Item 10.2 – Attachment A
RESOURCES ADEQUACY CONFIRMATION

This RESOURCES ADEQUACY CONFIRMATION ("Confirmation") confirms the transaction between MARSH LANDING, LLC, a Delaware limited liability company ("Seller") and ORANGE COUNTY POWER AUTHORITY, a California joint powers authority ("Buyer") agreed to as of [____________], 2022 (the "Confirmation Effective Date") in which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product as defined herein (the "Transaction"). This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties and that certain Cover Sheet thereto, effective as of [____________], 2022 (collectively, the "Master Agreement"). The Master Agreement and this Confirmation together are referred to herein as the "Agreement." To the extent this Confirmation is inconsistent with any provision of the Master Agreement, this Confirmation shall control and shall govern the rights and obligations of the Parties with respect to the Transaction. Except as otherwise specified, references to an "Article" or a "Section" or an "Appendix" mean an Article or Section or Appendix of this Confirmation. Seller and Buyer are sometimes referred to herein individually as a "Party" and jointly as the "Parties." Except as otherwise expressly provided, initially capitalized terms used in this Confirmation have the meanings set forth in Section 1.1 below.

NOW THEREFORE, in consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 Definitions. Except as otherwise expressly provided, initially capitalized terms used in this Agreement and the Appendices hereto have the meanings set forth in this Section 1.1.

"Aggregate Compliance Cost Cap" has the meaning set forth in the Preamble above.

"Agreement" has the meaning set forth in the preamble above.

"Alternate Capacity" means any replacement capacity from a Resource Adequacy Resource (as defined in the Tariff) that Seller has elected to provide to Buyer in accordance with Section 3.4 or Section 3.5 and the definition of Replacement Unit.

"Annual Compliance Cost Cap" has the meaning set forth in the Preamble above.

"Annual Supply Plan" means an annual Supply Plan.

"Applicable Law" means (i) any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Authority having jurisdiction over one or both Parties or this Transaction, and (ii) the Tariff.

"Availability Incentive Payments" has the meaning set forth in the Tariff.

"Availability Standard" has the meaning set forth in the Tariff.
“Buyer” has the meaning set forth in the preamble above.

“Buyer Security Amount” has the meaning set forth in Section 7.2(a).

“CAISO” means the California Independent System Operator Corporation, or its successor.

“Change in Law” has the meaning set forth in Section 3.6.

“CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

“Compliance Obligations” means, as applicable, RAR, Local RAR, and FCR.

“Compliance Showings” means the compliance showings that an LSE is required to make for RAR, Local RAR, and FCR for an applicable Showing Month. For illustrative purposes only, as of the Confirmation Effective Date, the applicable Compliance Showing deadlines are as follows: (i) forty-five (45) days prior to the Showing Month covered by the Monthly Supply Plan; and (ii) the last Business Day of October that is prior to commencement of the year covered by the Annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Period.

“Confirmation” has the meaning set forth in the preamble above.

“Confirmation Effective Date” has the meaning set forth in the preamble above.

“Contract Price” means

“Contract Quantity” means

“CPUC” means the California Public Utilities Commission or its successor.

“CPUC Decisions” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022 and 19-06-026, 19-10-021, 20-06-002, 20-06-028, 20-06-31, 20-12-006, 21-06-035, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including the CPUC Filing Guide, in each case as may be amended from time to time by the CPUC.

“CPUC Filing Guide” means the most recent guidance document issued by the CPUC or its staff specifying the guidelines, requirements, and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program.

“Delivery Period” has the meaning specified in Section 3.1.

“Delivery Point” has the meaning specified in Section 3.2.
“Effective Flexible Capacity” has the meaning set forth in the Tariff.

“Excess Costs” has the meaning set forth in Section 3.6.

“FCR” means the flexible capacity requirements established for LSEs by the CPUC Decisions, the Tariff, or another Governmental Authority with jurisdiction over Buyer.

“FCR Attributes” means, with respect to a Unit, any and all resource adequacy attributes that can be toward an LSE’s FCR.

“Flexible Capacity Category” has the meaning set forth in the Tariff.

“Governmental Authority” means (i) any federal, state, local, municipal, or other government; (ii) any governmental, regulatory, or administrative agency, commission, or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power; and (iii) any court or governmental tribunal.

“Guarantor” has the meaning set forth in Article VII.

“Guaranty” means a guaranty in a form reasonably acceptable to both Parties and the Guarantor.

“LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, the Tariff, or another Governmental Authority with jurisdiction over Buyer, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward Local RAR and are consistent with the operational limitations and physical characteristics of the Unit, but excluding any RAR Attributes that are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected.

“Letter of Credit” has the meaning set forth in the Master Agreement for “Letter(s) of Credit.”

“Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC Decisions, the Tariff, or another Governmental Authority having jurisdiction over Buyer.

“LSE” means an entity that serves end users within the CAISO Balancing Authority Area and is subject to Compliance Obligations.

“Master Agreement” has the meaning set forth in the preamble above.
“Monthly RA Capacity Payment” has the meaning set forth in Section 5.1(b).


“Moody’s” has the meaning set forth in the Master Agreement.

“MW” means megawatt.

“Net Qualifying Capacity” has the meaning set forth in the Tariff.

“Non-Availability Charges” has the meaning set forth in the Tariff.

“Notification Deadline” means twenty (20) Business Days before the relevant deadlines for the Compliance Showings applicable to the relevant Showing Month.

“Outage” means disconnection, separation, or reduction in the capacity of any Unit, including any Planned Outage.

“Party” and “Parties” have the meanings set forth in the preamble above.

“Performance Assurance” has the meaning set forth in the Master Agreement and, for Seller, shall include a Guaranty from Seller’s Guarantor.

“Planned Outage” means a CAISO-approved planned or scheduled disconnection, separation, or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of the Unit.

“Product” has the meaning set forth in Section 2.1(a).

“RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and FCR purposes for the Delivery Period, as determined by the CAISO or other Governmental Authority authorized to make such determination under Applicable Law.

“RAR” means the resource adequacy requirements established for LSEs by the CPUC Decisions, the Tariff, or another Governmental Authority with jurisdiction over Buyer.

“RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the Tariff, the CPUC Decisions, or another Governmental Authority with jurisdiction over Buyer, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, but excluding any LAR Attributes or FCR Attributes.

“RA Substitute Capacity” has the meaning set forth in the Tariff.

“Replacement Capacity” has the meaning set forth in Section 4.2(a).

“Replacement Unit” has the meaning set forth in Section 3.4(a)(ii).

“Resource Adequacy Plan” has the meaning set forth in the Tariff.
“Resource Category” shall be as described in the annual CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“SC” means Scheduling Coordinator as defined in the Tariff.

“Seller” has the meaning set forth in the preamble above.

“Seller Security Amount” has the meaning set forth in Section 7.1(a).

“S&P” has the meaning set forth in the Master Agreement.

“Showing Month” shall be the calendar month of the Delivery Period that is the subject of the Compliance Showing, as set forth in the CPUC Decisions and outlined in the Tariff. For illustrative purposes only, pursuant to the Tariff and CPUC Decisions in effect as of the Confirmation Effective Date, the monthly Compliance Showing made in June is for the Showing Month of August.

“Supply Plan” has the meaning set forth in the Tariff.

“System Resource” has the meaning set forth in the Tariff.

“Tariff” means the CAISO Tariff, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” in each case as amended or supplemented from time to time.

“Transaction” has the meaning set forth in the preamble above.

“Unit” means the generating unit described in Section 2.2.

“Unit EFC” means the Unit’s Effective Flexible Capacity and is the lesser of that set by CAISO as of the Confirmation Effective Date and that of the Unit on any subsequent date of determination.

“Unit NQC” means Unit’s Net Qualifying Capacity and is the lesser of that of that set by CAISO as of the Confirmation Effective Date and that of the Unit on any subsequent date of determination.

1.2 Rules of Interpretation. Unless specified otherwise or the context of this Confirmation otherwise requires: (a) words of any gender include each other gender and the neutral; (b) words using the singular or plural number also include the plural or singular number, respectively; (c) the terms “hereof,” “herein,” “hereby,” “hereunder,” “hereto,” and derivative or similar words refer to this entire Agreement and not to any particular section or other provision; (d) references to Articles, Sections, or Appendices shall be to all subparts of such Articles, Sections, and Appendices; (e) the terms “including,” “include,” and “includes” mean “including without limitation” or “includes without limitation,” as applicable; (f) reference to any Applicable Law or other laws means such Applicable Law or laws as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder; (g) reference to any document, including this Confirmation, refers to such
document as it may be amended, amended and restated, modified, replaced, or superseded from time to time in accordance with its terms, and any successor document thereto; (h) reference to any Person includes such Person’s permitted successors and assignees; (i) whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified; (j) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding”, and “through” means “through and including”; (k) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term; (l) references to any amount of money shall the referenced amount in United States Dollars; and (m) the expression “and/or” when used as a conjunction shall connote “any or all of.”

ARTICLE II
RESOURCE ADEQUACY CAPACITY PRODUCT

2.1 Product.

(a) During the Delivery Period, unless excused under Section 3.4 and subject to Seller’s rights under Sections 3.4, 3.5, and 3.6, Seller shall provide to Buyer and Buyer shall purchase from Seller, pursuant to the terms of this Confirmation, the Contract Quantity of Net Qualifying Capacity plus any of the following that are available from the Unit, which shall be provided only in proportion to the delivered Contract Quantity: (i) RAR Attributes; and (ii) if specified in Section 2.1(b) below as being applicable, LAR Attributes, and (iii) if specified in Section 2.1(b) below as being applicable, FCR Attributes, in each case on a contingent firm basis as specified in Section 2.3 (the “Product”). Seller shall not be obligated to make any modifications to the Units or to their operation or dispatch procedures in order to make any FCR Attributes available. The Contract Price and the Designated RA Capacity used for payments to Seller hereunder shall not be affected by whether or not FCR Attributes are delivered. The Product does not confer to Buyer any right to the electrical output from the Units, other than the right to include the Designated RA Capacity associated with the Contract Quantity of the Product in Buyer’s Compliance Showings. No energy or ancillary service associated with any Unit is required to be made available to Buyer as part of this Transaction. Seller retains the right to sell to any third party any RA Capacity from a Unit that is in excess of that Unit’s Contract Quantity and any RAR Attributes, LAR Attributes, and FCR Attributes not transferred, conveyed, or sold to Buyer under this Confirmation. Seller shall retain any and all revenues received from the CAISO with respect to the Transaction contemplated by this Confirmation and with respect to any other capacity, energy, ancillary services, or other products provided by or from the Unit.

(b) Subject to Sections 2.1(a) and 2.3, the Product includes the attributes indicated by the boxes checked below.

☑️ RAR Attributes

☑️ LAR Attributes: The local capacity area as of the Confirmation Effective Date is the Greater Bay Area.

☑️ FCR Attributes
2.2 **Unit Information.** Below is information for the Unit; provided, that (a) this Confirmation only provides for the sale of the Contract Quantity specified herein (as may be reduced in accordance with the terms hereof), and (b) Seller may elect, in its sole discretion, to supply the Contract Quantity or any portion thereof from a Replacement Unit.

| Unit Name: | [Redacted] |
| Location: | [Redacted] |
| CAISO Resource ID: | [Redacted] |
| Resource Type: | [Redacted] |
| Flexible Capacity Category (as of the Confirmation Effective Date): | [Redacted] |
| Resource Category (1, 2, 3, or 4 as of the Confirmation Effective Date): | [Redacted] |
| Point of Interconnection with the CAISO Controlled Grid: | [Redacted] |
| Path 26 (North, South, or None): | [Redacted] |
| Deliverability Restrictions: | [Redacted] |
| Run Hour Restrictions: | [Redacted] |
| Unit NQC (as of the Confirmation Effective Date): | [Redacted] |
| Unit EFC (as of the Confirmation Effective Date): | [Redacted] |

2.3 **Contingent RA Product.** Seller shall provide Buyer with Product from the Unit in the amount of the applicable Contract Quantity; provided, however, that (a) if the Unit is not available to provide the full amount of the Contract Quantity due to Planned Outage, reductions in Unit NQC, changes due to UCAP, or Force Majeure, then Seller may either reduce the Contract Quantity in accordance with Section 3.4 or provide Buyer with Alternate Capacity from one or more Replacement Units in accordance with Section 3.5, (b) the Flexible Capacity Category, the Resource Category, and the quantities of Effective Flexible Capacity, Unit EFC, and other FCR Attributes delivered as part of the Product shall be those applicable to and available from the Unit from time to time based on the CPUC Decisions, the CAISO Tariff, and Applicable Law then in effect, and shall be transferred to Buyer only in proportion to the delivered Contract Quantity, and (c) Seller’s obligations hereunder shall be subject to Section 3.6.
ARTICLE III
DELIVERY, CONTRACT QUANTITY, AND PAYMENT

3.1 Delivery Period. The “Delivery Period” shall be May 1, 2023 through September 30, 2026, inclusive, but expressly excluding the month of March in each of the included years. For the avoidance of doubt, nothing in this Agreement shall obligate Seller to provide any RA Capacity to Buyer for the month of March in any year during the Delivery Period, or for any period before or after the Delivery Period.

3.2 Delivery Point. The “Delivery Point” for each Unit shall be the Unit’s point of interconnection with the CAISO Controlled Grid.

3.3 Contract Quantity.

(a) The Contract Quantity of each Unit for each Showing Month shall be as specified below:

<table>
<thead>
<tr>
<th>Showing Months</th>
<th>Contract Quantity (MW)</th>
</tr>
</thead>
<tbody>
<tr>
<td>May 1, 2023 through September 30, 2026, inclusive, but expressly excluding the month of March in each of the included years.</td>
<td></td>
</tr>
</tbody>
</table>

3.4 Adjustments to Contract Quantity.
(b) Reductions in Unit NQC.

(c) Reductions in Unit EFC.
3.5 Alternate Capacity and Replacement Units.
3.6 Compliance Costs and Lost Revenue.
ARTICLE IV
DELIVERY OBLIGATIONS AND ADJUSTMENTS

4.1 Sale and Delivery of Product. Unless excused under Section 3.4 and subject to Seller’s rights under Sections 3.4, 3.5, and 3.6, for each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Contract Quantity of Product consistent with the following.

(a) Seller shall, on a timely basis, submit, or cause the Unit’s SC to submit, (i) Monthly Supply Plans and (ii) Annual Supply Plans, in accordance with the Tariff, identifying and confirming the transfer of the Designated RA Capacity provided to Buyer for each Showing Month.

(b) Seller shall cause the Unit’s SC to submit written notification to Buyer, no later than the Notification Deadline, that Buyer will be credited with the Designated RA Capacity for such Showing Month in the Unit’s Scheduling Coordinator Supply Plan.

(c) If CAISO rejects either the Monthly Supply Plan or the Resource Adequacy Plan with respect to any part of the Designated RA Capacity for the Unit or Replacement Unit in any Showing Month, the Parties shall confer, make such corrections as are necessary for acceptance, and resubmit the corrected Monthly Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(d) The Product is delivered and received when the CIRA Tool shows that the Monthly Supply Plan submitted in compliance with Buyer’s instructions, including Buyer’s instructions to withhold all or part of the Designated RA Capacity from Seller’s Monthly Supply Plan for any Showing Month during the Delivery Period, has been accepted for the Product from the Unit or any Replacement Unit by the CAISO.

4.2 Damages for Failure to Provide Designated RA Capacity. Unless excused under Section 3.4 and subject to Seller’s rights under Sections 3.4, 3.5, and 3.6, if Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, then the following shall apply:

(a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes, and/or FCR Attributes as the Designated RA Capacity (based on the RAR Attributes, LAR Attributes, and/or FCR Attributes applicable to the Designated RA Capacity at the time when delivery is required) not provided by Seller (“Replacement Capacity”). Such Replacement Capacity may be provided by CAISO to Buyer pursuant to the Tariff or Buyer may enter into purchase transactions with one or more parties to replace any portion of Designated RA Capacity not provided by Seller. Buyer shall use commercially reasonable efforts to minimize damages when procuring Replacement Capacity.
(b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity purchased by Buyer, plus (B) the market price for the Designated RA Capacity not provided at the Delivery Point, determined in a commercially reasonable manner, times the amount of the Designated RA Capacity not provided by Seller and for which Buyer has not purchased Replacement Capacity, and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the applicable Contract Price. If Seller fails to pay the foregoing amount, then, in accordance with Article Six of the Master Agreement, Buyer may offset such amount against any amounts it owes Seller under this Confirmation.

4.3 Indemnities for Failure to Deliver Contract Quantity.
ARTICLE V
PAYMENTS

5.1 Monthly RA Capacity Payment.

(a) In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears after the applicable Showing Month, in accordance with this Section 5.1.

(c) The “Contract Price” shall be the price set forth below for the applicable Showing Month:

<table>
<thead>
<tr>
<th>Showing Months</th>
<th>Contract Price ($/kW-month)</th>
</tr>
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<tbody>
<tr>
<td>May 1, 2023 through September 30, 2026, inclusive, but expressly excluding the month of March in each of the included years.</td>
<td>(Redacted)</td>
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</tbody>
</table>

5.2 Allocation of Other Payments and Costs.
ARTICLE VI
COVENANTS, REPRESENTATIONS, AND WARRANTIES

6.1 Additional Actions. Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer’s right to the use of the Contract Quantity for the sole benefit of Buyer's RAR, Local RAR, and/or FCR, as applicable; provided, that Seller shall not be required to spend more than ten thousand dollars ($10,000) in total in support of such actions. Such actions may include:

(a) Meeting requirements established by the Tariff and the CPUC Decisions, including (i) demonstrating the ability to deliver the Contract Quantity over all hours of the Delivery Period required for full RAR eligibility, (ii) demonstrating that the Contract Quantity can be delivered to the CAISO Controlled Grid pursuant to “deliverability” standards established by the CPUC or another Governmental Authority responsible for administration of RAR and/or FCR, and (iii) causing each Unit’s SC to provide a Supply Plan to the CAISO and sufficient information to Buyer to allow Buyer’s SC to submit the required Compliance Showings with respect to the Units; and

(b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, CAISO, or other Governmental Authority having jurisdiction to administer RAR, Local RAR, and FCR, so as to maintain the Parties’ relative benefits and burdens as agreed to on the Confirmation Effective Date.

6.2 Representations, Warranties, and Covenants. Seller represents, warrants, and covenants to Buyer that, throughout the Delivery Period:

(a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation;

(b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy RAR, Local RAR, FCR, or other analogous capacity obligations in CAISO markets, other than pursuant to a reliability must-run agreement between the CAISO and either Seller or a Unit’s owner or operator;

(c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, Local RAR, FCR, or other analogous capacity obligations in any non-CAISO market; and

(d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO.
ARTICLE VII
COLLATERAL REQUIREMENTS

7.1 Seller’s Performance Assurance.

(a) Notwithstanding anything to the contrary in Sections 8.2(b) through (e) of the Master Agreement, Seller shall provide to Buyer and thereafter maintain Performance Assurance in the form of a Guaranty from Clearway Energy Operating, LLC (“Guarantor”) in the amount specified for each annual period in the table below (the “Seller Security Amount”). For the Transaction and this Confirmation, the Performance Assurance required to be provided by Seller under this Article VII shall supersede and replace all requirements to provide Performance Assurance under Section 8.2(b) through (e) of the Master Agreement. The provisions of Section 8.3 of the Master Agreement (Grant of Security Interest/Remedies) apply to Performance Assurance provided by Seller under this Confirmation.

<table>
<thead>
<tr>
<th>Annual Period</th>
<th>Seller Security Amount</th>
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<tbody>
<tr>
<td>May 2023 – April 2024</td>
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<tr>
<td>May 2024 – April 2025</td>
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<tr>
<td>May 2025 – April 2026</td>
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<tr>
<td>May 2026 – September 2026</td>
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</tbody>
</table>

(b)  

7.2 Buyer’s Performance Assurance.

(a)  

__________________________
<table>
<thead>
<tr>
<th>Annual Period</th>
<th>Buyer Security Amount</th>
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<tbody>
<tr>
<td>May 2023 – April 2024</td>
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<td>May 2024 – April 2025</td>
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<tr>
<td>May 2025 – April 2026</td>
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<tr>
<td>May 2026 – September 2026</td>
<td></td>
</tr>
</tbody>
</table>

[Remainder of page intentionally left blank. Signatures follow.]
IN WITNESS WHEREOF, the Parties have caused this Confirmation to be executed by their duly authorized representatives, effective as of the Confirmation Effective Date.

**MARSH LANDING, LLC,**
a Delaware limited liability company

By: ____________________________

Name: __________________________

Title: __________________________

**ORANGE COUNTY POWER AUTHORITY,** a California joint powers authority

By: ____________________________

Name: __________________________

Title: __________________________
Item 10.2 – Attachment B
# MASTER POWER PURCHASE AND SALE AGREEMENT

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EXHIBIT A: CONFIRMATION LETTER ............................................................. 50
This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: [____________], 2022 ("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 shall be referred to as the “Agreement.” The Parties to this Master Agreement are the following:

Name: Marsh Landing, LLC ("Marsh Landing" or "Party A")

All Notices:
Address: 300 Carnegie Center, Suite 300
Princeton, NJ 08540
Attn: Bob Marrone
Phone: 609-436-9612
E-mail: bob.marrone@clearwayenergy.com

Invoices:
Attn: Bob Marrone
Phone: 609-436-9612
E-mail: bob.marrone@clearwayenergy.com

Scheduling:
Attn: Joe Moura
Phone: 925-779-6685
E-mail: Joe.Moura@nrg.com

Confirmations:
Attn: Bob Marrone
Phone: 609-436-9612
E-mail: bob.marrone@clearwayenergy.com

Payments:
Attn: Bob Marrone
Phone: 609-436-9612
E-mail: bob.marrone@clearwayenergy.com

Wire Transfer:

Credit and Collections:
Attn: Bob Marrone
Phone: 609-436-9612
E-mail: bob.marrone@clearwayenergy.com

Name: Orange County Power Authority ("OCPA" or "Party B")

All Notices:
Address: P.O. Box 54283
Irvine, CA 92619
Attn: Brian Probolsky, Chief Executive Officer
Phone: (949) 767-8700
Email: brian@ocpower.org

Invoices:
Attn: Tiffany Law
Phone: (949) 767-8700
Email: tlaw@ocpower.org

Scheduling:
Name: TEA CAISO Scheduling Coordinator
Address: 405 114th Ave SE #100, Bellevue, WA 98004
Phone: (425) 460-1118
Email: group-corp-tradingcaiso@teainc.org

Payments:
Attn: Tiffany Law
Phone: (949) 767-8700
Email: tlaw@ocpower.org

Wire Transfer:

Other details:
Credit and Collections:
Attn: Tiffany Law
Phone: (949) 767-8700
Email: tlaw@ocpower.org
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  N/A
Party B Tariff  N/A

**Article o**

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

**Article ur**

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

**Article ve**

Events of Default; Remedies

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**

8.1 Party A Credit Protection:

Credit and Collateral Requirements  Financial Information:

☐ Option A

☐ Option B Specify: ____________

☑ Option C Specify: ____________
Credit Assurances:

- Not Applicable
- Applicable to the extent specified in individual Confirmations executed by the Parties.

Collateral Threshold:

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 BBB- from S&P or Baa3 from Moody’s or if Party B is not rated by either S&P or Moody’s.

- Other - Specify:

Guarantor for Party B: N/A
8.2 Party B Credit Protection:

Financial Information:

Credit Assurances:

☐ Not Applicable
☑ Applicable to the extent specified in individual Confirmations executed by the Parties.

Collateral Threshold:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold shall be as specified in any Confirmation executed by the Parties.

Party A Independent Amount shall be as specified in any Confirmation executed by the Parties.

Party A Rounding Amount shall be as specified in any Confirmation executed by the Parties.

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 BBB- from S&P or Baa3 from Moody’s or if Party A is not rated by either S&P or Moody’s.

- Other - Specify: The Downgrade Event for Party A shall be as specified in any Confirmation executed by the Parties.

Guarantor for Party A: As specified in individual Confirmations executed by the Parties

Guarantee Amount: As specified in individual Confirmations executed by the Parties

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**Article**

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 8.4. If not checked, inapplicable

**Other Changes**

This Master Power Purchase and Sale Agreement incorporates, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

**ARTICLE ONE: GENERAL DEFINITIONS.**

1. **“Affiliate”**: Section 1.1 is amended by adding the following sentence at the end of the definition:

   “Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party B, the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an “Affiliate” for the purposes of this Master Agreement or any Confirmation executed in connection therewith, and that, in the case of Party A, the definition of “Affiliate” shall exclude any such person that is not organized or existing under the jurisdiction of Canada or the United States or a political subdivision thereof.”

2. **“Business Day”**: Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3. **“Credit Rating”**: Section 1.12 is amended by deleting the word “issues” and replacing it with the word “issuer”.

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Version 2.1 (modified 4/25/00)

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4. “Force Majeure”: Section 1.23 is amended by (i) deleting from the second and third lines the phrase “which event or circumstance was not anticipated as of the date the Transaction was agreed to,” and (ii) inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

5. “Gains”: Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

6. A new Section 1.26A is added as follows:

“1.26A Joint Powers Agreement” means the Joint Powers Agreement, effective as of November 20, 2020, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

7. “Letters of Credit”: Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

8. “Losses”: Section 1.28 is amended by adding to the end thereof: “based on the prime rate of interest as published from time to time under The Wall Street Journal for such period.”

9. “Potential Event of Default”: Section 1.46 is deleted in its entirety.

10. “Replacement Price”: Section 1.51 is amended by adding “for delivery” immediately before “at the Delivery Point” in the second line, and replacing “at Buyer’s option” with “absent a purchase” in the fifth line.

11. “S&P”: Section 1.52 is amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

12. “Sales Price” Section 1.53 is amended by:

   (i) deleting the phrase “at the Delivery Point” from the second line;

   (ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

   (iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

13. “Settlement Amount”: Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the following: “, as determined in accordance with Section 5.2.”

14. “Transaction”: Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to.”

15. The following definition is added to Section 1:

   “Member” means the city or county which is a member of Party B.
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS.

1. In Section 2.1, delete the first sentence in its entirety and replace it with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

2. In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

   “Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

3. Section 2.3 is deleted in its entirety and replaced with the following:

   “2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties (“Confirmation”). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties.”

4. Section 2.4 is amended by deleting the words “either orally or” in the sixth and seventh lines.

5. Section 2.5 is amended by deleting the last two sentences thereof in their entirety and replacing them with the following: “Upon full execution of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of this Master Agreement.”

ARTICLE THREE: OBLIGATIONS AND DELIVERIES.

1. Section 3.2 is amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

1. Insert the following as new Section 4.3

   [No text provided for new Section 4.3]

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

1. In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

2. In Section 5.1(b) insert the following at the end before the semicolon: “, if such representation or warranty is not made true and correct within fifteen (15) days after written notice”

3. In Section 5.1(c), change “three (3) Business Days” to “thirty (30) days”.
4. In Section 5.1(e), insert the following at the end before the semicolon: “or pursuant to any Confirmation executed by the Parties”.

5. In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

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

6. In Section 5.1(h)(v), add “made in connection with this Agreement” after “any guaranty”.

7. Section 5.2 is amended by:

   (i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

   (ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below).

8. Section 5.3 is amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

9. Section 5.4, delete the phrase “two (2)” and insert the phrase “five (5)”.

ARTICLE SIX: PAYMENT AND NETTING.

1. In Section 6.3, lines 3, 16 & 17, change twelve (12) months to twenty-four (24) months and in the fifth sentence, delete the words “two (2)” and insert the words “five (5)”.

ARTICLE SEVEN: LIMITATIONS.

1. Section 7.1 is amended by:

   (i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

   (ii) adding in the eighteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND
5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS.

1. In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

2. In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days” and before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

3. A new Section 8.4 is added as follows:

“8.4 California Commercial Code Waiver. This Agreement, any Collateral Annex, if applicable, and any Confirmations entered into by the Parties pursuant hereto, set forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1, 8.2, and Section 8.3, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, nor

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party that is complying with the relevant provisions of Section 8 of this Master Agreement;

and all implied rights relating to financial assurances arising from Section 2609 of the California Commercial Code or case law applying similar doctrines, are hereby waived.”

ARTICLE TEN: MISCELLANEOUS.

1. In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

2. After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) with respect to Party A, it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”); and
(xviii) with respect to Party A and Party B, each Party is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

3. Section 10.2(ix) is deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

4. Section 10.5 is amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however, that in each such case,” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party, (iii) transfer or assign this Agreement to any third party as long as (x) such third party’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such third party are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iv) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any; provided, however, that in the case of any assignment pursuant to subsections (ii), (iii), or (iv) above,”

5. Section 10.6 is amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine
all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of
decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as
defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court,
and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or
proceeding.”

6. In Section 10.6 change “NEW YORK” to “CALIFORNIA”.

7. Section 10.8 is amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5,
(ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of
either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall
also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of
counterparts with the same effect as if the signatures to the counterparts were upon a single instrument.
Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or
electronic mail transmission shall be effective as delivery of a manually executed signature page.”

8. In Section 10.9 insert the words “copies of” after the word “examine” in line 2.

9. Section 10.10 is amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such
term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of
the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In
any such proceeding, each Party further waives the right to assert that the other Party is a provider of last
resort.”

10. Section 10.11 is deleted in its entirety and replaced with the following:

“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 or the completed Cover Sheet to this Master Agreement to a third party (other than the
Party’s employees, lenders, counsel, accountants or advisors, or any such representatives of a Party’s
Affiliates, 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 applicable to
such Party or any of its Affiliates; 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.

Party A and Party B acknowledge and agree that the Master Agreement and any Transactions entered into
in connection therewith are subject to the requirements of the California Public Records Act (Government
Code Section 6250 et seq.). In order to designate information as confidential, the disclosing party must
clearly stamp and identify the specific portion of the material designated with the word “Confidential.”

Upon request or demand of any third person or entity not a Party hereto to Party B pursuant to the
California Public Records Act for production, inspection and/or copying of Confidential Information
(“Requested Confidential Information”), Party B will as soon as practical notify Party A in writing via
email that such request has been made and will not disclose the Requested Confidential Information until
Party A has been afforded an adequate opportunity to seek protection of the Requested Confidential
Information from disclosure. Party A will be solely responsible for taking at its sole expense whatever
legal steps are necessary to prevent release of the Requested Confidential Information to the third party
by Party B. If Party A takes no such action within sixty (60) days after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party’s request to the extent required by the California Public Records Act and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A.”

11. The following Mobile-Sierra clause is added as a new Section 10.12:

“Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the Mobile Sierra “public interest” standard of review set forth in Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al. No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.

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

12. The following is added as a new Section 10.13:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy or capacity attributes. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

13. The following is added as a new Section 10.14:

“Imaged Agreement. Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Confirmation or the Imaged Agreement (or photocopies of the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule or other rule of evidence.”
14. The following is added as a new Section 10.15:

“Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

15. Section 10.16, Cyber Attack, shall be added to Article Ten as follows:

“10.16 Cyber Attack. In addition to the provisions of Section 3.3, the parties hereby agree that a Cyber Attack (as defined below) that causes (i) the failure to perform a Firm obligation or (ii) a breach of a Party’s confidentiality obligations arising under Section 10.11 will constitute an event of Force Majeure. In addition, notwithstanding the provisions of Section 5.1, the parties agree that a failure to pay that is solely the result of a Cyber Attack will not constitute an Event of Default; provided that (a) sufficient funds were available for such party to fulfill its obligations hereunder on the relevant due date for payment, (b) the payment is made in full as soon as practicable but in no event later than 15 days after the occurrence of the Cyber Attack, and (c) such party complies with Section 3.3. “Cyber Attack” means a third-party attack that compromises the integrity or availability of information from an information system or systems required to perform the obligations under this Master Agreement that is outside the Party’s control and which, by the exercise of due diligence, such Party is unable to overcome or avoid or cause to be avoided.”

16. Section 10.17, Counterparts, shall be added to Article Ten as follows:

“10.17 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. Without limiting the foregoing, a facsimile copy of this Agreement or copy of this Agreement sent via electronic mail in a portable document format (“PDF”) will be considered an original.

17. Section 10.18, No Recourse Against Members of Party B, shall be added to Article Ten as follows:

“10.18 No Recourse Against Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Cal. Government Code § 6500, et seq.) and is a public entity separate from its Members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with, and subject to, the terms and conditions of each Transaction. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s Members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s Members, in connection with this Agreement. The Parties agree that Party B’s obligations to make payments with respect to this Master Agreement and each Transaction, are to be made solely from Party B, and not from the individual Members of Party B.”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM.

Schedule M is amended, with respect to Party B, as follows:

1. Paragraph A is amended by deleting the term “Act” and replacing it with the following:

“Act” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).

2. Paragraph D is deleted in its entirety and replaced with:

“Section 3.4 Party B’s Deliveries. Upon request by Party A, Party B shall provide Party A copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement.
Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), (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; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

3. Paragraph G is deleted in its entirety and replaced with the following:


SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.

1. Other Products and Service Levels: In addition to the Products set out in Schedule P, the Parties may agree to use a product or service level defined by a different agreement (i.e., the WSPP Agreement, etc.) for a particular Transaction under this Master Agreement. If so, then the Transaction shall be subject to all of the terms of this Master Agreement, except that (i) the product or service level definition, (ii) force majeure, uncontrollable force definitions or other excuses for performance, (iii) applicable regional reliability requirements and guidelines, and (iv) other terms and conditions as mutually agreed in writing, shall have the meaning given to them in the different agreement or in the applicable Confirmation.

[Signatures appear on the following page.]
IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

MARSH LANDING, LLC,  
a Delaware limited liability company

By: ____________________________  
Name: ____________________________  
Title: ____________________________

ORANGE COUNTY POWER AUTHORITY  
a California joint powers authority

By: ____________________________  
Name: ____________________________  
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 “Selling” 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 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.

**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
**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 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 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
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.
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.

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.

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’s 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.

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

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

Section 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.

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 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.

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

Section 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].
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:

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.

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.

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

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.

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.

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.

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.

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.
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.

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.

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.
Transmission.

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.

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.

Force Majeure. An “Into” Product shall be subject to the “Force Majeure” provisions in Section 1.23.

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:

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.

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.
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.

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

Seller: ____________________________
Buyer: ____________________________

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

Contract Quantity: ____________________________
Delivery Point: ____________________________
Contract Price: ____________________________
Energy Price: ____________________________
Other Charges: ____________________________
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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: _____________________________________________________
Title: _____________________________________________________
Phone No: _________________________________________________
Fax: ______________________________________________________

Name: _____________________________________________________
Title: _____________________________________________________
Phone No: _________________________________________________
Fax: ______________________________________________________