737,602.90

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(b) during the period from October 3, 2004 through February 28, 2005, City scheduled, supplied and delivered and Turlock agreed to purchase, scheduled and accepted delivery of the following amounts of Firm Class 1 Energy, Available Excess Energy and Additional Available Excess Energy for which City has billed Turlock the following amounts:

Period	Firm Class 1 Energy (MWh)	Total Excess Energy (MWh)	Total Amount Billed (Dollars)
October 3 through October 31, 2004	11,820.00	0	\$182,855.40
November 2004	10,400.00	0	\$160,888.00
December 2004	8,856.00	0	\$137,002.32
January 2005	9,044.90	6,062.10	\$326,319.60
February 2005	8,744.00	26,004.35	\$980,157.49

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(c) during the month of January 2005, and as a result of a forced outage at the Project on January 27, 2005, the Parties agreed that an additional 107.10 MWh of energy should

1 have been delivered to Turlock and that in connection therewith
2 and in satisfaction thereof, the City and Turlock agree that
3 City shall reimburse Turlock in the amount of \$4,017.32; and
4

5 (d) the total amount to be reimbursed by City to
6 Turlock for the period from July 1, 2004 through January 31,
7 2005 is \$1,741,620.22; and
8

9 (e) City shall pay Turlock, in immediately available
10 funds and by wire transfer or otherwise, the amount of
11 \$1,741,620.22, within thirty (30) days of the Execution Date.
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TABLE B-1

FIRM CLASS 1 ENERGY

	A	B	C	D	E	F
Year	Month	Quantity (MWh)	Maximum Base On Peak Demand (MW)	Maximum Base On Peak Energy (MWh)	Maximum Base Off Peak Demand (MW)	Maximum Base Off Peak Energy (MWh)
2004	July	18,472	31	12,896	17	5,576
	August	17,312	29	12,064	16	5,248
	September	15,600	27	10,800	15	4,800
	October	12,684	21	8,736	12	3,948
	November	10,400	18	7,200	10	3,200
	December	8,864	15	6,240	8	2,624
2005	January	9,152	16	6,400	8	2,752
	February	8,736	16	6,144	9	2,592
	March	10,464	17	7,344	10	3,120
	April	11,653	20	8,320	11	3,333
	May	14,528	26	10,400	12	4,128
	June	16,928	29	12,064	16	4,864
	July	18,304	32	12,800	16	5,504
	August	16,656	27	11,664	16	4,992
	September	15,600	27	10,800	15	4,800
	October	12,684	21	8,736	12	3,948
	November	10,400	18	7,200	10	3,200
	December	8,864	15	6,240	8	2,624

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Appendix C

SCHEDULE C-2

EXAMPLE OF TRUE-UP ENERGY SCHEDULE
(OVERAGE)

1		A	B	C	D	E	F	G	H	I	J	K	L	
2	Half Hour	Project Energy (scheduled)	City Municipal Energy (scheduled)	Available Energy	Modesto's Class 1 Energy (estimated)	Allocated Energy	Requested Half-Hour Energy	Scheduled Class 1 Energy	Scheduled Shortfall Energy	Scheduled Overage Energy	Interrupted Class 1 Energy	Rejected Class 1 Energy	Delivered Class 1 Energy	
3		(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	
4				[(A - B) x .98]		34.08%								
5														
6														
7	1	181.0	120.0	59.8	20.0	20.4	10.0	10.0	2.0	0.0	0.0	0.0	12.0	
8	2	165.0	120.0	44.1	20.0	15.0	20.0	20.0	0.0	0.0	2.0	0.0	18.0	
9	3	181.0	155.0	25.5	20.0	8.7	10.0	5.5	0.0	2.0	0.0	0.0	3.5	
10	4	181.0	120.0	59.8	20.0	20.4	10.0	10.0	0.0	2.0	0.0	0.0	8.0	
11														
12						RMC	7200							
13						HH	1440							
14						RHHE	10.00							
15														
16		A	B	C	D	E	F	G	H	I	J	K	L	M
17	Half Hour	Project Energy (scheduled)	City Municipal Energy (scheduled)	Available Energy	Modesto's Class 1 Energy (estimated)	Allocated Energy	Qualified Half-Hour Energy	Adjusted Scheduled Class 1 Energy	Scheduled Shortfall Energy	Scheduled Overage Energy	Interrupted Class 1 Energy	Rejected Class 1 Energy	Adjusted Delivered Class 1 Energy	True-up Energy
18		(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)	(MW)
19				[(A - B) x .98]		34.08%								
20														
21														
22	1	181.0	120.0	59.8	20.0	20.4	9.0	9.0	2.0	0.0	0.0	0.0	11.0	1.0
23	2	165.0	120.0	44.1	20.0	15.0	20.0	20.0	0.0	0.0	2.0	0.0	18.0	0.0
24	3	181.0	155.0	25.5	20.0	8.7	9.0	5.5	0.0	2.0	0.0	0.0	3.5	0.0
25	4	181.0	120.0	59.8	20.0	20.4	9.0	9.0	0.0	2.0	0.0	0.0	7.0	1.0
26														
27						QE	6480							
28						HH	1440							
29						QHHE	9.00							

5

Appendix D

APPENDIX D

CLASS 1 ENERGY RATE AND METHODOLOGY

1. Intent and Purpose. The intent and purpose of this Appendix D is (i) to determine the City's costs of developing, maintaining, generating, transmitting and delivering energy from the Hetch Hetchy Project ("Project") to Turlock, for qualifying and beneficial use by Turlock, under Section 9 (I) of the Raker Act (such energy, the "Class 1 Energy"); and (ii) to establish a rate (the "Class 1 Energy Rate") to recover only those costs without duplication in accordance with the methodology herein provided.

2. Class 1 Energy Rate. City shall recover the costs of Class 1 Energy each month by charging Turlock (i) the Provisional Class 1 Rate multiplied by a factor of 1.02 to account for line losses associated with delivery of such Energy by City to Turlock at the Points of Delivery, and (ii) the Reconciliation Amount.

3. Definitions. Whenever used herein, capitalized terms shall have the respective meanings ascribed to them below. The singular of a capitalized term shall include the plural and the plural shall include the singular. Unless otherwise defined herein, capitalized terms shall have the meanings ascribed to them in Section 4 of the Agreement.

3.1 "Activity Code" shall mean the element of the classification structure used in City's cost ledgers that identifies a particular item of expense and how it is shown in the expense reports prepared by City.

3.2 "Agreement" shall mean the Amended and Restated Long Term Power Sales Agreement.

3.3 "Allocated Cost of Power" shall mean the sum of the Power Related Costs and fifty-five (55) per cent of the Joint Related Costs.

3.4 "Audit" shall mean the formal examination, conducted by City, of the financial accounts and statements of the Project (including the work papers used in the examination and preparation of such statements), the results of which are used by City to determine the Project Costs.

3.5 "Average Annual Energy Generation" shall mean the average of recorded Project generation during the five (5) most recently audited Fiscal Years.

3.6 "Capital Outlays" shall mean expenditures recorded during a Fiscal Year for items that (i) cost in excess of five thousand dollars (\$5000); (ii) have an expected service life of three (3) or more years; and (iii) are necessary for the operation and maintenance of the Project.

3.7 "Debt Service" shall mean the principal and interest payments recorded during a Fiscal Year on borrowings for Capital Outlays in respect of Project Costs.

3.8 "Escalation Factor" shall mean a two (2) year extrapolation of a least squares linear curve fit to the most recent ten (10) year history of recorded Expenses less purchased power, wheeling and transmission line rental costs.

3.9 "Expenses" shall mean those costs (other than Capital Outlays and Debt Service, and excluding depreciation) recorded during a Fiscal Year to operate and maintain the Project, including those relating to (i) Hydraulic Power Generation, as shown in Activity Code 230; (ii) Transmission, excluding line rentals, as shown in Activity Code 220; (iii) Administrative and General, as shown in Activity Code 240; (iv) Fee to the U.S. Government, as shown in Activity Code 240, sub object 05241; (v) Taxes, as shown in Activity Code 260; and (vi) Adjustments for Non-operating Income and Expenses, as shown in Activity Codes 320 and 330.

3.10 "Fiscal Year" shall mean the period commencing on July 1 of any year and ending on June 30 of the following year.

3.11 "Hourly Allocated Cost of Power (Demand)" shall have the meaning ascribed thereto in Section 7.2 (i).

3.12 "Hourly Allocated Cost of Power (Energy)" shall have the meaning ascribed thereto in Section 7.2 (ii).

3.13 "Joint Related Costs" shall mean the Non-Financed Capital Outlays, Debt Service, and Expenses that are functionally related to both the water supply and power generating and transmission functions of the Project.

3.14 "Non-Financed Capital Outlays" are Capital Outlays for which there are no borrowings.

3.15 "Power Related Costs" shall mean those Non-Financed Capital Outlays, Debt Service, and Expenses which (i) relate exclusively to the power generating and transmission functions of the Project; and (ii) are recoverable by the City under Section 9 (l) of the Raker Act.

3.16 "Project Costs" shall mean the sum of Joint Related Costs, Water Related Costs and Power Related Costs.

3.17 "Provisional Class 1 Rate" shall mean the energy rate, expressed in cents per kilowatthours ("kWh"), provided for in Sections 6 and 7 hereof.

3.18 "Revised Provisional Class 1 Rate" shall mean the energy rate, expressed in cents per kilowatthours ("kWh"), provided for in Section 8.1 hereof.

3.19 "Reconciliation Amount" shall mean one-twelfth of the amount determined pursuant to Section 8.3 hereof, except as provided in Section 9 hereof.

3.20 "Water Related Costs" shall include those Non-Financed Capital Outlays, Debt Service, and Expenses that relate exclusively to the water supply and delivery functions of the Project.

4. Annual Audit. City shall cause an Audit of Project Costs to be performed for each Fiscal Year in a timely manner and under the direction of the Controller of the City and County of San Francisco.

5. Annual Notice. Beginning May 1, 2005, and on each May 1 of each Year thereafter during the Term, City shall notify Turlock in writing of the Provisional Class 1 Rate and the Reconciliation Amount to be charged Turlock monthly during the twelve (12) month period beginning on July 1 of that Year, provided, however, that the notice to be delivered by City on May 1, 2015 shall set forth the Provisional Class 1 Rate to be charged Turlock during the six (6) month period beginning on July 1 and ending December 31 of that Year. City shall provide Turlock with copies of work papers and other documentation in support of its calculation of the Provisional Class 1 Rate and the Reconciliation Amount.

6. Provisional Class 1 Rate. The Parties agree that the Provisional Class 1 Rate to be charged Turlock during the period from July 1, 2004 through June 30, 2005 shall be \$0.01517 per kWh. Thereafter, the Provisional Class 1 Rate to be charged Turlock shall be the rate determined by City in accordance with Section 7 hereof and set forth in the annual notice delivered by City to Turlock under Section 5 hereof.

7. Method for Determining Provisional Class 1 Rate. The Provisional Class 1 Rate shall be determined by City in accordance with this Section 7.

7.1 City shall first determine a reasonable estimate of the Allocated Cost of Power by estimating (i) the Expenses in connection therewith, as the product of the Expenses derived from the most recent Audit and the Escalation Factor; (ii) the Non-Financed Capital Outlays in connection therewith, as the average of the Non-Financed Capital Outlays derived from the five (5) most recent Audits; and (iii) the Debt Service in connection with Capital Outlays, as the amount thereof derived from the most recent Audit; and

7.2 City shall then (i) allocate a portion of such estimated Allocated Cost of Power to the demand component, using for this purpose the methodology and allocation percentage(s) described in the notes on Table D-1 to arrive at the Allocated Cost of Power (Demand) and shall convert the Allocated Cost of Power (Demand) into an hourly rate in the manner shown on Table D-1 to arrive at the Hourly Allocated Cost of Power (Demand); (ii) allocate a portion of such estimated Allocated Cost of Power to the energy component, using for this purpose the methodology and allocation percentage(s)

described in the notes on Table D-1 to arrive at the Hourly Allocated Cost of Power (Energy), and (iii) shall add (a) the Hourly Allocated Cost of Power (Demand) divided by .80, to (b) the Hourly Allocated Cost of Power (Energy), to arrive at the Provisional Class 1 Rate.

8. Method for Determining Reconciliation Amount. The Parties understand and agree that Reconciliation Amount(s) will be determined and that payment in respect thereof will be due in monthly amounts during the Fiscal Year following determination, except as provided otherwise in Section 9 hereof. Except as provided in Section 9 hereof, City shall determine the Reconciliation Amount as follows:

8.1 City shall first determine a Revised Provisional Class 1 Rate by:

(i) taking the Allocated Cost of Power derived from the most recent Audit and allocating a portion of such Allocated Cost of Power to the demand component, using for this purpose the methodology and allocation percentage(s) described in the notes on Table D-7 to arrive at the revised Allocated Cost of Power (Demand), and converting the revised Allocated Cost of Power (Demand) into an hourly rate in the manner shown on Table D-7 to arrive at the revised Hourly Allocated Cost of Power (Demand); and

(ii) taking the Allocated Cost of Power derived from the most recent Audit and allocating a portion of such Allocated Cost of Power to the energy component, using for this purpose the methodology and allocation percentages described in the notes on Table D-7, to arrive at the revised Allocated Cost of Power (Energy) and by dividing the revised Allocated Cost of Power (Energy) by the actual amount of energy generated by the Project during the Fiscal Year to which such Audit relates to arrive at the revised Hourly Allocated Cost of Power (Energy); and

(iii) adding (A) the revised Hourly Allocated Cost of Power (Demand) divided by .80, to (B) the revised Hourly Allocated Cost of Power (Energy), to arrive at the Revised Provisional Class 1 Rate.

8.2 City shall determine the revenues it would have received from Turlock during such Fiscal Year if City had charged Turlock the Revised Provisional Class 1 Rate, multiplied by a factor of 1.02 to account for line losses associated with delivery of Class 1 Energy by City to Turlock at the Points of Delivery; and

8.3 City shall calculate the difference between (i) the revenue determined in Section 8.2 hereof, and (ii) that portion of the revenue received from charges to Turlock at the Provisional Class 1 Rate (or Rates) that were in effect during the same Fiscal Year, or portion thereof.

9. Payment of Final Reconciliation Amount(s). The Parties understand and agree that Reconciliation Amount(s) will be determined and that payment in respect thereof will be due during periods that will extend beyond the Term of this Agreement. Therefore, the Parties agree that:

9.1 For any period beyond the Term of this Agreement, the calculation to be made in Section 8.3 shall be made with reference to that portion of the revenue, if any, City actually received from the sale and delivery of Class 1 Energy to Turlock during the applicable Fiscal Year, or portion thereof;

9.2 The obligation to pay such Reconciliation Amount(s) shall survive termination of the Agreement; and

9.3 The payment of such Reconciliation Amount(s) shall be (i) made in a lump sum, and (ii) due within thirty (30) days of the date City delivers to Turlock notice that City has concluded its audit of Project Costs for the applicable Fiscal Year and together with such notice has provided Turlock with copies of work papers and other documentation in support of its calculation of such Reconciliation Amount(s).

10. Tables.

10.1 The Parties acknowledge and agree that the Tables attached to this Appendix D accurately describe the methodologies and allocation percentages and the calculations to be performed based thereon that will be used by City to determine the Provisional Class 1 Rate (Tables D-1 through D-6); the Revised Provisional Class 1 Rate (Table D-7) and the Reconciliation Amount (Table D-8) hereunder; and

10.2 The Parties further acknowledge and agree that the numeric values contained in Tables D-1 through Table D-8 are derived from the Audit conducted by City for the Fiscal Year that commenced on July 1, 2002 and ended on June 30, 2003, and based thereon show City's determination of the Provisional Class 1 Rate (Tables D-1 through D-6), the Revised Provisional Rate (Table D-7) and the Reconciliation Amount (Table D-8) for the period commencing on July 1, 2004 and ending on June 30, 2005. The Parties further acknowledge and agree that the numeric values in Tables D-1 through Table D-8 will change annually thereafter.

HETCH HETCHY WATER AND POWER COST OF POWER

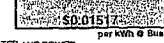
Provisional Class 1 Rate

TABLE 1

EXPENSE CLASSIFICATION	NOTES	BASED ON RECORDED FY 2002-03 AUDIT DATA				POWER-ALL CUSTOMERS				FY 04/05			PROJECTED COST OF POWER		FY 04/05 COP
		TOTAL	POWER	WATER	JOINT	NOTES	TOTAL	DEMAND	ENERGY	EXCLUDED	NOTES	TOTAL	DEMAND	ENERGY	
OPERATING															
HYDRAULIC POWER GENERATION		2,568,301	2,568,301	0	0	3	2,568,301	1,332,948	1,235,353	0	3,6	2,340,541	1,474,241	1,266,500	
PURCHASED POWER	1	32,561,682	32,561,682	0	0	3	32,561,682	0	0	0	3,6	0	0	0	
WHEELING CHARGES		10,556,958	10,556,958	0	0		10,556,958	0	0	0		0	0	0	
TRANSMISSION															
LINE RENTAL		0	0	0	0		0	0	0	0		0	0	0	
REMANINDER		435,166	435	101,328	333,185	4	658	333	262	0	4,5	724	435	200	
WATER QUALITY	1	0	216,252	176,833	(39,385)	4	216,252	120,751	66,501	0	4,8	238,175	143,505	95,670	
ADMIN. & GENERAL															
COWCAP	2	457,155	0	0	457,155		0	0	0	0	4,5	299,097	179,458	119,638	
SFPUC	2	3,638,368	0	0	3,638,368	4	276,431	162,259	106,172	0	4,5	2,223,536	1,234,121	889,414	
FEE TO US GOVT	2	4,077,873	127,529	4,064,267	855,733	5	127,829	63,765	63,765	0	5,9	141,048	70,524	70,524	
FEES, LICENSES & PERMITS	1	2,117,544	176,334	35,000	1,906,210	5	377,181	193,591	183,591	0	5,8	417,163	226,392	236,562	
REMANINDER	1	1	1,048,416	897,735	(1,908,210)	5	1,048,416	224,206	234,206	0	5,6	1,159,549	578,774	578,774	
	1	11,229,632	5,010,483	362,941	5,897,408	4	5,010,483	3,006,220	2,004,163	0	4,8	5,541,594	3,224,857	2,216,897	
		0	3,639,074	2,049,834	(5,307,408)	4	3,236,074	1,746,944	1,295,530	0	4,5	3,361,310	2,149,785	1,634,524	
MAINTENANCE															
HYDRAULIC POWER GENERATION	1	2,219,153	632,990	0	1,586,167	3	632,956	328,559	304,457	0	3,6	700,060	363,331	326,729	
TRANSMISSION	1	2,443,421	1,063,159	731,357	848,905	3	872,332	452,771	419,521	0	3,6	924,899	500,765	484,100	
ADMIN. & GENERAL	1	0	358,828	292,032	(64,560)	4	358,828	214,167	142,771	0	4,8	394,782	235,558	157,635	
OTHER TAXES	1	398,024	0	0	398,024	4	256,519	153,911	102,608	0	4,8	283,710	170,239	119,484	
DEBT SERVICE			218,919	179,111	(39,808)	5	218,919	109,457	109,457	0	5,7	218,914	109,457	109,457	
CAPITAL OUTLAYS											5,9	4,217,759	2,108,879	2,108,879	
SUBTOTAL		78,595,602					53,963,907					27,349,423	15,349,764	11,899,859	
LESS NON-OPERATING INCOME		98,985	53,001	43,364	0	5	53,001	28,501	28,501	0	5,6,7	58,620	29,310	29,310	
TOTAL DETERMINATION OF RATE FOR BILLING DETERMINANTS		78,496,617					20,722,266					27,190,802	15,320,454	11,870,549	
DEMAND-KWH, ENERGY-MWH												3,130,600		1,759,491	
CHARGES															
DEMAND-SKOW/MG											10		4.81		
ENERGY-MILLS/KWH											13			6.76	
TOTAL											12,19		0.00947834	0.00978	

NOTES TO TABLE 1

- Joint cost allocated 65% to power and 35% to water
- Allocation of joint cost per Table D-2
- Allocation of power cost between demand and energy per Table D-3
- Allocate 95% to demand and 5% to energy
- Allocate 50% to demand and 50% to energy
- Escalation Factor of 1.108 per Table D-4 applied to Recorded FY 02/03 costs
- Carry forward from Recorded FY 02/03 without escalation
- FY 04/05 COP budget per Table D-5
- FY 04/05 COP budget per Table D-6
- Total Demand costs divided by 12-month sum of projected demand (89,000 x 12 = 3,108,000), rounded to two decimal places
- Total Energy costs divided by year average generation as determined on Table D-6
- Demand rate changed to an hourly rate (4.21 (12,190,802) = Hourly Allocated Cost of Power (Demand)
- Energy rate converted to a kWh hourly rate (6.76 (11,870,549) = Hourly Allocated Cost of Power (Energy)
- Hourly Cost of Power (Demand) & Hourly Cost of Power (Energy) and rounded to 5 decimal places
- Total Demand rate multiplied by 1000 = rate of 4.81 per MWh and Energy rate multiplied by 1000 = rate of 6.76 per MWh



HETCH HETCHY WATER AND POWER
FY0405

Modified 09/21/04

HETCH HETCHY WATER AND POWER
 COST OF POWER
 ALLOCATION OF SFPUC AND COWCAP CHARGES
 BASED ON RECORDED FY 2002-03 AUDIT DATA

DESCRIPTION	TOTAL	APPLICABLE HHWPD COSTS	
		POWER	WATER
OPERATING			
HYD. POWER GEN.	2,568,301	2,568,301	0
TRANSMISSION REMAINDER	495,166	216,907	278,259
WATER QUALITY EXPENS ADMIN. & GENERAL	278,794	0	278,794
FEEES TO US GOV'T	4,877,679	504,710	4,372,969
FEEES, LICENSES & PERW	2,117,545	1,224,750	892,795
REMAINDER	11,279,932	8,248,557	3,031,375
MAINTENANCE			
HYD. POWER GEN.	2,219,133	1,505,358	713,775
TRANSMISSION	2,443,426	1,360,057	1,083,369
ADMIN. & GENERAL	4,732,899	2,716,853	2,016,046
TOTAL O & M	31,012,875	18,345,493	12,667,382
% FOR COWCAP + SFPUC CLA	100.00	59.15	40.85
	TOTAL	POWER	WATER
CAPITAL OUTLAYS	12,200,426	3,139,921	9,060,505
TOTAL O&M + CAP.OUT.	43,213,301	21,485,414	21,727,887
% FOR SFPUC CLB	100.00	49.72	50.28

Allocation of FY 2002-03 SFPUC Charges

	% of Total	Total	Power	Water
CLASS A CHARGES	63.50	2,291,631	1,355,500	936,131
CLASS A %		100.00	59.15	40.85
CLASS B CHARGES	36.50	1,317,237	654,930	662,307
CLASS B %		100.00	49.72	50.28
TOTAL	100.00	3,608,868	2,010,430	1,598,438

HETCH HETCHY WATER AND POWER
 COST OF POWER
 ALLOCATION OF HYDRAULIC POWER GENERATION
 EXPENSE TO DEMAND AND ENERGY
 BASED ON RECORDED FY 2002-03 AUDIT DATA

A. HYDRAULIC POWER GENERATION EXPENSE ALLOCATED TO POWER

OPERATING	2,568,301
MAINTENANCE	1,505,358
TOTAL	4,073,659

B. RESERVOIRS, DAMS, ETC., ALLOCATED TO POWER

OPERATING (ACCT.# 8-24541)	613,502
MAINTENANCE (ACCT.# 8-23543) (55% OF ACCT.# 8-1X543)	243,366 243,665
TOTAL	1,100,533

C. ALLOCATION TO DEMAND AND ENERGY

	TOTAL	DEMAND		ENERGY	
		%	\$	%	\$
RESER., DAMS., ETC.	1,100,533	30.00	330,160	70.00	770,373
BALANCE HYD. POWER GEN.(A-B)	2,973,126	60.00	1,783,876	40.00	1,189,250
TOTAL	4,073,659		2,114,036		1,959,623
% OF TOTAL	100.00		51.9		48.1

HETCH HETCHY WATER AND POWER
 PROJECTIONS OF HETCH HETCHY PROJECT O&M COST
 LINEAR LEAST-SQUARES REGRESSION
 10-YEARS RECORDED DATA

FISCAL YEAR	X_i	Y_i (a)	$X_i Y_i$	X_i^2
1993-94	1	21,323,182	21,323,182	1
1994-95	2	20,193,119	40,386,238	4
1995-96	3	20,957,974	62,873,922	9
1996-97	4	28,052,943	112,211,772	16
1997-98	5	36,964,558	184,822,790	25
1998-99	6	33,951,092	203,706,552	36
1999-00	7	40,300,130	282,100,910	49
2000-01	8	40,296,239	322,369,912	64
2001-02	9	34,968,000	314,712,000	81
2002-03	10	35,380,596	353,805,960	100
	55	312,387,833	1,898,313,238	385

$Y_i = a + bX_i$

$$b = \frac{\text{Sum } X_i Y_i - \text{Sum } X_i \text{ Sum } Y_i / n}{\text{Sum } X_i^2 - (\text{Sum } X_i)^2 / n} = \frac{\text{Sum } X_i Y_i - 5.5 \text{ Sum } Y_i}{82.5}$$

$$a = \frac{\text{Sum } Y_i - b \text{ Sum } X_i}{n} = \frac{\text{Sum } Y_i - 55 b}{10}$$

$b = 2,184,002$

$a = 19,226,773$

For $i=10$ $Y_i = 41,066,792$

For $i=12$ $Y_i = 45,434,796$

$$\text{ESCALATION INDEX} = \frac{Y_{12}}{Y_{10}} = \frac{45,434,796}{41,066,792} = 1.106$$

(a) Annual costs excluding Purchased Power, Wheeling Charges and Transmission Line Rental

HETCH HETCHY WATER AND POWER
COST OF POWER

DEBT SERVICE

	ISSUE	TOTAL	WATER	POWER
INTEREST	Joint	\$0	\$0	\$0
	Water	\$0	\$0	\$0
	Power	\$0	\$0	\$0
	TOTAL	\$0	\$0	\$0
REDEMPTION	Joint	\$0	\$0	\$0
	Water	\$0	\$0	\$0
	Power	\$0	\$0	\$0
	TOTAL	\$0	\$0	\$0
	GRAND TOTAL	\$0	\$0	\$0

Recorded FY 02/03
 FY 04/05 COP
 HETCH HETCHY WATER AND POWER

FROM PROJECTED CAPITAL OUTLAYS,
 FISCAL YEARS ENDING JUNE 30
 BY FUNCTIONAL CLASSIFICATION

TABLE 6

PROJECTED CAPITAL OUTLAYS,
 5 YEAR AVERAGE 1998/99 TO 2002/03
 BY FUNCTIONAL CLASSIFICATION

FUNCTIONAL CLASSIFICATIONS	FY98/99 6/99	FY99/00 6/00	FY00/01 6/01	FY01/02 6/02	FY02/03 6/03	Total	5-Year Average
GRAND TOTAL	\$9,631,692	\$13,146,511	\$15,183,416	\$14,237,085	\$25,237,628	\$78,436,332	\$15,687,266
OTHER MUNI PROJECTS	1,966,612	1,538,896	803,653	5,162,295	14,037,202	\$23,498,658	\$4,699,732
PROJECT CAPITAL OUTLAYS	\$7,665,080	\$11,607,615	\$14,379,763	\$9,084,790	\$12,200,426	\$54,937,674	\$10,987,535
POWER	2,698,310	551,697	2,088,654	992,443	725,285	\$7,056,389	\$1,411,278
WATER	1,385,964	3,137,502	7,811,750	2,947,710	7,084,893	\$22,367,819	\$4,473,564
JOINT	3,580,806	7,918,416	4,479,359	5,144,637	4,390,248	\$25,513,466	\$5,102,693
PROJECT CAPITAL OUTLAYS	7,665,080	11,607,615	14,379,763	9,084,790	\$12,200,426	54,937,674	10,987,535

ALLOCATION OF FIVE YEAR AVERAGE

Notes	TOTAL	POWER	WATER	JOINT
	\$10,987,535	\$1,411,278	\$4,473,564	\$5,102,693
	(0)	2,806,481	2,296,212	(5,102,693)
	10,987,535	4,217,759	6,769,776	0

Note to Table D-6,
 1. Joint Costs allocated 55% to Power
 and 45% to Water

HETCH HETCHY WATER AND POWER RECORDED NET GENERATION (kwhr)

POWERHOUSES	6/99	6/00	6/01	6/02	6/03	Total	Average
KIRKWOOD	679,787,812	591,562,525	483,540,558	581,816,688	743,799,350	3,080,506,933	616,101,387
HOLM	950,948,780	723,019,031	560,507,541	721,637,246	732,805,707	3,688,918,305	737,783,661
MOCCASIN	410,386,700	393,907,900	388,880,500	430,012,700	360,035,500	1,983,223,300	396,644,660
MOCCASIN LOWHEAD	9,328,000	6,870,000	6,154,000	4,094,000	3,161,000	29,607,000	5,921,400
TOTAL	2,050,451,292	1,715,359,456	1,439,082,599	1,737,560,634	1,839,801,557	8,782,255,538	1,756,451,108

TURLOCK IRRIGATION DISTRICT FY0203 Adjustment MODIFIED 06/07/04											12 Month Billing Adjustment FY0203		One Time Billing Adjustment FY0203			
MODIFIED 06/07/04			RECONCILIATION AMOUNT		Table D-6						Class 1 Provisional Rates		Class 1 Revised Provisional Rates		Difference	
(1)	(2)	(3)	(4)	(5) *(0)(4)	(6)	(7)	(8)	(9)	(10) *(0)(9)	(11) *(0)(1)	CL 1 ENERGY 0.00627	MODIFIED 06/07/04 0.00888	Difference Balance Corrected and Final	CL 1 DEMAND 4.85	4.34	Difference Balance Corrected and Final
FY0203	Class 1 Provisional Rate	Class 1 Provisional Rate	Total BR PRELIMINARY	Total BR PRELIMINARY Adjusted BR	Class 1 Final Rate	Class 1 Final Rate	Total BR FINAL	0001Adj	Total BR Adjusted	DIFFERENCE Between Corrected and Final BRs	FY0203 Preliminary	TID Final	Difference Balance Corrected and Final	FY0203 Preliminary	TID Final	Difference Balance Corrected and Final
JUL 02	17395000	39223	39223,114.47	\$21,970.39	\$204,694.86	17677000	38699	\$467,933.65	\$21,970.39	\$489,904.04	JUL 02	\$204,372.45	\$277,856.43	\$20,484.02	\$20,484.02	\$3,702.00
AUG	16379000	35182	\$460,325.31	\$21,970.39	\$400,993.79	16154000	35794	\$431,133.85	\$21,970.39	\$453,104.24	AUG	\$215,175.10	\$285,176.00	\$23,894.10	\$23,894.10	\$13,275.00
SEP	16680000	34789	\$467,839.00	\$21,970.39	\$488,907.59	14732000	34940	\$438,468.58	\$21,970.39	\$460,438.97	SEP	\$248,080.16	\$324,292.91	\$24,242.91	\$24,242.91	\$2,145.11
OCT	11965000	25625	\$376,196.28	\$21,970.39	\$354,126.47	12224000	25818	\$350,468.64	\$21,970.39	\$372,439.03	OCT	\$202,708.26	\$262,296.22	\$19,960.13	\$19,960.13	\$2,795.14
NOV	9725000	17489	\$244,835.54	\$21,970.39	\$222,865.15	9781000	17558	\$218,006.00	\$21,970.39	\$239,976.39	NOV	\$144,478.28	\$184,107.54	\$14,771.51	\$14,771.51	\$1,490.57
DEC	8592000	15962	\$773,680.81	\$21,970.39	\$801,551.00	8743000	16043	\$764,517.94	\$21,970.39	\$786,488.33	DEC	\$134,885.98	\$171,187.80	\$13,187.80	\$13,187.80	\$1,994.77
JAN 03	8776000	15488	\$473,264.82	\$21,970.39	\$451,294.43	8770000	15488	\$459,382.38	\$21,970.39	\$481,352.77	JAN 03	\$132,332.00	\$178,262.84	\$13,262.84	\$13,262.84	\$0.00
FEB	8410000	16222	\$728,522.64	\$21,970.39	\$750,503.23	8470000	16222	\$728,091.50	\$21,970.39	\$749,061.89	FEB	\$124,094.80	\$162,735.36	\$15,771.54	\$15,771.54	\$0.00
MAR	10127000	17475	\$706,454.33	\$21,970.39	\$728,424.72	10127000	17475	\$691,261.62	\$21,970.39	\$713,232.01	MAR	\$191,218.05	\$248,473.31	\$18,473.31	\$18,473.31	\$0.00
APR	10274000	15522	\$233,421.72	\$21,970.39	\$211,451.33	10274000	15522	\$222,967.51	\$21,970.39	\$244,937.90	APR	\$168,335.50	\$214,074.47	\$18,200.53	\$18,200.53	\$164.18
MAY	13777000	36408	\$398,872.36	\$21,970.39	\$376,901.97	13777000	36408	\$367,061.17	\$21,970.39	\$389,031.56	MAY	\$288,387.25	\$364,785.16	\$27,812.18	\$27,812.18	\$0.00
JUN	10222000	38847	\$398,297.32	\$21,970.39	\$376,326.93	10222000	38847	\$378,107.82	\$21,970.39	\$399,078.21	JUN	\$202,443.48	\$263,853.16	\$20,160.29	\$20,160.29	\$0.00
16825000	31121	\$2,451,854.10	\$21,970.39	\$2,473,824.49	16847000	31243	\$2,466,981.62	\$21,970.39	\$2,488,951.91	\$21,970.39	\$2,231,288.67	\$245,270.98	\$245,270.98	\$20,822.10	Credit	

All data is from Turlock BRs (preliminary and final)
* The one time adjustments for non D1 power adjustments for FY0203. The one time adjustments is applicable through Feb. 13, 2004.

TID 0203 Adjustment Modified 09/07/04
TID 0203 Adjustment sent to L&M dated 4/22/04

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12 month	\$20,412.58	Credit
FY0203		
Adjustment		

1 TIME ADJUSTMENT	\$20,822.10	Credit
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6

Appendix E

APPENDIX E

MUTUAL RELEASE AGREEMENT

THIS MUTUAL RELEASE AGREEMENT (the "Release"), dated as of April 18, 2005 (the "Effective Date"), is by and between the **CITY AND COUNTY OF SAN FRANCISCO**, a California municipal corporation ("City") and **TURLOCK IRRIGATION DISTRICT**, a California irrigation district ("Turlock ") (City and Turlock are hereinafter referred to individually as a "Party," and collectively as the "Parties").

WITNESSETH:

WHEREAS, City and Turlock previously entered into an agreement for the sale of power entitled **LONG TERM POWER SALES AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND THE TURLOCK IRRIGATION DISTRICT**, which became effective by its terms on April 1, 1988, as subsequently amended and as in effect immediately prior to February 14, 2004 (the "Prior Agreement");

WHEREAS, certain disputes arose between City and Turlock regarding the proper interpretation of certain terms of the Prior Agreement, including those regarding (i) the rights and obligations of the Parties under the Section 25 of the Prior Agreement and the procedures for dispute resolution applicable thereto (the "Protection Clause Dispute"); (ii) the method for determining the quantity of Class 1 Power available to Turlock each month under Section 15 and other provisions of the Prior Agreement (the "Class 1 Dispute"); (iii) the Class 1 demand charges that were invoiced to Turlock for the period February 14 through February 29, 2004 (the "February 2004 Demand Charge Dispute"); and (iv) true-ups for Class 1 rates for the periods July 1, 2001 through June 30, 2002, July 1, 2002 through June 30, 2003, and July 1, 2003 through February 13, 2004 ("Class 1 True-up Dispute");

WHEREAS, in connection with the Protection Clause Dispute, in August 2001, Turlock issued to City a Notice Initiating Dispute Pursuant to Section 23 of the Long Term Power Sales Agreement between the City and County of San Francisco and the Turlock Irrigation District (the "Section 23 Protection Clause Proceeding"), and City (i) issued to Turlock a notice of termination under Section 25 of the Prior Agreement; (ii) filed a complaint in the Superior Court for the County of San Francisco (the "Superior Court") for declaratory and injunctive relief against Turlock ; and (iii) initiated a non-binding arbitration proceeding before the American Arbitration Association ("AAA") against Turlock , in Case No. AAA 71-198-00547-01 (the "AAA Arbitration");

WHEREAS, the issues raised by the City in the AAA arbitration and the Superior Court litigation remain pending in litigation, with the Parties recently completing a non-binding arbitration before three appointed arbitrators (the "Litigation");

WHEREAS, in connection with the Class 1 Dispute, Turlock invoked the provisions of Sections 17 of the Prior Agreement to resolve the Parties' dispute (the "Class 1 Section 17 Proceeding");

WHEREAS, in connection with February 2004 Demand Charge Dispute, Turlock invoked the provisions of Sections 17 of the Prior Agreement to resolve the Parties' dispute (the "Demand Charge Section 17 Proceeding"); and

WHEREAS, in connection with the Class 1 True-up Dispute City has identified the amount to be reimbursed to Turlock to resolve the Parties' dispute (the "Class 1 True-up Reimbursement"); and

WHEREAS, City and Turlock desire to resolve any and all disputes between them and to that end the Parties are entering into this Release and, concurrent herewith, are entering into an amendment and restatement of the Prior Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree to release one another from any and all claims that may be asserted as follows:

1. City's Release. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the execution of this Release, City without reservation or condition, for itself and its assigns, agents, representatives, attorneys, and any other person or entity that could initiate or continue litigation, arbitration or any other proceeding on its behalf, does hereby fully acquit and waive, release and forever discharge Turlock, its directors, officers, employees, agents, attorneys, representatives, successors and assigns, and all persons and entities acting by, through, under or in concert with any of them, from any and all claims, counterclaims, liabilities, suits, demands, causes of action, administrative proceedings, damages, losses, pecuniary losses, costs, expenses (including attorneys' fees), and/or any other obligations of any nature whatsoever, whether known or unknown, in law, equity or otherwise, asserted or as may be asserted by City which City has or may have against, claims to have against or contends it is entitled to or from Turlock arising from or related to the Prior Agreement, the Litigation, the AAA Arbitration, the Section 23 Protection Clause Proceeding, the Class 1 Section 17 Proceeding, the Demand Charge Section 17 Proceeding, and Class 1 True-up Reimbursement including any act or omission, whether negligent or otherwise, taken or not taken, or directed by Turlock against City in connection therewith through and including the Effective Date of this Release, excepting only any claim, cause of action or suit arising from an undertaking or promise contained in this Release.

In connection with the immediately preceding paragraph, City acknowledges that it is familiar with and hereby waives and relinquishes any and all rights and benefits it may have under the laws of any state, similar to and including Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

2. Turlock's Release. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the execution of this Release, Turlock without reservation or condition, for itself and its assigns, agents, representatives, attorneys, and any other person or entity that could initiate or continue litigation, arbitration or any other proceeding on its behalf does hereby fully acquit and waive, release and forever discharge the City, its governing board members, officers, directors, employees, managers, partners, agents, attorneys, representatives, successors and assigns, and all persons and entities acting by, through, under or in concert with any of them from any and all claims, counterclaims, liabilities, suits, demands, causes of action, administrative proceedings, damages, losses, pecuniary losses, costs, expenses (including attorneys' fees), and/or any other obligations of any nature whatsoever, whether known or unknown, in law, equity or otherwise, asserted or as may be asserted by Turlock which Turlock has or may have against, claims to have against or contends it is entitled to or from City arising from or related to the Prior Agreement, the Litigation, the AAA Arbitration, the Section 23 Protection Clause Proceeding, the Class 1 Section 17 Proceeding, the Demand Charge Section 17 Proceeding, and Class 1 True-up Reimbursement including any act or omission, whether negligent or otherwise, taken or not taken, or directed by City against Turlock in connection therewith through and including the Effective Date of this Release; excepting only any claim, action, cause of action or suit arising from an undertaking or promise contained in this Release.

In connection with the immediately preceding paragraph, Turlock acknowledges that it is familiar with and hereby waives and relinquishes any and all rights and benefits it may have under the laws of any state, similar to and including Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

3. No Indemnity. Nothing in this Release shall in any way constitute an agreement by any Party to indemnify any other Party against any third party claim.

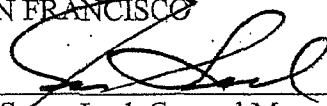
4. City Acknowledgment. City expressly acknowledges that it has consulted with competent legal counsel with regard to the provisions of this Release and it fully understands and accepts the same. City further acknowledges that Turlock HAS NOT MADE ANY WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED OR MADE AVAILABLE NOW, HERETOFORE, OR HEREAFTER TO CITY IN CONNECTION WITH THIS RELEASE. IN ENTERING INTO AND PERFORMING THIS RELEASE, CITY HAS RELIED AND WILL RELY SOLELY UPON ITS INDEPENDENT INVESTIGATION OF, AND JUDGMENT WITH RESPECT TO, THE VALUE OF THIS RELEASE.
5. Turlock's Acknowledgment. Turlock expressly acknowledges that it has consulted with competent legal counsel with regard to the provisions of this Release and it fully understands and accepts the same. Turlock further acknowledges that City HAS NOT MADE ANY WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED OR MADE AVAILABLE NOW, HERETOFORE, OR HEREAFTER TO TURLOCK IN CONNECTION WITH THIS RELEASE. IN ENTERING INTO AND PERFORMING THIS RELEASE, TURLOCK HAS RELIED AND WILL RELY SOLELY UPON ITS INDEPENDENT INVESTIGATION OF, AND JUDGMENT WITH RESPECT TO, THE VALUE OF THIS RELEASE.
6. Dismissal of Proceedings. Concurrent with the execution of this Release (i) the City agrees to execute the dismissal, with prejudice, of the of the Litigation in the form attached hereto at Exhibit A-1 and the AAA Arbitration in the form attached hereto at Exhibit A-2; and (ii) Turlock agrees to execute and deliver to City the written notices of withdrawal, with prejudice, of the Section 23 Protection Clause Proceeding, the Class 1 Section 17 Proceeding, the Demand Charge Section 17 Proceeding, and Class 1 True-up Reimbursement substantially in the form attached hereto at Exhibit B. The City further agrees that the City shall cause the dismissal of the Litigation and the AAA Arbitration to be filed with the Superior Court and the AAA, respectively, promptly after execution of the same.
7. No Admission. This Release is being entered into by the Parties as a result of a compromise and with the intention to avoid further disputes and litigation between the Parties and the attendant inconvenience and expense of the same. Accordingly, nothing contained in this Release, nor in the consummation of this Release, shall be construed or deemed as an admission or acknowledgement by any Party of the existence or nonexistence of any breach of the Prior Agreement, culpability, fault, liability or wrongdoing whatsoever. In connection with the foregoing, this Release may not be used in evidence in any proceeding, excepting only in a proceeding involving a claim, action, cause of action or suit arising from an undertaking or promise contained in this Release.

8. Binding Effect. This Release and all the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.
9. Section Headings. The section headings in this Release are solely for convenience and shall not affect the meaning, construction, interpretation or effect of any provision of this Release.
10. Counterparts. This Release may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same legal instrument.
11. Changes. This Release may not be altered, amended, modified, or otherwise changed except by a writing duly executed by City and Turlock.
12. Deemed Prepared by all Parties. This Release was jointly prepared by the Parties, and the rule that uncertainties or ambiguities shall be interpreted against the drafting party shall not apply to the interpretation or construction of this Release.

IN WITNESS WHEREOF, the Parties hereto have executed this Release as of the date first written above.

PUBLIC UTILITIES COMMISSION OF
OF THE CITY AND COUNTY
OF SAN FRANCISCO

By:


Susan Leal, General Manager

TURLOCK IRRIGATION DISTRICT

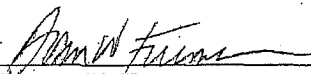
By:


Larry Weis, General Manager

APPROVED AS TO FORM:

DENNIS J. HERRERA
City Attorney

By:


Donn W. Furman
Deputy City Attorney
City and County of San Francisco

By:

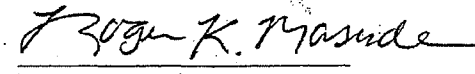

Roger Masuda
General Counsel
Turlock Irrigation District

EXHIBIT A-1

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): DENNIS HERRERA, City Attorney DONN W. FURMAN Deputy City Attorney 1390 Market Street, 4th Floor San Francisco, California 94102 Tel.: (415) 554-3959 Fax : (415) 554-8793		FOR COURT USE ONLY
ATTORNEY FOR (Name) City and County of San Francisco Insert name of court, judicial district, and branch, if any: SUPERIOR COURT FOR THE STATE OF CALIFORNIA CITY AND COUNTY OF SAN FRANCISCO		
PLAINTIFF/PETITIONER:	CITY & COUNTY OF SAN FRANCISCO	
DEFENDANT/RESPONDENT:	TURLOCK IRRIGATION DISTRICT	
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Declaratory & Injunctive Relief		CASE NUMBER: CGC-01-323717

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. **TO THE CLERK:** Please dismiss this action as follows
- a. (1) With prejudice (2) Without prejudice
- b. (1) Complaint (2) Petition
- (3) Cross-complaint filed by (name): _____ on (date): _____
- (4) Cross-complaint filed by (name): _____ on (date): _____
- (5) Entire action of all parties and all causes of action
- (6) Other (specify): _____

DONN W. FURMAN (CBN 166479)

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.

(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross-complainant

2. **TO THE CLERK:** Consent to the above dismissal is hereby given.**

Date: _____

(TYPE OR PRINT NAME OF ATTORNEY PARTY WITHOUT ATTORNEY)

** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 581(f) or (j).

(SIGNATURE)

Attorney or party without attorney for:

- Plaintiff/Petitioner Defendant/Respondent
- Cross-complainant

(To be completed by clerk)

3. Dismissal entered as requested on (date): _____
4. Dismissal entered on (date): _____ as to only (name): _____
5. Dismissal **not entered** as requested for the following reasons (specify): _____
6. a. Attorney or party without attorney notified on (date): _____
- b. Attorney or party without attorney not notified. Filing party failed to provide
 a copy to conform means to return conformed copy

Date: _____

Clerk, by _____, Deputy

EXHIBIT A-2

April 15, 2005

VIA FEDERAL EXPRESS

Mr. Jeremy T. Jackson, Case Manager
American Arbitration Association
1750 Two Galleria Tower
13455 Noel Road
Dallas, TX 75240

Re: City and County of San Francisco v. Turlock Irrigation District
Case No. 71-198-00547-01

Dear Mr. Jackson:

This letter is to notify you that Claimant City and County of San Francisco (the "City"), through its duly authorized undersigned counsel, hereby dismisses the above-referenced proceeding with prejudice. Please provide written confirmation of the City's dismissal and that the American Arbitration Association has closed its file in this matter.

Very Truly Yours,

DENNIS J. HERRERA
City Attorney

By _____
Donn W. Furman

cc: Roger Masuda
General Counsel
Turlock Irrigation District

4/8/2005
8:15:56 AM

EXHIBIT B

April 15, 2005

Mr. Donn W. Furman
Deputy City Attorney
Office of the City Attorney
Fox Plaza
1390 Market Street, Suite 250
San Francisco, California 94102-5408

Re: Mutual Release Agreement between Turlock Irrigation District and
the City and County of San Francisco dated April 15, 2005

Dear Donn:

In accordance with Section 6 of the above-referenced Mutual Release Agreement, Turlock Irrigation District hereby withdraws its notices of dispute and terminates, with prejudice, all such proceedings with regard thereto, as to the following matters:

1. The Notice Initiating Dispute Pursuant to Section 23 of the Long Term Power Sales Agreement Between the City and County of San Francisco and the Turlock Irrigation District ("LTPSA"), dated July 24, 2001, relating to disputes as to (1) whether San Francisco has been precluded from substantially realizing the benefit of the LTPSA by an action designated in Section 25.3 of the LTPSA and (2) whether the provisions of Section 23 or Section 25 of the LTPSA govern the resolution of dispute.
2. The Notices of Billing Dispute pursuant to Section 17 of the LTPSA relating to invoices for August through November 2001, September through November 2002, and August through December, 2003, as described in letters to Patricia E. Martel and/or Marla Jurosek signed by Larry Weis.
3. The Notice Initiating Dispute Pursuant to Section 17 of the LTPSA relating to a dispute arising out of energy and capacity charges in the February 2004 invoice.

4/8/2005
8:15:56 AM

If you have any questions regarding the foregoing, please contact me at your earliest convenience.

Sincerely,

Roger Masuda
General Counsel

4/8/2005
8:15:56 AM

7

Appendix F

APPENDIX F

QUARTERLY RECONCILIATION OF AVAILABLE ENERGY

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1. PURPOSE AND INTENT

The purpose of this Appendix F is to provide the Parties with an independent means of monitoring energy available from Project from time to time and to provide an exclusive remedy for the over scheduling or under scheduling of City Municipal Energy that may occur despite diligent and good faith efforts by City to predict and schedule Available Energy with reasonable accuracy.

2. DEFINED TERMS

Whenever used in this Appendix F, terms initially capitalized shall have the meanings set forth below and if not defined herein shall have the meanings ascribed to them in Section 4 of the Agreement. In all cases the singular of a term shall include the plural and the plural shall include the singular.

2.1 AE or Actual Available Energy: The amount of energy that is ninety-eight percent (98%) of the difference between Project Energy actually generated during a half-hour in the period of determination and City Municipal Energy used in the same half-hour as determined by City in accordance with the terms of its agreement with its Scheduling Representative, all such half-hours summed over the period of determination,

1 provided, however, that if the amount of energy resulting from
2 the foregoing is less than zero in any half-hour then the value
3 for that half-hour shall be zero.

4
5 2.2 Average Dow Jones NP-15 Electricity Price Index: the
6 simple average of the Dow Jones NP-15 Electricity Price On-Peak
7 or Off-Peak Index in effect for all the applicable hours (On-
8 Peak Hours or Off-Peak Hours) in the calendar year quarter,
9 excluding the hours of certain Active Days pursuant to Section
10 3.2.

11
12 2.3 Contract Rate: Either (i) the simple average of the
13 Excess Energy Rate in effect for all the applicable hours (On-
14 Peak Hours or Off-Peak Hours) in the calendar year quarter,
15 excluding the hours of certain Active Days pursuant to Section
16 3.2, if the period of determination is the first or second
17 quarter of a calendar year, or (ii) the Class 1 Energy Rate if
18 the period of determination is the third or fourth quarter of a
19 calendar year.

20
21 2.4 Overscheduled Available Energy: The amount of energy
22 determined by City pursuant to Section 3.3(a) hereof.

23
24 2.5 SE or Scheduled Available Energy: The amount of
25 energy that is ninety-eight percent (98%) of the difference
26 between Project Energy in a half-hour in the period of
27 determination and City Municipal Energy in the same half-hour as
28 set forth on the Final Schedule City submits to its Scheduling
29 Representative, all such half-hours summed over the period of
30 determination, provided, however, that if the amount of energy
31 resulting from the foregoing is less than zero in any half-hour,
32 then the value for that half-hour, shall be zero.

1
2 2.6 Underscheduled Available Energy: The amount of energy
3 determined by City pursuant to Section 3.3(b) hereof.
4

5
6 3. DETERMINATION OF OVERSCHEDULED OR UNDERSCHEDULED AVAILABLE
7 ENERGY
8

9 3.1 At the end of the calendar year quarter commencing on
10 January 1, 2008 and at the end of each calendar year quarter
11 thereafter during the remaining term of this Agreement, City
12 shall determine, separately for the On-Peak Hours and for the
13 Off-Peak Hours, both the Overscheduled Available Energy and
14 Underscheduled Available Energy in the manner set forth herein
15 below.
16

17 3.2 City shall determine for each half-hour the difference
18 between Scheduled Available Energy and Actual Available Energy.
19 Such differences shall be summed for all On-Peak Hours and shall
20 be summed separately for all Off-Peak Hours during a calendar
21 year quarter ("Quarter On-Peak Difference" and "Quarter Off-Peak
22 Difference", respectively), provided however, that in making the
23 foregoing determination City shall exclude any Active Day on
24 which (a) either the Scheduling Representative or the Control
25 Area Operator experiences a system emergency that affects the
26 metering or delivery of Available Energy or City Municipal
27 Energy, or (b) Uncontrollable Forces affect City's ability to
28 generate or deliver Scheduled Available Energy, or (c) a
29 determination was made by City, in its sole judgment and
30 discretion, that generating, supplying or delivering Project
31 Energy or continuing the supply or delivery of such energy would
32 adversely impact City's ability either to provide water supply

1 or to meet applicable standards of water quality followed or
2 established by City.

3

4 3.3 If the absolute value of either the Quarter On-Peak
5 Difference or Quarter Off-Peak Difference or both determined
6 pursuant to Section 3.2 hereof is greater than 7.5 MW multiplied
7 by, respectively, the number of the On-Peak Hours or the Off-
8 Peak Hours not excluded pursuant to Section 3.2 hereof of the
9 applicable calendar year quarter, then City shall determine
10 separately for the On-Peak Hours and for the Off-Peak Hours (a)
11 for a positive Quarter On-Peak Difference or positive Quarter
12 Off-Peak Difference, Overscheduled Available Energy to be the
13 amount of energy, expressed in MWh, by which the product of
14 Turlock's Allocation times the Quarter On-Peak Difference and,
15 separately, the product of Turlock's Allocation times the
16 Quarter Off-Peak Difference exceeds the product of Turlock's
17 Allocation times 7.5 MW multiplied by the number of On-Peak
18 Hours or the number of Off-Peak Hours, respectively, in the
19 determination period for the Active Days not excluded pursuant
20 to Section 3.2 hereof during the calendar year quarter of
21 determination ("On-Peak Overscheduled Energy" and "Off-Peak
22 Overscheduled Energy", respectively); and (b) for a negative
23 Quarter On-Peak Difference or negative Quarter Off-Peak
24 Difference, Underscheduled Available Energy to be the amount of
25 energy, expressed in MWh, by which the absolute value of the
26 product of Turlock's Allocation times the Quarter On-Peak
27 Difference and, separately, the absolute value of the product of
28 Turlock's Allocation times the Quarter Off-Peak Difference
29 exceeds the product of Turlock's Allocation times 7.5 MW
30 multiplied by the number of On-Peak Hours or the number of Off-
31 Peak Hours, respectively, in the determination period for the
32 Active Days not excluded pursuant to Section 3.2 hereof during

1 the calendar year quarter of determination ("On-Peak
2 Underscheduled Energy" and "Off-Peak Underscheduled Energy",
3 respectively).

4 3.4 City shall provide Turlock with its determination of
5 Overscheduled Available Energy and Underscheduled Available
6 Energy on or before the day that is ninety (90) days after the
7 last day of calendar year quarter for which the determination
8 was made or as soon thereafter as is possible, and together with
9 such determination City shall notify Turlock of the remedy City
10 elects pursuant to Section 4 hereof.

11
12
13 4. ELECTION AND EXCLUSIVE REMEDY

14
15 4.1 In the event City determines that Overscheduled
16 Available Energy resulted in a calendar year quarter, for the
17 On-Peak Hours or the Off-Peak Hours or both, then, as City may
18 elect, Turlock shall (a) make a payment to City in an amount
19 equal to the On-Peak Overscheduled Available Energy and Off-Peak
20 Overscheduled Available Energy multiplied in each case by the
21 greater of (i) zero or (ii) the following difference: the
22 applicable Average Dow Jones NP-15 Electricity Price Index minus
23 the applicable Contract Rate, within a period of sixty (60) days
24 of receipt of City's determination, or (b) make a sale to City,
25 at the applicable Contract Rate, of the On-Peak Overscheduled
26 Available Energy and Off-Peak Overscheduled Available Energy, as
27 scheduled by Turlock during the same calendar year quarter in
28 the year following the calendar year quarter in which the
29 determination was made, provided that On-Peak Overscheduled
30 Available Energy will be returned during the On-Peak Hours of
31 such quarter.

1 4.2 In the event City determines that Underscheduled
2 Available Energy resulted in a calendar year quarter, for the
3 On-Peak Hours or the Off-Peak Hours or both, then, as City may
4 elect, City shall (a) make a payment to Turlock in an amount
5 equal to the On-Peak Underscheduled Available Energy and Off-
6 Peak Underscheduled Available Energy multiplied in each case by
7 the greater of (i) zero or (ii) the following difference: the
8 applicable Average Dow Jones NP-15 Firm Energy Index minus the
9 applicable Contract Rate, within a period of sixty (60) days of
10 delivery to Turlock of City's determination, or (b) make a sale
11 to Turlock, at the applicable Contract Rate, of the On-Peak
12 Underscheduled Available Energy and Off-Peak Underscheduled
13 Available Energy, as scheduled by City during the same calendar
14 year quarter in the year following the calendar year quarter in
15 which the determination was made, provided that On-Peak
16 Underscheduled Available Energy will be returned during the On-
17 Peak Hours of such quarter.

18
19 4.3 The remedies provided for in Section 4.2 hereof are
20 Turlock's exclusive remedies and are in lieu of any other remedy
21 Turlock may claim is due to it under the terms of the Agreement
22 arising from or relating to City's determination of Project
23 Energy or Available Energy during any period of determination.

24
25 4.4 The Parties intend and agree that nothing
26 herein shall be used to retroactively affect or adjust
27 City's determination of Excess Energy under Section 7.5 or
28 Section 7.6 of the Agreement, or True-Up Energy under
29 Section 7.7 of the Agreement.

8

Extra
Documentation

GRIFFITH & MASUDA

Roger K. Masuda
Sara J. Lima
James Koontz
Galileo Morales

W. Coburn Cook, 1892-1953
Lin H. Griffith, retired

RECEIVED
APR 22 2005

Moccasin

PROFESSIONAL LAW CORPORATION

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Turlock, California 95380
(209) 667-5501
Fax (209) 667-8176

www.calwaterlaw.com

Monterey Bay Office
UC MBEST Center
3239 Imjin Road #122
Marina, California 93933
(831) 601-1406

rmasuda@calwaterlaw.com

April 15, 2005

Mr. Donn W. Furman, Deputy City Attorney
Office of the City Attorney
Fox Plaza, 1390 Market Street, Suite 250
San Francisco, California 94102-5408

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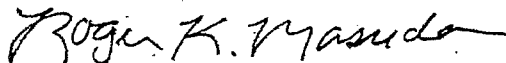
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3. The Notice Initiating Dispute Pursuant to Section 17 of the LTPSA relating to a
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If you have any questions regarding the foregoing, please contact me at your earliest
convenience.

Sincerely,



Roger K. Masuda
General Counsel
Turlock Irrigation District

RECEIVED

APR 15 2005

H.H.W.P.