

File No. 190674

Committee Item No. 7
Board Item No. 34

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Sub-Committee

Date July 17, 2019

Board of Supervisors Meeting

Date July 23, 2019

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
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Completed by: Linda Wong Date July 12, 2019
Completed by: Linda Wong Date July 18, 2019

1 [Purchase of Renewable Electricity - Public Utilities Commission - Not to Exceed \$15,775,000]

2
3 **Resolution authorizing the General Manager of the Public Utilities Commission to**
4 **enter into an agreement with Southern California Edison Company for CleanPowerSF**
5 **to purchase renewable energy for the period of January 1, 2020, through December 31,**
6 **2021, for a total cost of \$15,775,000.**

7
8 WHEREAS, State law allows cities and counties to develop community choice
9 aggregation (CCA) programs, through which local governments supply electricity to serve the
10 needs of participating customers within their jurisdictions while the existing utility continues to
11 provide services such as customer billing, transmission, and distribution; and

12 WHEREAS, In May 2016, the San Francisco Public Utilities Commission (PUC)
13 launched a CCA program called CleanPowerSF to provide San Francisco residents and
14 businesses the option to receive cleaner, more sustainable electricity at rates comparable to
15 those offered by Pacific Gas & Electric Company (PG&E); CleanPowerSF uses clean and
16 renewable energy purchased from various facilities, including energy from Hetch Hetchy; and

17 WHEREAS, State law requires entities that provide electric service to customers,
18 including CCAs like CleanPowerSF, to meet certain requirements to provide electricity from
19 renewable energy sources; and

20 WHEREAS, To meet those requirements, CleanPowerSF has issued several
21 competitive solicitations for renewable energy supplies for 2020 and 2021; CleanPowerSF
22 has executed a number of agreements for renewable energy but has not been able to obtain
23 sufficient volumes of renewable energy to meet State law requirements for 2020 and 2021;
24 and

1 WHEREAS, CleanPowerSF participated in a solicitation for renewable energy issued
2 by Southern California Edison Company ("SCE"); and

3 WHEREAS, SCE accepted CleanPowerSF's bid for volumes that satisfy
4 CleanPowerSF's remaining renewable energy obligations for 2020 and 2021; and

5 WHEREAS, CleanPowerSF has negotiated an agreement with SCE for renewable
6 energy for renewable energy supply for the period of January 1, 2020, through December 31,
7 2021, in the amount of \$15,775,000; and

8 WHEREAS, SCE requires the use of Edison Electric Institute (EEI) pro forma power
9 purchase contract for all short-term renewable energy contracts; that form agreement is on
10 file with the Clerk of the Board of Supervisors in File No. 190674; and

11 WHEREAS, In Ordinance Nos. 75-15, 223-15, and 8-18, the Board of Supervisors
12 authorized the PUC to use certain pro forma contracts, including the EEI pro forma power
13 purchase agreement, and to deviate from certain otherwise applicable contracting
14 requirements; and

15 WHEREAS, The agreement with SCE requires binding arbitration of any disputes
16 between the City and SCE; the Board of Supervisors in Ordinance No. 227-18 delegated to
17 the General Manager of the PUC the authority to enter into contracts to purchase electricity
18 that contain a binding arbitration provision, subject to certain conditions, all of which are
19 satisfied in this instance; and

20 WHEREAS, The San Francisco Public Utilities Commission will consider the SCE
21 agreement during its meeting on June 25, 2019; and

22 WHEREAS, Section 9.118(b) of the Charter requires the Board of Supervisors to
23 approve contracts that are estimated to cost \$10,000,000 or more; now, therefore, be it

24 RESOLVED, That the Board of Supervisors hereby authorizes the General Manager
25 of the Public Utilities Commission to execute an agreement with Southern California Edison

1 Company to purchase renewable energy in an amount not to exceed \$15,775,000 with the
2 term of January 1, 2020, through December 31, 2021; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the General
4 Manager of the Public Utilities Commission and the City Attorney to make amendments to
5 the agreement with SCE that do not materially increase the obligations or liabilities of the
6 City; and, be it

7 FURTHER RESOLVED, That within thirty days of the execution of the agreement by
8 all parties the General Manager of the Public Utilities Commission shall provide the final
9 agreement to the Clerk of the Board for inclusion in the official file.

<p>Item 7 File 19-0674</p>	<p>Department: Public Utilities Commission (PUC)</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p>	
<ul style="list-style-type: none"> The proposed resolution approves a service agreement between the San Francisco Public Utilities Commission (SFPUC) and Southern California Edison (SCE) to purchase renewable energy for CleanPowerSF for two years from January 1, 2020 through December 31, 2021 for an amount not to exceed \$15,775,000. The proposed agreement between SFPUC and SCE requires binding arbitration of any disputes between the City and SCE. According to the proposed resolution, the requirement for binding arbitration conforms to Ordinance 227-18, previously approved by the Board of Supervisors. 	
<p style="text-align: center;">Key Points</p>	
<ul style="list-style-type: none"> CleanPowerSF provides renewable energy to residential and commercial customers in San Francisco. Full scale citywide enrollment of residential customers was completed in April 2019. Approximately 400,000 customer accounts with average electricity demand of about 350 megawatts (MW) are currently enrolled in CleanPowerSF. In January 2019, the Board of Supervisors retroactively approved a service agreement between SFPUC and SCE for CleanPowerSF to purchase renewable energy for one year from January 1, 2019 through December 31, 2019 for an amount not to exceed \$24,000,000 (File 19-0013). The CleanPowerSF budget for power purchases in FY 2019-20 is \$164,571,626, projected to increase to \$166,526,003 in FY 2020-21 to account for an increase in customers. Power purchases are paid for by CleanPowerSF sales of electricity to retail customers. 	
<p style="text-align: center;">Fiscal Impact</p>	
<ul style="list-style-type: none"> Of the \$15,775,000 not-to-exceed amount for this agreement, CleanPowerSF estimates that they will pay SCE \$10,525,000 for renewable energy delivered during calendar year 2020 and \$5,250,000 for 2021. CleanPowerSF will pay SCE a fixed price to purchase the associated Renewable Energy Credit (REC) per megawatt hour of power delivered. SFPUC determined the contract volumes through supply planning for CleanPowerSF's expected demand in 2020 and 2021, and to meet the 50 percent renewable energy target in 2020 and the 52 percent renewable energy target in 2021. All costs associated with the agreement will be paid from CleanPowerSF revenues. These costs are included in the approved CleanPowerSF FYE19 and FYE20 budgets. SFPUC will include the cost of the FYE21 agreement in the next budget request. 	
<p style="text-align: center;">Policy Consideration</p>	
<ul style="list-style-type: none"> When the Board of Supervisors approved File 19-0013 in January 2019, the Board amended the resolution to require SFPUC to return to the Budget & Finance Committee to present the FY 2017-18 annual report on the CleanPowerSF program. According to SFPUC, staff submitted the FY 2017-18 annual report on the CleanPowerSF program to the Board on February 7, 2019. 	
<p style="text-align: center;">Recommendation</p>	
<ul style="list-style-type: none"> Approve the proposed resolution. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that has a term of more than ten years or requires expenditures of \$10 million or more is subject to Board of Supervisors approval.

BACKGROUND

Community Choice Aggregation

State law allows cities and counties to develop Community Choice Aggregation (CCA) programs, through which local governments supply electricity to participating customers within their jurisdictions while the existing private utility (Pacific Gas & Electric Company – PG&E – in San Francisco) continues to provide various services including billing, transmission, and distribution. San Francisco's CCA program ("CleanPowerSF") is in the process of phasing in service to residential customers citywide.

CleanPowerSF offers two levels of supply service: (1) Green, the default service which contains at least 40 percent renewable energy and (2) SuperGreen, a premium option which offers 100 percent renewable energy. Residential and business customers were automatically enrolled into the CleanPowerSF Green service and are given opportunities to opt-out of participating in the program during the enrollment period, as required under state law. The agreement with Southern California Edison Company (SCE) provides the renewable energy content for purchasers in the "Green" service category.

Full scale citywide enrollment was completed in April 2019. Approximately 400,000 customer accounts with average electricity demand of about 350 megawatts (MW) are currently enrolled in CleanPowerSF. The opt-out rate is currently 3.4 percent.

After the April 2019 enrollment, the only remaining accounts to be enrolled will be the largest commercial accounts, which are responsible for approximately 12 percent of citywide electricity demand. The SFPUC intends to meet with representatives of these customer accounts to gauge their interest in the program prior to enrolling them. This approach is intended to avoid over-procurement of power, which could happen if these customers, with their significant energy use, opt-out in greater numbers than planned.

Previous CleanPowerSF Legislation

The Board of Supervisors has previously authorized the San Francisco Public Utilities Commission (SFPUC) to enter into long-term renewable energy supply agreements for CleanPowerSF without further Board of Supervisors approval:

- In May 2015, the Board of Supervisors authorized the SFPUC General Manager to use pro forma agreements to purchase and sell renewable electricity to operate the CleanPowerSF program (File No. 15-0408; Ordinance No. 75-15);
- In December 2015, the Board of Supervisors authorized the SFPUC General Manager to enter into agreements requiring expenditures of \$10 million or more for power and

related products and services to launch the initial phases of CleanPowerSF (File No. 15-1123; Ordinance No. 223-15); and,

- In January 2018, the Board of Supervisors authorized the SFPUC General Manager to enter into agreements for renewable energy with terms in excess of ten years or requiring expenditures of \$10 million or more for power and related products and services for citywide expansion of CleanPowerSF; and authorized deviations from contract requirements in the Administrative Code and the Environment Code (File No. 17-1172; Ordinance No. 8-18).

In September 2018, the Board of Supervisors authorized the SFPUC General Manager to enter into future agreements (executed within the next five years) requiring binding arbitration for purchase of electricity, if certain conditions were met; and retroactively authorized three agreements between CleanPowerSF and PG&E for purchase of electricity-related products requiring binding arbitration (File 18-0708, Ordinance No. 227-18).

In January 2019, the Board of Supervisors retroactively approved a service agreement between SFPUC and SCE for CleanPowerSF to purchase renewable energy for one year from January 1, 2019 through December 31, 2019 for an amount not to exceed \$24,000,000 (File 19-0013).

CleanPowerSF Budget and Power Purchases

The CleanPowerSF budget for power purchases in FY 2019-20 is \$164,571,626, projected to increase to \$166,526,003 in FY 2020-21 to account for an increase in customers, as shown in Table 1 below. Power purchases are paid for by CleanPowerSF sales of electricity to retail customers.

Table 1: CleanPowerSF Budget, FY 2019-20 (Adopted) and FY 2020-21 (Projected)

Revenues	FY 2019-20 (Adopted)	FY 2020-21 (Projected)
Electricity Sale CCA	\$212,070,541	\$231,728,830
<i>Green Revenue</i>	207,339,619	221,570,625
<i>SuperGreen Revenue</i>	4,730,921	10,158,205
Other	838,768	0
Total Revenues	\$212,909,309	\$231,728,830
Expenditures		
Power For Resale	\$153,877,739	\$164,959,005
Power For Resale-Budget	7,693,887	0
Power-Scheduling Coordinator	3,000,000	1,566,999
<i>Subtotal Operating Expenditures</i>	<i>\$164,571,626</i>	<i>\$166,526,003</i>
Reserves	22,505,510	39,768,531
Transfers Out	25,832,173	25,434,295
Total Expenditures	\$212,909,309	\$231,728,830

CleanPowerSF has contracts with 12 vendors to supply power in FY 2019-20 and FY 2020-21, totaling approximately \$287 million in aggregate over the two fiscal years. Pursuant to the enrollment in FY 2018-19, CleanPowerSF will execute additional contracts to meet power demand. The current vendors supply power from a mix of generating sources, providing the following: shaped energy¹, renewable energy, carbon-free energy, and capacity. The SFPUC projects that the proposed contract will ensure that the Green service is at least 50 percent renewable in CY 2020. The SCE contract will also contribute to Green service renewable energy needs for CY 2021. SFPUC staff plan to procure additional renewable energy for CY 2021 in the upcoming year.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves a service agreement between SFPUC and SCE for CleanPowerSF to purchase renewable energy for two years from January 1, 2020 through December 31, 2021 for an amount not to exceed \$15,775,000.

The proposed agreement between SFPUC and SCE requires binding arbitration of any disputes between the City and SCE. According to the proposed resolution, the requirement for binding arbitration conforms to Ordinance 227-18, previously approved by the Board of Supervisors.

CleanPowerSF Contracting for Power Supply

CleanPowerSF procures energy supplies in accordance with the CleanPowerSF Supply Management Policy adopted by the Public Utilities Commission. According to CleanPowerSF staff, in accordance with best practices in the energy industry, CleanPowerSF maintains an energy portfolio that includes a mix of short and long-term contracts (with terms ranging from 1 to 25 years) that best mitigates price, supply, and vendor risk. CleanPowerSF procures energy through requests for offers which are distributed to a list of known energy suppliers. Winning bidders are selected based on different factors including price, collateral requirements, vendor experience, and if relevant, project location. The majority of the contracts have a fixed price for the term of the contracts. Some shorter term (one to two years) contracts, such as the SCE contract, are based on a market price for energy plus a fixed price for the renewable attribute of the commodity. This is an industry-standard pricing term for renewable energy supplies.

Agreement with Southern California Edison Company

In June 2017 and August 2018, CleanPowerSF issued requests to obtain short term renewable energy supplies from vendors, but did not receive offers that had sufficient renewable energy supplies to support the expansion of CleanPowerSF in April 2019. As a result, CleanPowerSF participated in several Requests for Offers extended by energy suppliers that would allow them to purchase bundled renewable energy. In September 2018, CleanPowerSF responded to a Request for Offers for clean energy supplies from PG&E, but were not shortlisted by PG&E for the volumes desired. Also in September 2018, CleanPowerSF submitted a bid to purchase

¹ Shaped energy is also known as system energy, which is purchased from the California electrical grid and is used to reduce volatility in energy prices. Shaped energy may or may not come from renewable sources.

renewable energy from SCE in order to obtain sufficient renewable energy supply to support the service expansion. CleanPowerSF's bid was awarded in October 2018.

CleanPowerSF participated in SCE's 2019 Bundled Renewable Portfolio Standard (RPS) Energy Sales Request for Offers that was issued on April 18, 2019. CleanPowerSF submitted a bid on May 9, 2019 for Portfolio Content Category 1 (PCC 1) energy to be delivered in 2020 and 2021, and was shortlisted for the desired volumes by SCE.

Under the proposed agreement, SCE agrees to provide a firm amount of renewable energy to CleanPowerSF to be delivered in 2020 and 2021. SCE will bill CleanPowerSF monthly based on the amount of energy delivered in the prior month and the contract price, which is equal to the fixed price to purchase the associated Renewable Energy Credit (REC) per megawatt hour of power delivered.²

According to SFPUC, the proposed agreement is not subject to extensions and will expire in December 31, 2021. The SFPUC is actively soliciting additional renewable energy supplies to fill future renewable energy needs.

FISCAL IMPACT

Of the \$15,775,000 not-to-exceed amount for this agreement, CleanPowerSF estimates that they will pay SCE \$10,525,000 for renewable energy delivered during calendar year 2020 and \$5,250,000 for 2021. CleanPowerSF will pay Southern California Edison a fixed price to purchase the associated Renewable Energy Credit (REC) per megawatt hour of power delivered.

SFPUC determined the contract volumes through supply planning for CleanPowerSF's expected demand in 2020 and 2021, and to meet the 50 percent renewable energy target in 2020 and the 52 percent renewable energy target in 2021. The California Independent System Operator (CAISO) operates the California electricity market. Energy suppliers, such as SCE and CleanPowerSF, receive payment through the CAISO wholesale energy market for electricity generated and delivered to the grid. Under the proposed agreement, SCE will deliver renewable energy to CleanPowerSF through the CAISO wholesale energy market. SCE will receive payment from the CAISO market for the electricity generated and delivered; CleanPowerSF will pay SCE the fixed contract price for the environmental attributes (Renewable Energy Credits) associated with the generated energy. According to SFPUC, the benefit of this contractual approach is that it will significantly reduce the credit exposure of the parties, eliminating the need for CleanPowerSF to post collateral with SCE for this contract.

² Because electricity transmission and distribution systems do not separate electricity by renewable and nonrenewable sources, providers purchase Renewable Energy Credits (RECs) to account for the contracted amount of renewable energy. RECs are tradeable, non-energy commodities that represent proof that 1 megawatt-hour of electricity was generated from an eligible renewable energy resource and was fed into a shared power system. RECs carry all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resources underlying it. Renewable Energy Credit prices are set by the markets for these credits in each state.

All costs associated with the agreement will be paid from CleanPowerSF revenues. These costs are included in the approved CleanPowerSF FYE19 and FYE20 budgets. SFPUC will include the cost of the FYE21 agreement in the next budget request.

POLICY CONSIDERATION

When the Board of Supervisors approved File 19-0013 in January 2019, the Board amended the resolution to require SFPUC to return to the Budget & Finance Committee to present the FY 2017-18 annual report on the CleanPowerSF program. According to SFPUC, staff submitted the FY 2017-18 annual report on the CleanPowerSF program to the Board on February 7, 2019.

RECOMMENDATION

Approve the proposed resolution.

Master Power Purchase & Sale Agreement



EDISON ELECTRIC
INSTITUTE



Version 2.1 (modified 4/25/00)

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MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name ("_____ " or "Party A")

Name ("Counterparty" or "Party B")

All Notices:

All Notices:

Street: _____

Street: _____

City: _____ Zip: _____

City: _____ Zip: _____

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

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

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____
Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies Cross Default for Party A:
 Party A: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____
 Cross Default for Party B:
 Party B: _____ Cross Default Amount \$ _____
 Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements 8.1 Party A Credit Protection:
(a) Financial Information:
 Option A
 Option B Specify: _____
 Option C Specify: _____
(b) Credit Assurances:
 Not Applicable
 Applicable
(c) Collateral Threshold:
 Not Applicable
 Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: _____

Guarantee Amount: _____

Article 10

Confidentiality

Confidentiality Applicable If not checked, inapplicable.

Schedule M

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

Other Changes

Specify, if any: _____

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

Party A Name

Party B Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

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

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

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

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

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

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

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

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

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

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

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

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

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

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

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

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

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

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

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

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

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

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

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

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

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

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

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

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

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

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

- 1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.
- 1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.
- 1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.
- 1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.
- 1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.
- 1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.
- 1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.
- 1.39 "Party A Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.40 "Party B Independent Amount" means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.
- 1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.
- 1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.
- 1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.
- 1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.
- 1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.
- 1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

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

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

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

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

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

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

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

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

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

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

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

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

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

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

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

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

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

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

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

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

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

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

Option C: Neither Option A nor B shall apply.

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

ARTICLE SIX: PAYMENT AND NETTING

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

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

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

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

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

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

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

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

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

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

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

ARTICLE SEVEN: LIMITATIONS

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

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

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

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

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

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

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

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

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

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

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

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

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

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

ARTICLE TEN: MISCELLANEOUS

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

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

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

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

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

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

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

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

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

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

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

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

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

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

SCHEDULE M

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

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

“Act” means _____¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

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

“Capacity” has the meaning specified in the Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder; and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

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

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

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

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

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

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

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

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

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

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

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

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

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

MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER

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

Seller: _____

Buyer: _____

Product:

Into _____, Seller's Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm

(Specify System: _____)

Unit Firm

(Specify Unit(s): _____)

Other _____

Transmission Contingency (If not marked, no transmission contingency)

FT-Contract Path Contingency Seller Buyer

FT-Delivery Point Contingency Seller Buyer

Transmission Contingent Seller Buyer

Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter

Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

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

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

1 [Purchase and Sale of Electricity and Related Products and Services - Public Utilities
2 Commission]

3 **Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma**
4 **agreements to purchase and sell electricity and related products and services to**
5 **operate the City's municipal electric utility and community choice aggregation**
6 **program; authorizing the General Manager of the PUC, in such agreements, to deviate**
7 **from certain otherwise applicable requirements of City law, under certain**
8 **circumstances; and authorizing the PUC, within specified parameters, to approve**
9 **agreements with terms in excess of ten years or requiring expenditures of \$10,000,000**
10 **or more for renewable and greenhouse-gas-free power and related products and**
11 **services.**

12 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
13 **Additions to Codes** are in *single-underline italics Times New Roman font*.
14 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.
15 **Board amendment additions** are in Arial font.
16 **Board amendment deletions** are in ~~Arial font~~.
17 **Asterisks (* * * *)** indicate the omission of unchanged Code
18 subsections or parts of tables.

19 Be it ordained by the People of the City and County of San Francisco:

20 **Section 1. Findings.** The Board of Supervisors of the City and County of San
21 Francisco hereby finds:

22 (a) For decades, the City and County of San Francisco (City), through its Public
23 Utilities Commission (PUC), has operated a municipal electric utility that supplies clean
24 greenhouse-gas-free electricity to San Francisco's municipal facilities, services, and
25 customers.

1 (b) The PUC supplements electricity from its Hetch Hetchy hydroelectric facilities
2 with 11 megawatts of renewable energy from City-owned facilities and with purchases of
3 electricity from other sources. PUC makes many of these purchases using industry-standard
4 pro forma contracts that the Board of Supervisors has authorized in advance. See Ordinance
5 Nos. 54-92 and 39-01.

6 (c) The City has adopted aggressive goals for greenhouse gas reduction and use of
7 renewable energy. In Ordinance No. 81-08, the Board of Supervisors articulated the goal of
8 having a greenhouse-gas-free electric system by 2030, and meeting all City electricity needs
9 with renewable and greenhouse-gas-free sources.

10 (d) State law allows cities and counties to develop Community Choice Aggregation
11 (CCA) programs, through which local governments may choose to supply electricity to serve
12 the needs of participating customers within their jurisdictions while the existing utility continues
13 to provide services such as customer billing, transmission and distribution.

14 (e) For many years, the City has considered developing a CCA program to allow
15 San Francisco residents and businesses the option to receive cleaner, more sustainable
16 electricity at rates comparable to the incumbent utility. See Ordinance Nos. 86-04, 147-07,
17 232-09, 45-10, 200-12 and 78-14; and Resolution Nos. 348-12 and 331-13.

18 (f) In 2012, the Board of Supervisors approved a contract with Shell Energy North
19 America that required Shell to procure all power needed for the early phases of the City's
20 CCA program, called CleanPowerSF. See Resolution 348-12. The Shell contract was never
21 executed.

22 (g) In response to interest from City leaders and community members, PUC is
23 developing a new CCA program that would offer participating customers a choice of two levels
24 of renewable energy service: a 100% renewable option and a 33%-50% renewable option.
25 These options would be offered to groups of customers in phases, and over time would be

1 offered to all customers within San Francisco. PUC expects to implement this program
2 expeditiously by purchasing energy using its in-house expertise and staff resources. At the
3 same time, PUC would immediately begin the process of developing new local renewable
4 energy resources that would over time replace purchased energy, if such projects are
5 approved following any necessary environmental review.

6 (h) PUC anticipates that it will need to procure no less than 30 megawatts of
7 renewable energy for the first phase of CCA service. To meet aggressive implementation date
8 targets and secure the best possible prices and terms, PUC staff will need to negotiate a mix
9 of electricity contracts with multiple renewable energy projects simultaneously in an expedited
10 time frame.

11 (i) PUC already uses some standardized contracting methods to streamline its
12 procurement practices. Increased ability to purchase power and related products and services
13 using pro forma contracts that meet specified criteria will enable PUC to implement CCA
14 expeditiously and capture maximum price benefits for CCA customers and customers of the
15 City's municipal utility.

16 (j) Most utilities and the existing CCA programs, Marin Clean Energy and Sonoma
17 Clean Power, use standardized contracts for their procurement practices.

18 (k) City law requires standard contract provisions to protect the City's interests,
19 ensure accountability, and promote important social values. The Board of Supervisors may
20 waive certain contract provisions by ordinance. When the PUC uses pro forma contracts for
21 the purchase and sale of power and related products and services, it may be appropriate to
22 waive some of the City's standard contract provisions, if the General Manager finds and
23 documents in writing that doing so is in the best interest of the City.

1 **Section 2. Approval of Pro Forma Contracts and Related Waivers of Certain**
2 **Requirements of City Law.**

3 (a) Background.

4 Utilities and energy suppliers use industry-standard pro forma contracts to ensure the
5 availability of essential services in a timely and cost-effective manner. Using these
6 agreements can help facilitate negotiations by focusing the parties on the elements that are
7 most likely to differ from one transaction to another: e.g., price, quantity, location, and
8 duration. These contracts provide standard terms and conditions that address common
9 issues, but allow parties to determine which provisions to include in a particular contract.
10 These contracts do not contain all contractual provisions required by local law.

11
12 (b) Specific Pro Forma Contracts.

13 (1) Western System Power Pool Agreement.

14 (A) The Western System Power Pool ("WSPP") is a group of more than 300
15 publicly-owned and private utilities, including Alameda Municipal Power, the City of Palo Alto,
16 the City of Roseville, the Sacramento Municipal Utility District, and Silicon Valley Power, all of
17 which operate publicly-owned utilities. The City, through PUC, is a member of the WSPP.
18 The WSPP has developed an agreement that sets forth standard terms and conditions for the
19 purchase and sale of power and related products and services. A copy of the current WSPP
20 agreement is on file with the Clerk of the Board of Supervisors in File No. 150408 and
21 available on the Board's website, and is incorporated herein by reference as though fully set
22 forth. The WSPP agreement has been approved by the Federal Energy Regulatory
23 Commission ("FERC"). The WSPP agreement is periodically updated and modified subject
24 to the approval of FERC.

1 (B) The Board of Supervisors has previously authorized the General
2 Manager to use the WSPP agreement for transactions with a duration of up to five years and
3 waived for those transactions the requirements of section 12.F of the Administrative Code and
4 Chapter 8 of the Environment Code (formerly Administrative Code Section 12I.5(b)). See
5 Ordinance 54-92 and Ordinance 39-01, which are on file with the Clerk of the Board of
6 Supervisors in File No. 150408.

7 (C) Using the WSPP Agreement, PUC routinely engages in short term
8 transactions of five years or less in order to supplement power generated by Hetch Hetchy or
9 sell excess power. These purchases are subject to the PUC's risk management procedures
10 and policies, while sales of Hetch Hetchy energy are subject to the City's "water first" policy
11 and requirements of the Raker Act. See Raker Act of 1913, ch. 4, 38 Stat. 242.

12 (2) The Edison Electric Institute Master Agreement.

13 (A) The Edison Electric Institute (EEI) in collaboration with more than 80
14 member utilities, affiliated and independent power marketers, merchant power, and end-use
15 representatives, developed an agreement that sets forth standard terms and conditions for the
16 purchase and sale of power and related products and services. The EEI agreement is
17 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
18 with the Clerk of the Board of Supervisors in File No. 150408 and available on the Board's
19 website, and is incorporated herein by reference as though fully set forth

20 (B) In Resolution 348-12, the Board of Supervisors authorized the General
21 Manager to execute an agreement based on the EEI agreement with Shell Energy North
22 America to provide services require to launch a CCA.

23 (3) Other Pro Forma Agreements.

24 (A) Feed-in-Tariff (FIT).
25

1 A FIT Program is a standard tariff for purchases of electricity from distributed
2 generation facilities, such as a roof-top solar photovoltaic systems. The FIT establishes
3 uniform rules for participation, standard-offer prices, and a form contract. Because the term of
4 the contract is typically 10-20 years, a FIT can incentivize the development of local renewable
5 resources by assuring project owners of a stable long-term revenue stream.

6 (B) City Standard Contracts.

7 PUC may find it beneficial and efficient to develop City-specific standard contracts for
8 the purchase and sale of power and related products and services.

9
10 (c) Authorization to Use Pro Forma Contracts.

11 (1) The Board of Supervisors authorizes the use of the WSPP agreement and the
12 EEI agreement, as those agreements may be modified over time, for the PUC's purchase and
13 sale of power and related products and services, notwithstanding that the terms of those
14 agreements may deviate from the City's standard contract forms; provided that if those
15 agreements are modified in a manner that, in the judgment of the General Manager and the
16 City Attorney, materially decreases the City's rights or materially increases its liabilities, then
17 the General Manager shall seek approval from the Board of Supervisors to enter into any
18 agreement that would be subject to such approval absent the authorization granted in this
19 subsection 2(c).

20 (2) The Board of Supervisors authorizes the use of one or more pro forma contracts
21 developed by PUC for the purchase and sale of power and related products and services;
22 provided that if those agreements, in the judgment of the General Manager and the City
23 Attorney, materially decrease the City's rights or materially increase its liabilities as compared
24 to the forms of the WSPP agreement and EEI agreement authorized for use by this ordinance,
25 then the General Manager shall seek approval from the Board of Supervisors to enter into any

1 agreement that would be subject to such approval absent the authorization granted in this
2 subsection 2(c).

3 (3) The Board of Supervisors authorizes the use of a pro forma contract to support
4 a FIT or similar mechanism to purchase electricity from distributed generation facilities that is
5 consistent with industry standards; provided that if the contract contains terms that in the
6 judgment of the General Manager and the City Attorney materially decrease the City's rights
7 or materially increase its liabilities as compared to the forms of the WSPSP agreement and EEI
8 agreement authorized for use by this ordinance, then the General Manager shall seek
9 approval from the Board of Supervisors to enter into any agreement that would be subject to
10 such approval absent the authorization granted in this subsection 2(c).

11 (4) The authority granted in this subsection 2(c) shall be limited to agreements that
12 do not exceed ten years or require expenditures by the City of ten million dollars or more.

13 (5) For purposes of the authorizations and waivers in this section, power and
14 related products and services shall include power supplies, the conveyance or transmission of
15 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
16 required for assuring reliable services in accordance with good utility practice and applicable
17 laws.

18 (d) Waivers of Required City Contract Provisions.

19 (1) For purchase or sale of power and related products and services, where the
20 General Manager finds and documents in writing both that the transaction represents the best
21 opportunity available to the City to obtain essential services and products or dispose of
22 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
23 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
24 the following standard contract provisions to the extent found necessary by the General
25

1 Manager, and finds such waivers to be reasonable and in the public interest, for purchases
2 made using the pro forma contracts identified in subsection 2(c) above:

3 (A) Review of the City's support of the MacBride Principles (Admin. Code
4 Chapter 12F);

5 (B) Increased participation by small and micro local businesses in City
6 contracts (Admin. Code Chapter 14B);

7 (C) The competitive bidding requirement (Admin. Code Section 21.1);

8 (D) First source hiring requirements (Admin. Code Chapter 83); and

9 (E) The tropical hardwood and virgin redwood ban (Environ. Code Chapter
10 8).

11 (2) For purchase or sale of power and related products and services, where the
12 General Manager finds and documents in writing both that the agreement represents the best
13 opportunity available to the City to obtain essential services and products or dispose of
14 excess power in a manner beneficial to the City, and that it is not feasible to add all standard
15 City contract provisions to the agreement, the Board of Supervisors waives the requirement
16 to include in the agreement references to the following City Code provisions to the extent
17 found necessary by the General Manager and finds such waivers to be reasonable and in the
18 public interest for transactions using the pro forma contracts identified in subsection 2(c)
19 above:

20 (A) Public access to meeting and records for non-profit organizations (Admin.
21 Code Section 12L.2);

22 (B) Sweatfree Contracting (Admin. Code Section 12U.4);

23 (C) Food service waste reduction (Environ. Code Section 1605).
24
25

1 (3) The waivers specified in subsection 2(d) shall apply only to procurement
2 contracts using the pro forma contracts referenced in subsection 2(c) above, which include
3 language requiring compliance with all applicable federal, state, and local laws.
4

5 **Section 3. Authorization Pursuant to Charter Section 9.118(b) for Purchases of**
6 **Renewable and Greenhouse-Gas-Free Energy.**

7 (a) Background.

8 (1) PUC anticipates it will need at least 30 megawatts of renewable energy for the
9 first phase of CCA service. Under the new program design, PUC will manage the supply
10 portfolio for CCA customers, rather than contracting with a third party to purchase the energy
11 needed for the program. This approach will be more cost-effective than paying a third party to
12 enter into and manage contracts, but it will require PUC to negotiate and manage many
13 contracts.

14 (2) PUC anticipates issuing competitive solicitations for renewable energy supplies
15 and related services. It expects to enter into contracts of varying terms (up to 25 years) with
16 multiple sellers for a variety of resource types including solar, wind, and geothermal. This
17 approach will facilitate diversity of sellers and resource types while also reducing the risk of
18 failure that would be present in relying on a single entity for all energy supply. Long term
19 contracts of up to 25 years also encourage the development of local resources by limiting
20 development risk and providing revenue certainty.

21 (3) This new approach requires negotiating a number of contracts in a short time
22 period in order to meet the aggressive implementation schedule established for the program.
23 The ability to enter into agreements quickly will also allow PUC to capture attractive pricing
24 and finalize important terms in a time frame that is expected in commercial transactions.
25

1 (4) PUC's energy needs for serving the customers of its municipal utility are met
2 almost entirely by Hetch Hetchy supplies. But there may be limited circumstances where
3 purchases of renewable or greenhouse-gas-free supplies will be needed to ensure operations
4 consistent with good utility practices or to comply with legal requirements. The ability to make
5 these purchases in a timely manner will enable PUC to ensure the best prices and terms for
6 its municipal utility energy supply.

7
8 (b) Authorizations.

9 (1) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
10 authorizes the General Manager to purchase renewable and greenhouse-gas-free energy
11 supplies from facilities in California using contracts with terms in excess of ten years or
12 requiring expenditures of ten million dollars or more including amendments to such
13 agreements with an impact of greater than \$500,000, so long as the contract term, including
14 any amendments, does not exceed 25 years or require expenditures in excess of five million
15 per year or \$125 million over the life of the contract, and further provided that such contracts
16 are procured through a competitive process and approved by the PUC acting through its
17 Commission at a public meeting.

18 (2) Waivers. For such purchases of renewable and greenhouse-gas-free energy
19 supplies and capacity pursuant to the authority delegated in subsection 3(b)(1) that use the
20 pro forma standard agreements described in subsection 2(c) above, the Board of Supervisors
21 authorizes the waivers set forth in section 2(d) above.

22 (3) Contracts authorized under this subsection 3(b) for CCA shall be subject to a
23 maximum aggregate limit of \$500 million. PUC shall annually report to the Board of
24 Supervisors the duration, product purchased and cost of contracts entered into pursuant to
25

1 this section 3(b). PUC shall also annually report the program costs, the rates charged to CCA
2 customers to recover those costs, and a comparison of those CCA rates to PG&E rates.

3 (4) The cost of procurement contracts entered into under this section 3(b) for the
4 City's municipal electric utility and CCA program shall be subject to the PUC's existing budget
5 and appropriation process.

6 (5) For purposes of the authorizations and waivers in this section 3(b), power and
7 related products and services shall include power supplies, the conveyance or transmission of
8 same, or ancillary services such as spinning reserve, voltage control, or load scheduling, as
9 required for assuring reliable services in accordance with good utility practice and applicable
10 laws.

11 (6) That within 30 days of any agreements and/or contracts authorized by this
12 legislation being fully executed by all parties, the final agreement or contract shall be provided
13 to the Clerk of the Board for inclusion in the official file.

14 **Section 4. Severability.**

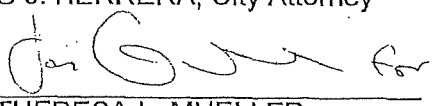
15 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or any
16 application thereof to any person or circumstance, is held to be invalid or unconstitutional by a
17 decision of a court of competent jurisdiction, such decision shall not affect the validity of the
18 remaining portions or applications of the ordinance. The Board of Supervisors hereby
19 declares that it would have passed this ordinance and each and every section, subsection,
20 sentence, clause, phrase, and word not declared invalid or unconstitutional without regard to
21 whether any other portion of this ordinance or application thereof would be subsequently
22 declared invalid or unconstitutional.

23
24 **Section 5. Effective Date.** This ordinance shall become effective 30 days after
25 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

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ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
THERESA L. MUELLER
Deputy City Attorney



City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 150408

Date Passed: May 19, 2015

Ordinance authorizing the Public Utilities Commission (PUC) to use pro forma agreements to purchase and sell electricity and related products and services to operate the City's municipal electric utility and community choice aggregation program; authorizing the General Manager of the PUC, in such agreements, to deviate from certain otherwise applicable requirements of City law, under certain circumstances; and authorizing the PUC, within specified parameters, to approve agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for renewable and greenhouse-gas-free power and related products and services.

May 06, 2015 Budget and Finance Sub-Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

May 06, 2015 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

May 12, 2015 Board of Supervisors - AMENDED

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 12, 2015 Board of Supervisors - PASSED ON FIRST READING AS AMENDED

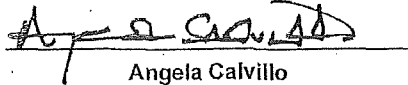
Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

May 19, 2015 Board of Supervisors - FINALLY PASSED


Ayes: 10 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Mar, Tang, Wiener and Yee
Excused: 1 - Kim

File No. 150408

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 5/19/2015 by the Board of Supervisors of the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



Mayor

5/28/15
Date Approved

AMENDED IN COMMITTEE
11/18/15

FILE NO. 151123

ORDINANCE NO. 223-15

1 [Purchase and Sale of Electricity and Related Products and Services for CleanPowerSF - San
2 Francisco Public Utilities Commission]

3 **Ordinance conditionally authorizing the San Francisco Public Utilities Commission**
4 **(SFPUC) to enter into one or more agreements requiring expenditures of \$10,000,000 or**
5 **more for electric power and related products and services to launch the City's**
6 **community choice aggregation program, CleanPowerSF, and authorizing the General**
7 **Manager of the SFPUC to deviate from certain otherwise applicable requirements of**
8 **City law in such agreements.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

16 Be it ordained by the People of the City and County of San Francisco:

17 Section 1. Findings.

18 **San Francisco Community Choice Aggregation Program**

19 (a) State law allows cities and counties to develop Community Choice Aggregation
20 (CCA) programs, through which local governments may choose to supply electricity to serve
21 the needs of participating customers within their jurisdictions while the existing utility continues
22 to provide services such as customer billing, transmission and distribution.

23 (b) For many years, the City has considered developing a CCA program to allow
24 San Francisco residents and businesses the option to receive cleaner, more sustainable
25 electricity at rates comparable to the incumbent utility. See Board of Supervisors (BOS)
Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and 78-14; and BOS Resolution Nos.
348-12, and 331-13.

1 (c) The Public Utilities Commission (SFPUC) has developed a CCA program called
2 CleanPowerSF. On May 12, 2015, in SFPUC Resolution 15-0112, on file with the Clerk of the
3 Supervisors in File No. 151123, the SFPUC approved initial not-to-exceed rates and a rate-
4 setting methodology for CleanPowerSF.

5 (d) In May 2015, the City enacted Ordinance No. 75-15. Ordinance No. 75-15
6 authorized the General Manager of the SFPUC to use certain pro forma contracts, such as
7 the Western System Power Pool (WSPP) agreement and the Edison Electric Institute (EEI)
8 agreement to purchase electricity and authorized the General Manager to deviate from certain
9 requirements under City law in such contracts. That ordinance also authorized the SFPUC
10 within specified parameters to approve agreements with terms in excess of 10 years or
11 requiring expenditures of \$10,000,000 or more, for renewable and greenhouse-gas-free
12 energy supplies from facilities in California.

13 **SFPUC Competitive Processes for Power and Related Products to Launch**
14 **CleanPowerSF, Short Listing of Bidders and Approval of Contract Negotiations**

15 (e) On August 11, 2015, the SFPUC issued a Request for Offers (RFO) for power
16 supplies to launch CleanPowerSF. The RFO requested bids for energy to support the first
17 phase of CleanPowerSF that would initially be 30 to 50 megawatts (MW).

18 (f) The RFO sought proposals for three types of products: firmed and shaped
19 renewable and conventional energy with a term of three to five years (Bid Option 1); firmed
20 and shaped or as available renewable energy with a term of one to 25 years (Bid Option 2);
21 and resource adequacy capacity (RA Capacity).

22 (g) The SFPUC received six bids from respondents offering Bid Option 1 products;
23 52 bids from respondents offering Bid Option 2 products; and six bids from respondents
24 offering RA Capacity. SFPUC staff reviewed the bids to ensure their compliance with the
25

1 minimum bid requirements, and an evaluation team reviewed the bids against the RFO
2 evaluation criteria.

3 (h) The evaluation team recommended the following respondents for further
4 consideration and negotiations:

5 (1) for Bid Option 1 products: Calpine Energy Services; L.P., Constellation;
6 and Morgan Stanley;

7 (2) for Bid Option 2 products: Calpine Energy Services, L.P.; E.ON; EDF
8 Renewable Development, LLC; First Solar; FTP Power LLC; dba Sustainable Power Group
9 (sPower); Iberdrola Renewables; Republic Services of Sonoma County, Inc.; 8minutenergy;
10 Centaurus Renewable Energy LLC/Clenera, LLC; and

11 (3) for RA Capacity: Calpine Energy Service, L.P.; Constellation; and EWP
12 Renewable Development Corporation.

13 (i) On October 27, 2015, in SFPUC Resolution 15-0222, on file with the Clerk of the
14 Board of Supervisors in File No. 151123, the SFPUC approved the pool of qualified
15 respondents recommended by the evaluation team, authorized the General Manager to
16 negotiate energy supply contracts with one or more of the respondents, and authorized the
17 General Manager to execute energy supply contracts with one or more of the qualified
18 respondents subject to specified conditions. The SFPUC authorized the General Manager to
19 submit the contracts to the Board of Supervisors for its review, if required.

20 (j) SFPUC Resolution 15-0222 imposed the following conditions, among others:

21 (1) contract pricing must be consistent with the rate setting priorities set forth
22 in SFPUC Resolution 15-0112;

23 (2) contractors must maintain an investment grade credit rating, or provide
24 equivalent credit support during the duration of the contract;

25 (3) contracts for Bid Option 1 products may not exceed five years;

1 (4) contracts for Bid Option 2 products may not exceed 25 years;
2 (5) contracts for RA Capacity may not exceed five years; and
3 (6) the total cost of all CleanPowerSF energy supply contracts entered into
4 pursuant to SFPUC Resolution 15-0222 may not exceed \$365 million a year.

5 (k) SFPUC Resolution 15-0222 also provides:

6 (1) The SFPUC intends to review the expected costs of CCA service and
7 consider authorizing the General Manager to finalize the schedule of rates and charges for the
8 initial offering, prior to commencement of the opt-out process;

9 (2) The contracts will not be effective until the SFPUC has reviewed the
10 CleanPowerSF business plan and risk assessment and adopted business practice policies for
11 CleanPowerSF;

12 (3) The General Manager will report to the SFPUC on the final schedule of
13 rates and charges for the initial offering, prior to commencement of the opt-out process; and

14 (4) Before making any future decisions to construct or cause the construction
15 of specific renewable energy projects subject to the California Environmental Quality Act
16 (CEQA), the SFPUC will consider any environmental review documents prepared by the City
17 or another lead agency in compliance with CEQA and, if it approves such projects, the
18 SFPUC will make or adopt any required CEQA findings as part of such approval actions.

19 (l) If the City defaults or elects to terminate an agreement, the SFPUC may be
20 required to make termination payments under Bid Option 1 product contracts, and such
21 termination payments could be in the tens of millions of dollars.

22 (m) In order to secure this potential exposure the SFPUC issued a request for
23 proposals in August 2015 to obtain an irrevocable letter of credit to secure such termination
24 payments.

1 (n) After a review of responsive proposals from qualified commercial banks the
2 SFPUC determined to negotiate the terms of a letter of credit with JPMorgan Chase Bank,
3 National Association.

4 **Need for Further Contracting Authority for Bid Option 1 Products.**

5 (o) Based on its review of the competitive process responses and program needs,
6 the SFPUC in its expert judgment has determined that in order to obtain the best service for
7 the best price, it may require the ability to enter into contracts for Bid Option 1 products and
8 related letters of credit that exceed \$10,000,000.

9 Section 2. Authorizations.

10 (a) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
11 hereby authorizes the General Manager to ~~(i)~~ enter into no more than one agreements per
12 bidder for Bid Option 1 products with one or more of the three bidders specified in SFPUC
13 Resolution 15-0222 (Calpine Energy Services, L.P., Constellation, and Morgan Stanley),
14 requiring expenditures of \$10,000,000 or more, including amendments to such contracts with
15 an impact of greater than \$500,000, provided that the total aggregate cost of any such
16 agreement(s) authorized by this Section 2(a) may not exceed \$30 million a year.

17 (b) Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
18 hereby authorizes the General Manager to and ~~(ii)~~ enter into one or more credit agreements
19 with JPMorgan Chase Bank for one or more letters of credit to secure termination payments
20 under any contract for Bid Option 1 products, ~~in either case~~ requiring expenditures of
21 \$10,000,000 or more, including amendments to such contracts with an impact of greater than
22 \$500,000, provided that the total aggregate value of such letter(s) of credit authorized by this
23 Section 2(b) may not exceed \$40 million.

24 ~~(b)(c)~~ The Board of Supervisors hereby extends to contracts authorized pursuant to
25 Section 2(a)~~(i)~~ above the authorization to use pro forma contracts set forth in Section 2(c) of

1 Ordinance No. 75-15, and the waivers of required City Contracting Provisions set forth in
2 Section 2(d) of Ordinance No. 75-15.

3 ~~(e)~~(d) The authorization in Section 2(a)(i) and authorization and waivers in Section
4 2(c**b**) above apply only to contracts authorized by SFPUC Resolution 15-0222 that meet all of
5 the requirements set forth in SFPUC Resolution 15-0222. The authorization in Section
6 2(b**a**)(ii) applies only for letters of credit to secure termination payments in contracts
7 authorized by SFPUC Resolution 15-0222 that meet all of the requirements set forth in
8 SFPUC Resolution 15-0222.

9 (d)~~(e)~~ The authorizations in Sections 2(a) and 2(b) and the authorization and waivers
10 in Section 2(c**b**) are subject to all other requirements of Ordinance No. 75-15.

11 ~~(e)~~(f) The cost of procurement contracts entered into under Section 2 shall be subject
12 to the Charter budget and fiscal provisions.

13 (g) The SFPUC shall submit annual reports to the Board of Supervisors that include
14 annual program costs, the rates charged by the SFPUC to CleanPowerSF customers to
15 recover the costs, and a comparison of those CleanPowerSF rates to PG&E rates.

16 (h) This Ordinance adds to but does not otherwise modify the authority granted in
17 Ordinance No. 75-15.

18 Section 3. Effective Date.

19 This ordinance shall become effective 30 days after enactment. Enactment occurs
20 when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not
21 sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the
22 Mayor's veto of the ordinance.

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APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: Jeanne M. Sole
JEANNE M. SOLE
Deputy City Attorney

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails
Ordinance

File Number: 151123

Date Passed: December 08, 2015

Ordinance conditionally authorizing the San Francisco Public Utilities Commission (SFPUC) to enter into one or more agreements requiring expenditures of \$10,000,000 or more for electric power and related products and services to launch the City's community choice aggregation program, CleanPowerSF, and authorizing the General Manager of the SFPUC to deviate from certain otherwise applicable requirements of City law in such agreements.

November 18, 2015 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

November 18, 2015 Budget and Finance Committee - RECOMMENDED AS AMENDED

December 01, 2015 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Avalos, Breed, Campos, Christensen, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

December 08, 2015 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Avalos, Breed, Campos, Cohen, Farrell, Kim, Mar, Tang, Wiener, Yee and Peskin

File No. 151123

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 12/8/2015 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mayor

12/16/15
Date Approved

1 [Authorizing Agreements - Purchase of Electricity and Related Products and Services for
2 CleanPowerSF - Public Utilities Commission]

3 Ordinance delegating authority under Charter, Section 9.118, to the General Manager of
4 the Public Utilities Commission to enter into agreements with terms in excess of ten
5 years or requiring expenditures of \$10,000,000 or more for power and related products
6 and services required to supply San Francisco's community choice aggregation
7 program, CleanPowerSF, subject to specified conditions, as defined herein; and
8 authorizing deviations from certain otherwise applicable contract requirements in the
9 Administrative Code and the Environment Code.

10 NOTE: Unchanged Code text and uncodified text are in plain Arial font.
11 Additions to Codes are in single-underline italics Times New Roman font.
12 Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
13 Board amendment additions are in double-underlined Arial font.
14 Board amendment deletions are in ~~strikethrough Arial font~~.
15 Asterisks (* * * *) indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 **Section 1. Background.**

19 (a) State law allows cities and counties to develop Community Choice Aggregation
20 (CCA) programs, through which local governments supply electricity to serve the needs of
21 participating customers within their jurisdictions while the existing utility continues to provide
22 services such as customer billing, transmission, and distribution.

23 (b) The City elected to implement a CCA program to provide San Francisco
24 residents and businesses the option to receive cleaner, more sustainable electricity at rates
25 comparable to PG&E's rates. See Ordinance Nos. 86-04, 147-07, 232-09, 45-10, 200-12 and
78-14; and Resolution Nos. 348-12, 331-13 and 75-15.

1 (c) In May 2016, the San Francisco Public Utilities Commission (PUC) launched
2 San Francisco's CCA program, CleanPowerSF, with initial service to almost 8,000 accounts.
3 In November 2016, PUC expanded its service and CleanPowerSF now serves about 80,000
4 accounts. As required by State law for all CCAs, customers are given several opportunities to
5 opt out of CleanPowerSF service.

6 (d) CleanPowerSF currently offers two levels of supply service: Green, the default
7 service taken by most customers, which contains 40% renewable energy; and SuperGreen, a
8 premium option selected by 3.94% of customers, which offers 100% renewable energy.

9 (e) The goals of CleanPowerSF are to provide affordable and reliable electricity
10 services, cleaner energy alternatives advancing the City's Greenhouse Gas reduction goals,
11 investment in local renewable energy projects and jobs, and long-term rate and financial
12 stability.

13 (f) Public and private utilities and energy suppliers use industry-standard pro forma
14 contracts to ensure the availability of essential services in a timely and cost-effective manner.
15 Using these agreements can help facilitate negotiations by focusing the parties on the
16 elements that are most likely to differ from one transaction to another: price, quantity, location,
17 and duration. These contracts provide standard terms and conditions that address common
18 issues, but allow parties to determine which provisions to include in a particular contract.

19 (g) City law requires standard contract provisions to protect the City's interests,
20 ensure accountability, and promote important social values. For the initial phase of
21 CleanPowerSF service, in Ordinance Nos. 75-15 and 223-15, the Board of Supervisors
22 authorized the PUC to use certain pro forma contracts and deviate from certain otherwise
23 applicable contracting requirements, subject to specified conditions. The Board also
24 delegated authority to the PUC General Manager to enter agreements with terms in excess of
25 ten years or requiring expenditures of \$10,000,000 or more, subject to specified conditions.

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Section 2. Expansion of CleanPowerSF Service to San Francisco Customers.

State law requires cities that offer CCA service to offer service to all residential customers; many CCA programs, including CleanPowerSF, have added customers in phases to mitigate financial and operational risk. The CleanPowerSF Phasing Policy (adopted in the CleanPowerSF Business Practice Policies on December 8, 2015, by PUC Resolution 15-0267) provides that service will be offered to additional customers throughout San Francisco in a manner that is financially prudent and operationally feasible. The PUC expects additional phases of service to meet the following conditions: program rates are sufficient to cover program costs and rates are projected to be at or below PG&E rates at the launch of each phase; supply commitments are sufficient to meet new projected customer demand; staffing and systems and/or qualified third party service providers can handle additional transactions and customer account volumes; sufficient and reasonably priced credit, collateral and working capital support is available; and required approvals have been obtained.

In May 2017 the PUC completed a study of the options for expanding CleanPowerSF to offer service to all customers in San Francisco. On May 9, 2017, the PUC Commission adopted in a public meeting the goal of completing City-wide enrollment into CleanPowerSF by July 2019. The CleanPowerSF Growth Plan, Final Report, is on file with the Clerk of the Board of Supervisors in File No. 171172.

The PUC anticipates launching a large program expansion in 2018, with further expansion to all customers in the City in 2019, although exact expansion dates will depend on available power supply and program costs. To meet these aggressive implementation date targets and secure the best possible prices and terms, PUC will need to negotiate a mix of electricity contracts with multiple suppliers simultaneously in an expedited time frame.

1 **Section 3. Contracts Needed for CleanPowerSF Expansion.**

2 (a) The electricity supplies needed to expand CleanPowerSF service throughout the
3 City will be obtained through a mix of long-term (10 to 25 years) and shorter term contracts.
4 To acquire the electricity products necessary to supply this program expansion and meet the
5 program's portfolio content goals and regulatory obligations, the PUC issued two Requests for
6 Offers ("RFO"), one in June 2017 (described in subsection (1) below) and one in September
7 2017 (described in subsection (2) below). To ensure it had adequate credit support for these
8 purchases and other program requirements, the PUC also issued an RFP for a bank credit
9 facility in July 2017 (described in subsection (3) below).

10 (1) On June 22, 2017, the PUC issued an RFO seeking bids for energy,
11 environmental attributes, and capacity from new or existing eligible renewable resources, for
12 contracts of up to 25 years in duration. A copy of the renewable energy RFO is on file with
13 the Clerk of the Board of Supervisors in File No. 171172, and is incorporated herein by
14 reference as though fully set forth. The PUC received more than 300 bids from 32 different
15 companies, for supplies from more than 70 different projects, 83% of which are located in
16 California. Over 90% of the bids offered energy from new renewable resources. After the
17 evaluation team reviewed the bids to determine compliance with minimum qualifications and
18 criteria specified in the RFO, the PUC shortlisted two subsets of bidders for further
19 consideration and possible negotiations. For projects with initial contract delivery dates in
20 2018 or 2019, the selected bidders are 8minutenergy Renewable LLC; Avangrid Renewables
21 LLC; Calpine Energy Services L.P.; E.ON Climate & Renewables North America LLC; First
22 Solar; Frontier Renewable; FTP Power LLC, dba Sustainable Power Group (sPower); Morgan
23 Stanley Capital Group Inc.; NextEra Energy Resources Acquisitions LLC; Shell Energy North
24 America (US) L.P.; SunPower Corporation Systems; Terra-Gen LLC; Wadham Energy L.P.;
25 and Wind Wall Development LLC. For projects with initial contract delivery dates in 2020 or

1 2021, the selected bidders are 8minutenergy Renewable LLC; E.ON Climate & Renewables
2 North America, LLC; EDF Renewable Development, LLC; EDP Renewables North America
3 LLC; First Solar; Lendlease Energy Development LLC; NextEra Energy Resources
4 Acquisitions, LLC; NRG Renew, LLC; Sempra Renewables, LLC; and SunPower Corporation,
5 Systems.

6 The RFO invited Respondents to submit proposals for community benefits to be
7 invested in San Francisco County and/or the county in which the renewable project is or will
8 be located. Community Benefits are firm commitments on the part of the bidder to be
9 delivered to the community during the term of the contract in accordance with the SFPUC's
10 2011 Community Benefits Policy and 2009 Environmental Justice Policy, which directs the
11 SFPUC and its partner firms to be a good neighbor to all who are directly impacted by its
12 activities and investments. Community benefits must support non-profit or charitable activities
13 and may not go to, nor benefit, any employee of the SFPUC. The contractor may provide
14 community benefits in the form of a direct financial contribution, volunteer hours, in-kind
15 contributions, or a combination thereof. Community benefits are a "zero-dollar task," meaning
16 no hours or dollars are allocated in the selected contractor's costs under the contract.

17 (2) On September 12, 2017, the PUC issued an RFO seeking bids for
18 shaped energy, renewable energy, carbon-free energy, and capacity for contracts of up to
19 three years in length, with start dates as early as 2018 and as late as 2021. A copy of the
20 shaped energy RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,
21 and is incorporated herein by reference as though fully set forth. These bids are not for
22 electricity produced by pre-specified projects; instead, the bidder provides a portfolio of
23 electricity supply from a variety of available sources responsive to the need the PUC
24 identified. The RFO excluded bids containing power purchased from coal or nuclear plants.
25 PUC received bids from five companies. After the evaluation team reviewed the bids to

1 determine compliance with minimum qualifications and criteria specified in the RFO, the PUC
2 shortlisted five bidders for further consideration and possible negotiations. The selected
3 bidders are Calpine Energy Services L.P.; Constellation; Direct Energy Business Marketing
4 LLC; Morgan Stanley Capital Group Inc.; and Shell Energy North America (U.S.) L.P.

5 (3) On July 18, 2017, the PUC issued an RFP for a bank credit facility. A
6 copy of the bank RFO is on file with the Clerk of the Board of Supervisors in File No. 171172,
7 and is incorporated herein by reference as though fully set forth. After evaluating the
8 responses, PUC selected JPMorgan Chase Bank, N.A. (JPMorgan) for further discussions
9 and negotiations. PUC anticipates negotiating a credit agreement to provide liquidity support,
10 as needed, for power purchases, regulatory requirements, and other financial obligations of
11 the program through letters of credit or loans. The credit agreement will have a maximum
12 term of six years and a maximum credit commitment of \$150 million.

13 (b) Negotiation and Execution of Contracts. PUC expects to negotiate contracts
14 with one or more bidders for power and to make purchases under one or more of the
15 contracts after approvals and after final pricing. PUC anticipates that some purchases will be
16 made in early 2018, and additional purchases will be made over the next few years, through
17 2021. ~~The PUC Commission in public meetings will consider authorizing one or more of these~~
18 ~~contracts. PUC expects the Commission to review and consider approvals related to the~~
19 ~~RFOs for power supply in its regular Commission meeting on November 14, 2017. PUC also~~
20 ~~expects to successfully conclude negotiations with JPMorgan for the bank credit facility, which~~
21 ~~will is expected to be considered by the PUC Commission in a public meeting in January 2018~~
22 ~~2017. The General Manager will not execute any contracts unless conditions specified by the~~
23 ~~PUC Commission have been satisfied, including requirements for program rates. Final~~
24 ~~program rates will provide for program cost recovery including energy procurement and~~
25 ~~administrative and financial costs of program implementation.~~

1 (c) In a public meeting on November 14, 2017, the PUC Commission approved the
2 pool of qualified bidders for energy supply contracts and authorized the General Manager to
3 negotiate energy supply contracts with one or more of those bidders, and to execute one or
4 more contracts, subject to the following conditions:

5 (1) the total cost of the executed contracts is consistent with the rate setting
6 methodology adopted by the Commission in Resolution 15-0112;

7 (2) the renewable energy supplied is from resources eligible to be counted as
8 California Renewables Portfolio Standard Portfolio Content Category 1 or Portfolio Content
9 Category 2 resources;

10 (3) the counterparties to any contract must be creditworthy;

11 (4) the total combined volume of power procured under contracts from the
12 two competitive solicitations shall not exceed 435 MW per year;

13 (5) the duration of any contract under the renewable energy RFO shall not
14 exceed 25 years, and the duration of any contract under the shaped energy RFO shall not
15 exceed three years;

16 (6) the total quantity of Resource Adequacy Capacity procured shall not
17 exceed the expected quantity established by state law and regulation for load of 435 MW per
18 year; and

19 (7) the total cost of all energy supply contracts shall not exceed \$175 million
20 per year.

21 The Commission further determined it would review the expected costs of CCA service
22 and consider authorizing the General Manager to finalize the schedule of rates and charges
23 for the next expansion to additional customers; the contracts would not be effective until the
24 PUC has reviewed the CleanPowerSF risk assessment for the proposed portfolio of contracts
25 to be executed; and the General Manager would report to the SFPUC on the final schedule of

1 rates and charges prior to commencement of the opt-out process. See Resolution No. 17-
2 0226, which is on file with the Clerk of the Board of Supervisors in File No. 171172, and is
3 incorporated herein by reference as though fully set forth.
4

5 **Section 4. Grant of Authority to Use Standard Power Contracts.**

6 As approved in Ordinances 75-15 and 223-15, and for the reasons stated there in
7 addition to the reasons stated above, for purchases of power and related products and
8 services necessary to provide CleanPowerSF service, the Board of Supervisors authorizes
9 the use of the following standardized contracts that deviate from the City's contract forms.

10 (a) Western System Power Pool ("WSPP") Agreement. The WSPP is a group of
11 more than 300 publicly-owned and private utilities, including Alameda Municipal Power, the
12 City of Palo Alto, the City of Roseville, the Sacramento Municipal Utility District, and Silicon
13 Valley Power, all of which operate publicly-owned utilities. The City, through PUC, is a
14 member of the WSPP. The WSPP has developed an agreement that sets forth standard
15 terms and conditions for the purchase and sale of power and related products and services.
16 A copy of the current WSPP agreement is on file with the Clerk of the Board of Supervisors in
17 File No. 171172, and is incorporated herein by reference as though fully set forth. The WSPP
18 agreement has been approved by the Federal Energy Regulatory Commission ("FERC").
19 The WSPP agreement is periodically updated and modified subject to the approval of FERC.
20 The Board of Supervisors authorized the use of the WSPP agreement for CleanPowerSF
21 purchases in Ordinance No. 75-15.

22 (b) The Edison Electric Institute (EEI) Master Agreement. The EEI, in collaboration
23 with more than 80 member utilities, power marketers, power generators, and customer
24 representatives, developed an agreement that sets forth standard terms and conditions for the
25 purchase and sale of power and related products and services. The EEI agreement is

1 updated as needed to reflect market changes. A copy of the current EEI agreement is on file
2 with the Clerk of the Board of Supervisors in File No. 171172 and is incorporated herein by
3 reference as though fully set forth. The Board of Supervisors authorized the use of the EEI
4 agreement for CleanPowerSF purchases in Ordinance No. 75-15.

5 (c) City Pro forma Agreements. In connection with the recent RFOs for power
6 supplies, the PUC has developed its own standardized contract forms for three different types
7 of energy supply, combining standard industry terms with key City requirements. Ordinance
8 No. 75-15 authorized the use of form agreements developed by PUC for CleanPowerSF
9 purchases. Each of these form agreements is on file with the Clerk of the Board of
10 Supervisors in File No. 171172 and is incorporated herein by reference as though fully set
11 forth:

- 12 (1) Renewable Power Purchase Agreement (New Facility);
- 13 (2) Renewable Power Purchase Agreement (Existing Facility); and
- 14 (3) Power Purchase and Sale Agreement.

15 (d) The Board of Supervisors authorizes the use of the WSPP agreement and the
16 EEI agreement for the PUC's purchase of power and related products and services,
17 notwithstanding that the terms of those agreements may deviate from the City's standard
18 contract terms; the Board of Supervisors authorizes modifications to the form agreements so
19 long as such modifications, in the judgment of the General Manager and the City Attorney, do
20 not materially decrease the City's rights or materially increase its liabilities.

21 (e) The Board of Supervisors approves the pro forma contracts developed by PUC
22 for the purchase of power and related products and services, notwithstanding that the terms of
23 those agreements may deviate from the City's standard contract terms; the Board of
24 Supervisors authorizes modifications to the form agreements so long as such modifications, in
25

1 the judgment of the General Manager and the City Attorney, do not materially decrease the
2 City's rights or materially increase its liabilities.

3
4 **Section 5. Agreement for a Bank Credit Facility.**

5 The Board of Supervisors authorizes the General Manager, subject to the conditions in
6 Section 7, to enter an agreement for liquidity support with JPMorgan, or with another entity if
7 negotiations with JPMorgan do not result in an acceptable agreement. The General Manager
8 may utilize the waivers in Section 6 below and may make modifications to the standard City
9 agreements so long as such modifications, in the judgment of the General Manager and the
10 City Attorney, do not materially decrease the City's rights or materially increase its liabilities.

11
12 **Section 6. Waiver of Certain Contract-Related Requirements in the**
13 **Administrative Code and the Environment Code.**

14 (a) Where the General Manager finds and documents in writing both that the
15 transaction represents the best opportunity available to the City to obtain essential services
16 and products in a manner beneficial to the City, and that it is not feasible to add all standard
17 City contract provisions to the agreement, the Board of Supervisors hereby grants waivers of
18 the following standard contract provisions to the extent found necessary by the General
19 Manager, and finds such waivers to be reasonable and in the public interest:

- 20 (1) Implementing the MacBride Principles (Admin. Code Chapter 12F);
21 (2) Increased participation by small and micro local businesses in City
22 contracts (Admin. Code Chapter 14B);
23 (3) The competitive bidding requirement (Admin. Code Section 21.1);
24 (4) First source hiring requirements (Admin. Code Chapter 83); and
25

1 (5) The tropical hardwood and virgin redwood ban (Environ. Code
2 Chapter 8).

3 (b) Where the General Manager finds and documents in writing both that the
4 agreement represents the best opportunity available to the City to obtain essential services
5 and products in a manner beneficial to the City, and that it is not feasible to add all standard
6 City contract provisions to the agreement, the Board of Supervisors waives the requirement to
7 include in the agreement references to the following City Code provisions to the extent found
8 necessary by the General Manager, and finds such waivers to be reasonable and in the public
9 interest:

10 (1) Public access to meeting and records of non-profit organizations (Admin.
11 Code Section 12L);

12 (2) Sweatfree Contracting (Admin. Code Section 12U.4);

13 (3) Food service waste reduction (Environ. Code Section 1605).

14 (c) The waivers specified in this Section 6 shall apply only to contracts which
15 include language requiring compliance with all applicable federal, state, and local laws.
16

17 **Section 7. Conditions on Contract Authority Granted in this Ordinance.**

18 (a) The City's payment obligations under these contracts for CleanPowerSF power
19 supply and bank credit facility to support CleanPowerSF expansion to offer service throughout
20 San Francisco shall be special limited obligations of the City payable solely from the revenues
21 of CleanPowerSF.

22 (b) The total cost of the power supply contracts authorized by this ordinance, with
23 terms from one to twenty-five years, shall not exceed \$175 million per year.

24 (c) The total credit commitment under the bank credit facility agreement shall not
25 exceed \$150 million over the term of the agreement, which shall not exceed six years.

1 (d) The contracts shall be approved by the PUC acting through its Commission in a
2 public meeting. The Commission may delegate approval authority to the General Manager,
3 subject to conditions specified by the Commission in a public meeting.

4 (e) All conditions established by the PUC shall be met, including but not limited to
5 requirements regarding program rates, program expansion, and electricity portfolio content.

6 (f) The PUC shall submit annual reports to the Board of Supervisors that include
7 annual program costs, the rates charged by the PUC to CleanPowerSF customers to recover
8 costs, and a comparison of CleanPowerSF rates to PG&E rates.

9
10 **Section 8. Community Benefits in Renewable Power RFO.**

11 The Board of Supervisors finds that the community benefits component of the RFO for
12 renewable energy supplies is reasonable and beneficial to the City and authorizes its inclusion
13 in contracts, where the General Manager deems feasible and appropriate, so long as the PUC
14 Commission finds, in a public meeting, that the community benefits component is reasonable
15 and serves a utility purpose.

16
17 **Section 9. Delegation of Authority Under Charter Section 9.118 to the PUC**
18 **General Manager.**

19 Pursuant to its authority under Charter Section 9.118, the Board of Supervisors
20 delegates to the PUC General Manager authority to purchase renewable and shaped energy
21 supplies and credit support for CleanPowerSF from bidders selected by competitive
22 solicitation as described above in Section 3 of this ordinance, using contracts with terms in
23 excess of ten years or requiring expenditures of ten million dollars or more including
24 amendments to such agreements with an impact of greater than \$500,000, so long as the
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contract term does not exceed 25 years, and subject to the conditions specified above in Section 7.

Section 10. Effective Date.

This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within 10 days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 

THERESA L. MUELLER
Deputy City Attorney

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City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 171172

Date Passed: January 23, 2018

Ordinance delegating authority under Charter, Section 9.118, to the General Manager of the Public Utilities Commission to enter into agreements with terms in excess of ten years or requiring expenditures of \$10,000,000 or more for power and related products and services required to supply San Francisco's community choice aggregation program, CleanPowerSF, subject to specified conditions, as defined herein; and authorizing deviations from certain otherwise applicable contract requirements in the Administrative Code and the Environment Code.

December 13, 2017 Budget and Finance Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

December 13, 2017 Budget and Finance Committee - RECOMMENDED AS AMENDED

January 09, 2018 Board of Supervisors - PASSED ON FIRST READING

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

January 23, 2018 Board of Supervisors - FINALLY PASSED

Ayes: 11 - Breed, Cohen, Farrell, Fewer, Kim, Peskin, Ronen, Safai, Sheehy, Tang and Yee

File No. 171172

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/23/2018 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

Mark E. Farrell
Mayor

1/25/18

Date Approved

1 [Authorizing Agreements - Binding Arbitration for Purchase of Electricity and Related Products
2 - Public Utilities Commission - Total Costs of \$13,762,490]

3 **Ordinance delegating authority to the General Manager of the Public Utilities**
4 **Commission to enter into agreements requiring binding arbitration for purchase of**
5 **electricity and related products within certain parameters and where necessary to meet**
6 **legal requirements; and retroactively authorizing three agreements for CleanPowerSF**
7 **with Pacific Gas & Electric Company requiring binding arbitration, with a combined**
8 **term of two years and five months from August 2018, through December 2020, and total**
9 **costs of \$13,762,490 for purchase of electricity-related products.**

10 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
11 **Additions to Codes** are in *single-underline italics Times New Roman font*.
12 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
13 **Board amendment additions** are in double-underlined Arial font.
14 **Board amendment deletions** are in ~~strikethrough Arial font~~.
15 **Asterisks (* * * *)** indicate the omission of unchanged Code
16 subsections or parts of tables.

17 Be it ordained by the People of the City and County of San Francisco:

18 **Section 1. Background.**

19 (a) For the last 100 years, the Public Utilities Commission (PUC) has operated a
20 municipal electric utility providing service to City agencies and other customers using
21 greenhouse-gas-free energy produced by the Hetch Hetchy system. The PUC supplements
22 the energy produced by Hetch Hetchy and other City-owned facilities with purchases of
23 electricity and related products to satisfy the energy demand of its customers and meet legal
24 requirements.

25 (b) In May 2016, the PUC launched a Community Choice Aggregation (CCA) program
called CleanPowerSF to provide San Francisco residents and businesses the option

1 to receive cleaner, more sustainable electricity at rates comparable to Pacific Gas & Electric
2 Company's (PG&E) rates. CleanPowerSF uses clean and renewable energy purchased from
3 various facilities, including energy from Hetch Hetchy.

4
5 **Section 2. Pacific Gas and Electric Company Agreements; Retroactive**
6 **Authorization.**

7 (a) State law requires entities that provide electric service to customers, including
8 CleanPowerSF and the City's municipal electric utility operated by PUC, to meet certain
9 requirements such as those intended to ensure reliable service. One such requirement is for
10 Resource Adequacy, an electricity-related product that ensures sufficient electric generation
11 resources are available to meet unusually high levels of demand.

12 (b) CleanPowerSF has issued competitive solicitations for Resource Adequacy
13 supplies and has participated in PG&E's solicitations to sell such supplies. The PUC has
14 executed agreements with several suppliers, but must also make purchases from PG&E to
15 procure sufficient supplies for CleanPowerSF for 2018-2020.

16 (c) To timely comply with state law requirements, the PUC has executed the
17 following three agreements with PG&E: one for August through December 2018 for
18 \$3,411,740; one for September through December 2018 for \$504,000; and one for January
19 2019 through December 2020 for \$ 9,846,750. These agreements use the Edison Electric
20 Institute form agreement authorized by Ordinance No. 75-15; that form agreement is already
21 on file with the Clerk of the Board of Supervisors in File No. 150408.

22 (d) PG&E requires a three-step dispute resolution process that includes negotiation,
23 mediation, and binding arbitration in accordance with the JAMS Commercial Arbitration Rules.

24 (e) The Board of Supervisors hereby authorizes retroactively the three PG&E
25 agreements, described in subsection (c) of this Section 2, with binding arbitration provisions.

1 **Section 3. Limited Delegation of Authority to Enter Into Certain Contracts**
2 **Requiring Binding Arbitration.**

3 (a) State law requires entities that provide electricity service to customers to
4 demonstrate compliance with rules to ensure reliable service, meet renewable energy
5 standards, and achieve other goals. These rules apply to the City's municipal electric utility
6 and CleanPowerSF.

7 (b) The Board of Supervisors has previously granted the PUC additional flexibility in
8 contracting to ensure it can secure electricity products needed for operating CleanPowerSF
9 and its municipal electric utility. See, e.g., Ordinance Nos. 75-15, 223-15, and 8-18.

10 (c) It is reasonable and in the public interest to allow the General Manager of the
11 PUC to agree to binding arbitration in certain limited circumstances, without Board of
12 Supervisors approval. Accordingly, the Board hereby delegates authority to the General
13 Manager of the PUC to enter into agreements that require binding arbitration, provided that
14 the agreement meets all of the following conditions:

- 15 1. The agreement is to purchase electricity or an electricity-related product
16 such as, by way of illustration but not limitation, Resource Adequacy;
- 17 2. The purchase is necessary to meet a legal requirement;
- 18 3. No other purchase that would meet the legal requirement and does not
19 require binding arbitration is available; and
- 20 4. The agreement would not otherwise require Board of Supervisors
21 approval.

22 (d) The General Manager of the PUC shall notify the Board of Supervisors in writing
23 of any agreements executed under the authority granted in subsection (c) of this Section 3,
24 and shall provide a copy of the agreement along with the notice.

1 (e) This section III expires by operation of law five years from the effective date of
2 this ordinance.

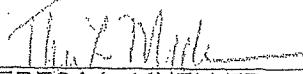
3
4 **Section 4. Effective Date; Retroactivity.**

5 (a) This ordinance shall become effective 30 days after enactment. Enactment
6 occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or
7 does not sign the ordinance within ten days of receiving it, or the Board of Supervisors
8 overrides the Mayor's veto of the ordinance.

9 (b) Upon the effective date of this ordinance, Section 2 of this ordinance shall be
10 retroactive to May 29, 2018.

11
12 APPROVED AS TO FORM:
13 DENNIS J. HERRERA, City Attorney

14 By:

15 
16 _____
17 THERESA L. MUELLER
18 Deputy City Attorney

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City and County of San Francisco

Tails
Ordinance

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 180708

Date Passed: September 25, 2018

Ordinance delegating authority to the General Manager of the Public Utilities Commission to enter into agreements requiring binding arbitration for purchase of electricity and related products within certain parameters and where necessary to meet legal requirements; and retroactively authorizing three agreements for CleanPowerSF with Pacific Gas & Electric Company requiring binding arbitration, with a combined term of two years and five months from August 2018, through December 2020, and total costs of \$13,762,490 for purchase of electricity-related products.

September 06, 2018 Budget and Finance Committee - CONTINUED

September 13, 2018 Budget and Finance Committee - AMENDED

September 13, 2018 Budget and Finance Committee - RECOMMENDED AS AMENDED
AS A COMMITTEE REPORT

September 18, 2018 Board of Supervisors - PASSED ON FIRST READING

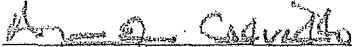
Ayes: 11 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani,
Tang and Yee

September 25, 2018 Board of Supervisors - FINALLY PASSED

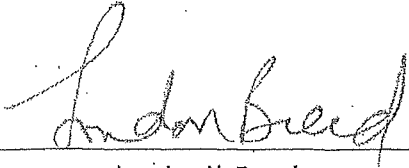
Ayes: 10 - Brown, Cohen, Fewer, Kim, Mandelman, Peskin, Ronen, Safai, Stefani
and Tang
Excused: 1 - Yee

File No. 180708

I hereby certify that the foregoing
Ordinance was FINALLY PASSED on
9/25/2018 by the Board of Supervisors of
the City and County of San Francisco.



Angela Calvillo
Clerk of the Board



London N. Breed
Mayor

10/5/18
Date Approved



San Francisco Water Power Sewer

Services of the San Francisco Public Utilities Commission

525 Golden Gate Avenue, 13th Floor
San Francisco, CA 94102
T 415.554.3155
F 415.554.3161
TTY 415.554.3488

TO: Angela Calvillo, Clerk of the Board
FROM: John Scarpulla, SFPUC Policy and Government Affairs
DATE: June 10, 2019
SUBJECT: Purchase of Renewable Electricity- Public Utilities Commission

Please see the attached resolution authorizing the General Manager of the Public Utilities Commission to enter into an agreement with Southern California Edison Company for CleanPowerSF to purchase renewable energy for the period of January 1, 2020 through December 31, 2021, for a total cost of \$15,775,000.

The following is a list of accompanying documents (2 sets):

1. Board of Supervisors Resolution
2. Draft contract agreement
3. Board of Supervisors Ordinance 75-15
4. Board of Supervisors Ordinance 223-15
5. Board of Supervisors Ordinance 8-18
6. Board of Supervisors Ordinance 227-18
7. Form 126

Please contact John Scarpulla at (415) 934-5782 if you need any additional information on these items.

2019 JUN 10 AM 11:20
BOARD OF SUPERVISORS
SAN FRANCISCO
RECEIVED

London N. Breed
Mayor

Ann Moller Caen
President

Francesca Vietor
Vice President

Anson Moran
Commissioner

Sophie Maxwell
Commissioner

Tim Paulson
Commissioner

Harlan L. Kelly, Jr.
General Manager

OUR MISSION: To provide our customers with high-quality, efficient and reliable water, power and sewer services in a manner that values environmental and community interests and sustains the resources entrusted to our care.



FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Southern California Edison Company	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary.</i> Kevin Payne-CEO William Petnecky – CFO Ron Nichols – President SCE does not have a board of directors. It's parent company, EIX does. They can be found at: https://www.edison.com/home/investors/corporate-governance/meet-our-board-of-directors.html No single person has 20% or more ownership No subcontractors will be used SCE does not sponsor or control any political committee	
Contractor address: 2244 Walnut Grove Avenue, Rosemead, CA 91770	
Date that contract was approved:	Amount of contract: \$15,775,000
Describe the nature of the contract that was approved: A contract with Southern California Edison Company for CleanPowerSF to purchase renewable energy for the period of January 1, 2020 through December 31, 2021, for a total cost of \$15,775,000	
Comments:	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Relocation Appeals Board, and Local Workforce Investment Board) on which an appointee of the City elective officer(s) identified on this form sits

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed

