

MASTER POWER PURCHASE AND SALE AGREEMENT

AMENDED AND RESTATED COVER SHEET

This *Amended and Restated Master Power Purchase and Sale Agreement (Version 2.1, modified April 25, 2000)* (“*Master Agreement*”) is made as of the following date: April 22, 2002 (“*Effective Date*”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the “*Agreement*.” The Parties to this *Master Agreement* are the following:

Party A: **HIGH DESERT POWER PROJECT, LLC**

Name: **State of California Department of Water Resources** separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“California Department of Water Resources” or “Party B”)

All Notices:

All Notices: DWR/CERS

Attn: Executive Manager Power Systems

Street: 111 Market Place, Suite 500

Street: 3310 El Camino Avenue, Suite 120

City/State: Baltimore, MD Zip: 21202

City/State: Sacramento, California 95821

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: 410-468-3620

Phone: (916) 574-0339

Facsimile: 410-468-3540

Facsimile: (916) 574-2512

Duns: 01-563-5220

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

Invoices:

Attn: Jack Disney
Phone: 410-468-3620
Facsimile: 410-468-3540

Invoices:

Attn: Settlements Unit; Doreen Singh
Phone: (916) 574-0309
Facsimile: (916) 574-1239

Scheduling:

Attn: Ryan Fitzpatrick
Phone: 410-468-3530
Facsimile: 410-468-3540

Scheduling:

Attn: Power Dispatcher
Phone: 916-574-0161
Facsimile: (916) 574-2569

Payments:

Attn: Thomas Marlatt
Phone: 410-468-3620
Facsimile: 410-468-3540

Payments:

Attn: Cash Receipts Section
Phone: (916) 653-6892
Facsimile: (916) 654-9882

Wire Transfer:

BNK:
ABA:
ACCT:

Wire Transfer:

BNK:
for Department of Water Resources
ABA: Routing #
ACCT: #

Credit and Collections:

Attn: John R. Collins
Phone: 410-468-3410
Facsimile: 410-468-3499

Credit and Collections:

Attn: Credit Manager
Phone: (916) 574-1297
Facsimile: (916) 574-2512

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

Attn: David M. Perlman
Phone: 410-468-3490
Facsimile: 410-468-3540

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

Attn: Financial Officer
Phone: (916) 574-1297
Facsimile: (916) 574-2512

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

Party A Tariff	Tariff: Market-Based	Dated: May 15, 1997	Docket Number: ER97-2261
Party B Tariff	Tariff: Not applicable	Dated:	Docket Number:

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

Cross Default for Party A: Not Applicable

Party A: Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B: Not Applicable

Party B: Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

- Option A
- Option B Specify: _____
- Option C Specify: Annual audit, annual budget and all financial information sent to any seller under a power

purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ -0-

Party B Rounding Amount: \$-0-

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ -0-

Party A Rounding Amount: \$-0-

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: _____

Article 10

Confidentiality Confidentiality Applicable If not checked, inapplicable.

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

Other Changes: Applicable Specify, if any: See below

Part 1. GENERAL TERMS AND CONDITIONS.

(a) Definitions.

- (1) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."
- (2) Section 1.51, "Replacement Price" is deleted .
- (3) Section 1.53, "Sales Price" is deleted .
- (4) Section 1.46 "Potential Event of Default" is deleted.
- (5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"
- (6) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."
- (7) Sections 1.62 through 1.72 are added to Article One as follows:
 - 1.62 "Bonds" means the bonds offered by Department pursuant to AB 1X, codified at California Water Code § 80100, et seq. ("the Act"), with recourse only to the Trust Estate., and shall include any financing pursuant to Executive Order D-42-01 and a Credit and Security Agreement, dated as of June 26, 2001, by and among the Department, various lenders and Morgan Guaranty Trust Company of New York, as agent on behalf of such lenders.
 - 1.63 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
 - 1.64 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
 - 1.65 "Market Value" shall have the meaning set forth in Section 5.3.
 - 1.66. "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.
 - 1.67 "Qualified Electric Corporation" means an electrical corporation, as defined by the Act, whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Corporation and Baa2 or better by Moody's Investor Services; provided, however, that, with the exception of San Diego Gas and Electric Company, Southern California Edison Company, and Pacific Gas and Electric Company no electrical corporation shall be a Qualified Electric Corporation without HDPP's written agreement.
 - 1.68 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.), or its successor, and Baa2 or better by Moody's Investor Services, or its successor.
 - 1.69 "Replacement Agreement" means any agreement identical to this Agreement excluding any and all information and checked elections on the Cover Sheet above (such information and checked elections shall be negotiated between Party A and the relevant Qualified Electric Corporation), Schedule M, Section 1.64, Section 1.65, Section 1.66, paragraphs (c), (f), (j), (k), (l) and (m) hereof, and Special Condition 9 of the 2001A Transaction, together with such additional changes as Party A and the relevant Qualified Electric Corporation shall mutually agree. Such Replacement Agreement shall state that it is a Replacement Agreement within

the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration.

1.70 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

1.71 "2001A Transaction" means the Transaction described in the attached Amended and Restated Confirmation dated April 22, 2002.

1.72 "Trust Estate" means all revenues under any obligation entered into by, and rights to receive the same from, and moneys on deposit in, the Fund and income or revenue derived from the investment thereof.

(b) Transactions. The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

(c) Governing Terms. Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, the 2001A Transaction shall be treated as a stand-alone Transaction and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the 2001A Transaction, and (b) an Event of Default with respect to any Transaction other than the 2001A Transaction shall not affect the 2001A Transaction. Except for the attached Confirmation dated March 9, 2001, no provision of any Confirmation entered into pursuant to Section 2.4 shall affect the 2001A Transaction."

(d) Remedies for Failure to Deliver/Receive. Article 4 shall be deleted in its entirety and shall be left intentionally blank.

(e) Events of Default. The following changes shall be made to Section 5.1:

(1) Article 5.1(c) shall be deleted and replaced with the following::

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 as set forth in the Confirmation Letter of even date attached hereto in Product: Other, the exclusive remedy for which is provided for therein) if such failure is not remedied within forty-five (45) Business Days after written notice.

(2) The following shall be added at the end of Section 5.1 as an additional Event of Default;

(i) for Party B, any amendment or repeal of the Water Code, or the promulgation of any regulations under the Water Code subsequent to the date hereof, that adversely affects the ability of Party B to perform its obligations under this Agreement or otherwise adversely affects the rights of Party A hereunder shall constitute an Event of Default with Party B as the Defaulting Party.

(f) Declaration of an Early Termination Date and Calculation of Termination Payment

(1) The last sentence of Section 5.2 is replaced in its entirety by the following: "The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the

Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3) Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intra-day trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.13 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(4) Sections 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(g) Article Seven shall be amended as follows:

(1) The fifth sentence of Section 7.1 shall be amended by deleting the phrase "UNLESS EXPRESSLY HEREIN PROVIDED,".

(2) Add a new Section 7.2. "The obligations hereunder of Party A shall be solely those of Party A and no other person or entity."

(h) Term of Master Agreement. The first sentence of Section 10.1 shall be amended by deleting the phrase "terminated by either Party upon (thirty) 30 days prior written notice" and in its place the phrase "the day following the last day of the Term set forth in the 2001A Transaction, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

(i) Governmental Charges. The following two sentences shall be added to the end of Section 9.2:

"Seller shall be entitled to pass through to Buyer any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at assets or activities involved in the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services. Buyer shall be entitled to the benefit of a reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement."

(j) Representations and Warranties. The following change shall be made to Section 10.2:

Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

(k) Indemnity. The phrase "To the extent permitted by law" shall be added at the beginning of the first two sentences of Section 10.4.

(l) Assignment. Section 10.5 is replaced in its entirety by the following:

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, Party A (or, with respect to clause (i), (iv) or (v), Party B) may without the consent of the other Party (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, (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, (iv) in the case of Party B only, transfer or assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of Party B under the Act whose creditworthiness is equal to or higher than Party B's; or (v) in the case of Party B only, transfer or assign this Agreement to a Qualified Electrical Corporation, as defined by the Act, whose creditworthiness is equal to or higher than Party B's; provided, further, that in any 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 assurances, together with such assurances as to the sufficiency of the creditworthiness of such assignee to perform its obligations hereunder, as the non-transferring Party may reasonably request; and provided, further, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof unless and until the bond trustee or any successor or assign shall foreclose on such collateral in which case such bond trustee or its successor or assign shall be bound by each of the provisions hereof, including the immediately preceding proviso; and provided, further, in the case of (v) above that, such assignee executes appropriate assignment documents, including without limitation the then applicable Edison Electric Institute Master Power Purchase and Sale Agreement, with such revisions, addenda, additional terms and

provisos, including without limitation reasonable credit protection terms appropriate to the circumstances, and provides assurances regarding such electric corporation's ability to charge rates sufficient to meet its obligations under this Agreement, as, in each case, the non-assigning Party desires in the good faith and reasonable exercise of its discretion, under the then applicable circumstances and in light of the identity of the proposed assignee.

(m) Novation. At any time after January 1, 2003, notwithstanding any other limitation on assignment herein, the Seller shall, upon at least (60) days written notice by Party B, enter into a Replacement Agreement with a Qualified Electric Corporation. Simultaneous with such notice, Party B shall notify the relevant Qualified Electric Corporation and make a request to the California Public Utilities Commission to require such Qualified Electric Corporation to enter into good faith negotiations with Seller for the purpose of making appropriate modifications to the Agreement. This Agreement shall terminate upon the effectiveness of such Replacement Agreement. The effectiveness of the Replacement Agreement shall constitute a novation which shall relieve Party B of any liability or obligation arising after the date of termination of this Agreement, except for the payment of amounts due for performance prior to such termination date. Party A's obligation to enter into a Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have made a properly documented finding including this Agreement in the rates of the Qualified Electric Corporation pursuant to Section 451 of the Public Utilities Code with respect to such Replacement Agreement.

(n) Governing Law. In Section 10.6, "New York" shall be replaced with "California."

(o) General. The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

(p) Additional Provisions. New Sections 10.12, 10.13, 10.14, 10.15 and 10.16 shall be added to Article 10 as follows:

"10.12 No Retail Services; No Agency.

(a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person.

(b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

10.13 No Interference; No Adverse Actions.

Party B agrees to assist Party A in good faith to resolve acts or omissions (other than as otherwise required to be done by a public agency pursuant to the legal exercise of such public agency's mandate) which Party A believes would have a significant effect on (a) Party A's right or ability to (x) sell and deliver, or cause to be delivered, Product to Party B or (y) otherwise satisfy its obligations under this Agreement or (b) Party B's right or ability to (x) purchase and receive, or cause to be received Product from Party A or (y) otherwise satisfy its obligations under this Agreement.

10.14 No Third Party Beneficiaries.

The provisions of this Agreement are for the benefit of the Parties hereto, and as to any other person or entity, this Agreement shall not be construed as a third party beneficiary contract.

10.15 Fixed Rate Contract

The parties hereby stipulate and agree that this Agreement, including any Transaction hereunder, is a fixed rate contract and that it was entered into as a result of arms'-length negotiations between the Parties. The Parties intend that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and anticipate that the rates, terms and conditions of this Agreement will

remain so over the life of the Agreement. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement or any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect.

10.16 Arbitration. Any claim, counterclaim, demand, cause of action, dispute, or controversy arising out of or relating to this Agreement, any provision hereof or, the alleged breach thereof, involving the Parties and/or their respective representatives (for purposes of this Section 10.16 only, collectively the "Claims"), shall be resolved by binding arbitration. Arbitration shall be conducted in accordance with the Complex Commercial Arbitration Rules of the American Arbitration Association. The validity, construction, and interpretation of this agreement to arbitrate, and all procedural aspects of the arbitration conducted pursuant hereto shall be decided by the arbitrators. In deciding the substance of the Parties' Claims, the arbitrators shall refer to the governing law identified below. It is agreed that the arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or under the Federal Arbitration Act, or under the Commercial Arbitration Rules of the American Arbitration Association, the Parties hereby waiving their right, if any, to recover any such damages. The arbitrators shall be limited to determining direct compensatory damages in accordance with the provisions of this Agreement. The arbitration proceeding shall be conducted in Los Angeles, California. Within twenty (20) days of the notice of initiation of the arbitration procedure, the respondent shall file a response in writing. Within thirty (30) days after the response, each party shall select one arbitrator. Within twenty (20) days thereafter, the two (2) arbitrators shall select a third arbitrator. All three arbitrators are required to be neutral and impartial and shall take an oath at the first session of the arbitration affirming same. None of the three arbitrators shall have business, professional or social relationships with any of the parties. However, upon full disclosure of such relationships, all parties may agree that the arbitrator may serve as an arbitrator. The arbitration shall proceed within sixty (60) days after the appointment of the last of the three arbitrators. The arbitrators shall render their decision (by majority rule) within twenty (20) days after the conclusion of the arbitration. California law shall apply to the subject matter of the arbitration. To the fullest extent permitted by law, the arbitration and the award resulting from the arbitration shall be maintained in confidence by the parties and the arbitrators.

(q) **Schedule M.** Schedule M shall be amended as follows:

(1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended .

(2) "Special Fund" will mean the Fund.

(3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "'Governmental Entity' means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).

(4) In Section C add the following representations and warranties:

(i) "Party B represents and warrants continuously during the term of this Agreement (including for purposes of Section 5.1(b)) that at all times Party B will be entitled to recover, and the Public Utilities Commission will approve and impose, rates sufficient to enable Party B to recover its revenue requirements on a timely basis."

(ii) This Amended and Restated Master Power Purchase and Sale Agreement is a "Priority Long Term Power Contract" as that term is defined in the Rate Agreement By and Between State of California Department of Water Resources and State of California Public Utilities Commission adopted by the California Public Utilities Commission on February 21, 2001 in Decision 02-02-051.

(5) In Section D, delete Section 3.5 and replace it with the following:

"3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court or in connection with any arbitration proceeding undertaken, in the case of such arbitration, pursuant to Section 10.16 hereof.

(6) In Section G, specify that the laws of the State of California will apply.

(7) Add a new Section H, which shall read as follows:

"3.7. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

(8) Add a new Section I, which shall read as follows:

"3.8. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement."

(9) Add a new Section J, which shall read as follows:

"3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement payable from the Trust Estate for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A."

(10) Add a new Section K, which shall read as follows:

"3.10. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

(11) Add a new Section L, which shall read as follows:

"3.11. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it

would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that the provisions of the Government Code and the Public Contracts Code applicable to state contracts are therefore not applicable to or incorporated in this Agreement."

(12) Add a new Section M, which shall read as follows:

"3.12. Electric Corporations as Agents. Party B shall establish the terms and conditions for the segregation of moneys received by electrical corporations pursuant to Section 80106 pending their transfer to Party B in accordance with Section 80112 of the Water Code."

(13) Add a new Section N, which shall read as follows:

"3.13. Deposit of Proceeds of Bonds. The proceeds of any bonds issued by Party B shall be deposited and applied in accordance with the resolution or indenture providing for the issuance thereof."

(14) Add a new Section O, which shall read as follows:

"3.14. Transfers of Power Charge Revenues and Bond Charge Revenues. The indenture providing for the issuance of any bonds or other indebtedness by Party B will expressly provide that Power Charge Revenues and Bond Charge Revenues, will be applied at the times and in the manner provided in the document entitled "California Department of Water Resources Summary of Material Terms of Financing Documents (Submitted in connection with Section 7.10 of a proposed Rate Agreement between California Department of Water Resources and the California Public Utilities Commission)" under the captions "III. Flow of Funds - Power Charge Revenues; Bond Charge Revenues and according to Section 7.10 of the Rate Agreement as adopted by the California Public Utilities Commission in Decision No. 02-02-051"

(15) Add a new Section P, which shall read as follows:

"3.15. Termination Without Recourse. (a) In addition to any other termination rights herein, Party A shall have the right, but not the obligation, to terminate the 2001A Transaction without recourse against Party B for any Termination Payment or other costs and without any further obligation or liability of either Party A or Party B, if Party B fails to maintain an underlying rating on the Bonds (without regard to credit enhancement) of Baa3 or better by Moody's or BBB- or better by S&P and such failure continues for 30 or more consecutive days. [With respect to Party B, this Section 3.15 shall not be effective until the Commercial Operation Date.] In the event Party A elects to terminate this Agreement, notwithstanding the provisions of Section 6.2, Party B shall pay all amounts due hereunder within five (5) days."

(15) Add a new Section Q, which shall read as follows:

"3.16. Collection Efforts. Party B agrees that it will exercise all rights and use all remedies available to it to collect from retail end use customers all amounts necessary to fund Party B's revenue requirements described in Section 80134 of the Water Code or otherwise owed to Party B for such power.

(r) Conditions Precedent. Party A's obligations under this Agreement and all Transactions thereunder are subject to and conditioned upon:

(a) delivery of an executed settlement agreement substantially in the form attached hereto as Exhibit A.

This Master Agreement supersedes the *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) made as of the following date: March 9, 2001.

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

Party A – HIGH DESERT POWER PROJECT, LLC.

Party B – DEPARTMENT OF WATER RESOURCES, with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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

**MASTER POWER PURCHASE AND SALE AGREEMENT
AMENDED AND RESTATED CONFIRMATION LETTER**

This Amended and Restated Confirmation Letter shall confirm the Transaction agreed to on April 22, 2002 between **HIGH DESERT POWER PROJECT, L.L.C.** (“HDPP” or “Party A”) and **DEPARTMENT OF WATER RESOURCES**, with respect to the **Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System** (“CDWR” or “Party B”), regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: HDPP

Buyer: CDWR

Product:

- Into _____, Seller’s Daily Choice
- Firm (LD)
- Firm (No Force Majeure)
- System Firm
(Specify System: _____)
- Unit Firm.
- Other: Obligation to provide: (i) Contract Quantity as scheduled in accordance with Special Condition 16 “Scheduling” below; (ii) Unit Contingent Energy; and (iii) ancillary services:
 -
 - (a) Contract Quantity from the Project, except that such obligation shall be excused due to: (i) a total or partial Planned Maintenance Outage of the Project in accordance with the provisions hereof (but only, in the case of a partial Planned Maintenance Outage, to the extent thereof); (ii) a total or partial forced outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) of the Project (but only, in the case of a partial forced outage, to the extent thereof); (iii) a Derating (“Derating” shall mean any physical limitation (ambient conditions, mechanical constraints, inability of Project when operating at full capacity to produce the scheduled contract quantity or other similar circumstances) that prevents the Project from producing the scheduled quantity, provided that the Project has been maintained and operated in accordance with Prudent Industry Practice) of the Project (but only to the extent thereof); (iv) the fact that any generation of energy for CDWR, or Starts with respect thereto, would cause the Project to fail to comply with any requirement of any governmental or regulatory authorization or approval (but only to the extent thereof); (v) the failure, despite HDPP’S commercially reasonable efforts, of any governmental or regulatory authority to issue or approve any governmental or regulatory authorization, or approval necessary for the operation of the Project in a manner sufficient for delivery of the

Contract Quantity (but only to the extent thereof); or (vi) a requirement of the California Independent System Operator or its successor ("CAISO") or other entity having jurisdiction that all or a portion of the Project's output or capability not be dispatched, or such dispatch be curtailed due to emergency or other system conditions (but only to the extent thereof); or

■

■ (b) HDPP may, at its sole election, deliver "Substitute Energy" as all or part of the Contract Quantity hereunder if and to the extent that CDWR has scheduled Contract Quantity energy and delivery from the Project is excused due to: (i) a total or partial forced outage (but only, in the case of a partial forced outage, to the extent thereof); (ii) a Derating; (iii) delivery of the Contract Quantity from the Project would cause it to fail to meet the requirements of any then current regulatory or governmental authorizations or approval; or (iv) the failure, despite HDPP'S commercially reasonable efforts, of any governmental or regulatory authority to issue or approve any regulatory or governmental authorization or approval necessary for the operation of the Project in a manner sufficient for delivery of the Contract Quantity. Substitute Energy may not be provided prior to the Commercial Operation Date and may only be provided under the circumstances outlined in the preceding sentence.

■

(c) HDPP shall also deliver any energy available from the Project beyond the Contract Quantity ("Unit Contingent Energy"). CDWR shall schedule Unit Contingent Energy in accordance with Special Condition 16. HDPP, unless such delivery shall adversely affect the Project, shall dispatch the Project to deliver the quantities of Unit Contingent Energy so scheduled. Deliveries of Unit Contingent Energy shall be excused if and to the extent that the Project does not produce such scheduled Unit Contingent Energy.

(d) To the degree the Project can provide ancillary services in the CAISO market, CDWR shall have the right to receive such ancillary services or any value derived therefrom. In the event CDWR desires to exercise its right to such ancillary services, CDWR shall notify HDPP in writing. Upon such notification, HDPP and CDWR shall cooperate to identify the services available from the Project, including the nature thereof. The Parties intend that HDPP will provide such ancillary services at its cost and CDWR shall pay HDPP for any incremental costs incurred by HDPP related to its provision of ancillary services.

■

■ CDWR's sole remedies for HDPP's failure to deliver any amount of the Contract Quantity that it is required to deliver hereunder as set forth above under Product: Other shall be: (i) an adjustment to the Capacity Payment as set forth in Special Condition 8 or (ii) liquidated damages as set forth in Special Condition 15.

Except as provided in the preceding sentence, the Parties have not modified or waived their rights or remedies contained in Article V of the Master Agreement.

■

HDPP shall accept any day-ahead schedule properly submitted by CDWR in accordance with Special Condition 16.

-
- “Project” means the High Desert Power Project, a generating station to be constructed in Victorville, California, the design of which includes three combustion turbines and one steam turbine.

“Planned Maintenance Outage” means a partial or complete interruption of the Project that affects the Project’s ability to provide the Contract Quantity and that is scheduled by HDPP as set forth in Special Condition 4 below.

- 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: _____)

Delivery Period: From the Commercial Operation Date (as defined in Special Condition 2) to seven (7) years and nine (9) months from the Commercial Operation Date unless extended pursuant to Special Condition 10.

Contract Quantity: Subject to adjustment in accordance with Special Condition 5, commencing on the Commercial Operation Date, the capacity amount and associated energy that may be scheduled by CDWR in accordance with the provisions hereof, shall be as follows:

	12 – 15 hours	16 – 23 hours	24 hours
January:	798 MW	806 MW	840 MW
February:	784 MW	792 MW	825 MW
March:	774 MW	782 MW	815 MW
April:	755 MW	763 MW	795 MW
May:	732 MW	739 MW	770 MW
June:	708 MW	715 MW	745 MW
July:	694 MW	701 MW	730 MW
August:	694 MW	701 MW	730 MW
September:	708 MW	715 MW	745 MW
October:	736 MW	744 MW	775 MW
November:	770 MW	778 MW	810 MW

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December: 793 MW 802 MW 835 MW

In addition to the Contract Quantity above, CDWR may schedule any available Unit Contingent Energy or ancillary services as described above.

Delivery Point: For the Project: The point of interconnect of the Project with the Southern California Edison transmission system within the CAISO-controlled grid.

For Substitute Energy: The high side of the transformer at any valid CAISO delivery point in SP 15; provided, however, that in the event that the CAISO or other entity having jurisdiction eliminates or materially alters SP 15 after the date hereof, the high side of any transformer in the geographic area which encompasses SP 15 on Exhibit I hereto

Price: Capacity Payment: Commencing on the Commercial Operation Date and for the remainder of the Delivery Period, CDWR shall pay a monthly capacity payment in arrears equal to \$12,100,000 per month, subject to adjustments and pursuant to Special Conditions 2, 5, and 8 . The Capacity Payment includes all fixed operation and maintenance costs of the Project and CDWR shall not be liable to Seller or any third party for any costs (other than the Variable O&M costs Fuel Costs, Start Charges, and other charges as set forth herein) for energy delivered from the Project or Substitute Energy. The monthly capacity payment shall be prorated on a daily basis for any partial month and any adjustments made pursuant to Special Condition 2 and 5.

Variable Operation and Maintenance Costs: Commencing on the Commercial Operation Date and for the remainder of the Delivery Period, CDWR shall pay HDPP \$2.25 MWh for each MWh of delivered energy (whether from the Project or Substitute Energy) including energy delivered during startup and shutdown phases of operation which shall fully compensate HDPP for all variable operation and maintenance costs monthly in arrears for delivered energy.

Fuel Costs: Commencing on the Commercial Operation Date and for the remainder of the Delivery Period, for each month in arrears, CDWR shall pay HDPP the Monthly Fuel Costs in arrears for Fuel supplied by HDPP as follows:

Monthly Fuel Costs shall be the aggregate for each month of product of the following formula calculated for each hour:

Fuel Price x (Applicable MWh x Heat Rate) plus any other applicable charges pursuant to an adopted fuel plan or as set forth herein

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Fuel Price = \$/MMbtu as per HDPP Fuel Plan or Spot Price as per Special Condition 12

Applicable MWh = MWh scheduled by CDWR and delivered by HDPP (whether from the Project or Substitute Energy).

Heat Rate =
(Higher Heating Value)

Start Up Cycle	10.0MMBtu / MWh
Shut Down Cycle	7.8 MMBtu / MWh
Minimum Load Level	7.7 MMBtu / MWh
Maximum Load Level I	7.3 MMBtu / MWh
Maximum Load Level II	7.4 MMBtu / MWh

Heat Rate will be increased by one-half of one percent (.5%) per Contract Year in each of Contract Years two through five and remain at the Contract Year five level for the remainder of the Delivery Period (Exhibit II sets forth the resulting Heat Rates for the affected Contract Years).

The maximum quantity of deliveries subject to the Maximum Load Level I heat rate shall be established by subtracting the “Maximum Load Level I Adjustment” from the Contract Quantity amounts set forth in “Delivery Period” above, including any adjustment to such amounts as may be made in accordance with Special Condition 5. The Maximum Load Level I Adjustment for the months May, June, July, August, September and October shall be 30 MWs. The Maximum Load Level Adjustment for all other months shall be 60 MWs. Thus, for example, the maximum quantity subject to Maximum Load Level I heat rate for “January, 24 Hours,” shall be 780 MWs, unless adjusted in accordance with Special Condition 5.

The Heat Rate shall be adjusted by a linear interpolation for deliveries between Minimum Load Level and Maximum Load Level I, such that Heat Rate will be increased or decreased ratably between such levels. In addition, Heat Rate shall be adjusted for deliveries greater than Maximum Load Level I (Maximum Load Level II) to reflect the Maximum Load Level II heat rate set forth above. The delivery level used to determine the adjusted Heat Rate shall reflect the actual delivery level. (Exhibit III sets forth an example of the manner in which such adjustments shall be implemented).

Special Conditions:

1. No Third Party Sales. HDPP shall not make any sales of energy from the Project to any third parties. However, HDPP may make such sales to the extent required

by CAISO or any other entity having jurisdiction; To the extent that HDPP incurs any costs or receives any revenues associated with such third party sales, such costs or revenues shall be for CDWR's account. Notwithstanding the foregoing, HDPP shall be entitled to make sales of energy from the Project to third parties prior to the Commercial Operation Date.

2. Commercial Operation.

- (a) As used herein, "Commercial Operation" means that such Project has been completed, has performed the Available Capacity Test set forth in Special Condition 5, has achieved an Available Project Capacity of at least 500 MW, and has all necessary governmental and regulatory authorizations or to operate the Project. Commercial Operation shall not occur until HDPP provides a written certification, signed by a duly authorized officer, to CDWR that the above requirements for Commercial Operation have been achieved. CDWR may dispute such certification within ten (10) business days of its receipt of HDPP's certification of Commercial Operation. CDWR's failure to initiate such dispute within such period shall be deemed an acceptance of HDPP's certification. If CDWR disputes HDPP's certification that Commercial Operation has been achieved, the reasons for such dispute shall be provided in writing and such dispute shall be resolved in accordance with the dispute resolution procedures set forth in the Master Agreement. The date of CDWR's receipt of HDPP's certification shall be the "Commercial Operation Date." If CDWR has disputed such Commercial Operation Date, an appropriate adjustment to the Commercial Operation Date will be made if CDWR's dispute is successful. Performance in accordance with this Agreement (or other receipt of energy from the Project) during the pendency of such dispute shall not be considered evidence of CDWR's agreement that the Project has achieved Commercial Operation.
- (b) HDPP shall use commercially reasonable efforts to achieve Commercial Operation by July 1, 2003.
- (c) In the event that the Commercial Operation Date does not occur on or prior to October 1, 2004 and HDPP has ceased Commercially Reasonable Efforts to achieve Commercial Operation of the Project, CDWR shall, at its sole discretion, have the right but not the obligation to terminate this Agreement upon written notice (including all necessary supporting detail) provided to HDPP. Solely for the purposes of this Special Condition 2, "Commercially Reasonable Efforts" means continued commercially reasonable efforts by HDPP or its affiliates to finalize: development, permitting, construction, financing and/or any other task necessary to achieve Commercial Operation of the Project. HDPP may dispute CDWR's determination that HDPP has ceased making Commercially Reasonable Efforts to achieve Commercial Operation within ten (10) Business Days of its receipt of CDWR's notice. If HDPP so disputes CDWR's notice, the reasons for such dispute shall be provided in writing and such dispute shall be resolved in accordance with the dispute resolution procedures set forth in the Master

Agreement. If HDPP so disputes CDWR's determination as provided in this Special Condition 2(c), such termination will not be effective until after the conclusion of such dispute resolution process which is resolved in CDWR's favor and shall be without recourse against CDWR for any Termination Payment or other costs and without any further obligation or liability of either HDPP or CDWR other than the termination payment set forth in Special Condition 2(d).

- (d) In the event that HDPP ceases making Commercially Reasonable Efforts to achieve Commercial Operation as set forth in Special Condition 2(c) and CDWR properly terminates this Agreement, HDPP shall pay CDWR fifty million dollars (\$50,000,000) within thirty (30) days after such termination is effective. The payment of this sum shall be secured by a guarantee provided by a related party to HDPP that satisfies the credit criteria described in Special Condition 9(a)(i) below.

- 3. Construction Reports; Inspection Rights. HDPP shall provide monthly reports to CDWR which set forth the status of pre-construction activities (including permitting, licensing, financing, equipment acquisition and similar pre-construction activities), construction activities and the then expected Commercial Operation Date of the Project. Such reports shall include the status of accomplishing major development and construction milestones including obtaining all permits, securing project financing, acquisition and installation of major equipment, and start-up testing. CDWR may inspect the Project, the Project construction site or non-confidential (or with an appropriate non-disclosure agreement reasonably acceptable to HDPP, confidential) on-site HDPP data and information pertaining to the Project (which, with respect to confidential data, CDWR can demonstrate that such data is required for its administration of the Agreement) during business hours upon reasonable notice and coordination with HDPP. With respect to the Tests required and/or permitted under Special Conditions 2 and 5, HDPP shall give CDWR reasonable notice thereof and CDWR shall have the right to monitor the performance of all such Tests and receive the results therefrom at the same time as HDPP receives such results.
- 4. Operation and Maintenance of the Project. (a) HDPP shall maintain and operate the High Desert Power Project in accordance with Prudent Industry Practices. "Prudent Industry Practices" means those practices, methods and acts (including but not limited to the generally accepted practices, methods and acts engaged in or approved by the operators of similar electric generating facilities) which at the time that such practice, method or action is employed, and in the exercise of reasonable judgment in light of the facts known at such time, would be expected to accomplish the desired result in a workmanlike manner, consistent with (a) applicable laws and governmental and regulatory requirements, and (b) reliability, safety, and environmental protection. "Prudent Industry Practices" shall not mean that operator is required to use the optimum practice, method, or act, but only requires the use of acceptable practices, methods or acts generally accepted in the United States of America in performing its obligations hereunder in accordance with prudent industry practices.
 - (b) HDPP will coordinate with buyer to schedule Planned Maintenance Outages and will make reasonable efforts to accommodate any requests made by CDWR with respect to the scheduling of such Planned Maintenance Outages; under no circumstances will such outages

occur during any part of the months of July, August or September without a written request by HDPP or CDWR and prior written approval from CDWR. Subject to the foregoing sentence, HDPP may revise and reschedule a Planned Maintenance Outage from time to time without CDWR's approval; provided that HDPP may not revise and reschedule a Planned Maintenance Outage during a period which CDWR requested delivery of energy pursuant to the provisions of Special Condition 16. Planned Maintenance Outages will occur in accordance with the durations ("Days") as set forth on Exhibit IV. If a Planned Maintenance Outage exceeds the applicable duration set forth on Exhibit IV, the remaining period shall not be considered a Planned Maintenance Outage. HDPP will provide CDWR reasonable notice of Planned Maintenance Outages and unplanned outages.

5. Determination of Available Project Capacity. (a) HDPP will conduct a four-hour test to determine the maximum MW output of the Project as measured at the plant boundary ("Available Capacity Test" or "Test"). The Test shall be performed in accordance with ASME Performance test code PTC 46. HDPP may conduct the Test concurrent with or as a component of other facility tests, such as its EPC Contract performance tests. After such Test, HDPP will use performance curves provided by HDPP's EPC Contractor to correct the Test results to 59 deg F, 60% RH and 14.696 psia ambient conditions ("ISO Conditions"). The Test results as so corrected will establish the Available Project Capacity of the Project for purposes of determining and/or adjusting the Capacity Payment, Contract Quantity and satisfying Special Condition 2(a). HDPP may conduct as many Tests utilizing the same four-hour Test procedures as may be necessary to comply with the requirements of Special Condition 2(a) and to establish Available Project Capacity for the first Contract Year. The Test procedure is set forth as Exhibit V. hereunder. If the Available Project Capacity established by the Test[s] performed prior to Commercial Operation is less than 830 MW in accordance with this Special Condition 5, the Capacity Payment and the Contract Quantity for the first Contract Year shall be proportionally reduced in accordance with the following formulas, an example of which is set forth on Exhibit VI:

$$\text{Available Project Capacity}/830 \times \text{Capacity Payment} = \text{Proportionally Adjusted Capacity Payment}$$

$$\text{Available Project Capacity}/830 \times \text{Contract Quantity Table} = \text{Proportionally Adjusted Contract Quantity}$$

For purposes of this formula, Available Project Capacity shall not exceed 830 MW.

Notwithstanding the foregoing, during the first Contract Year, HDPP shall have the right to undertake unlimited additional Tests conducted in accordance with this Special Condition 5 (each a "Subsequent Capacity Test") which, if the Available Project Capacity derived from any Subsequent Capacity Test[s] exceeds the Available Project Capacity established by the Capacity Test, the Capacity Payment and Contract Quantity shall, for the remainder of the first Contract Year, be proportionally increased in accordance with the formula set forth above but, in no event, shall Available Project Capacity exceed 830 MW at ISO Conditions.

(b) Upon five (5) days notice to CDWR, and at least ninety (90) days prior to the beginning of each Contract Year, HDPP shall conduct an initial Test as described in Special Condition 5(a) above and may, at its sole option and with at least five (5) days notice to CDWR, perform no more than four (4) additional Tests no later than five (5) days prior to the

beginning of each Contract Year (the “Annual Capacity Tests”, each a “Subsequent Annual Capacity Test”). Each test shall be corrected as described in Special Condition 5(a) above. The corrected test results from the Test deriving the highest Available Project Capacity will establish the Available Project Capacity for purposes of determining and/or adjusting the Capacity Payment and Contract Quantity for the next Contract Year

In determining the Capacity Payment and Contract Quantity for the second Contract Year (months 13 through 24), the Capacity Payment and the Contract Quantity shall be established in accordance with the following formulas:

Available Project Capacity/817.55 x Capacity Payment = Proportionally Adjusted Capacity Payment

Available Project Capacity/817.55 x Contract Quantity Table = Proportionally Adjusted Contract Quantity

For purposes of this formula, Available Project Capacity shall not exceed 817.55 Mw

In determining the Capacity Payment and Contract Quantity for each succeeding Contract Year (beginning with month 25 after the Commercial Operation Date), the Capacity Payment and the Contract Quantity shall be established in accordance with the following formulas:

Available Project Capacity/809.25 x Capacity Payment = Proportionally Adjusted Capacity Payment

Available Project Capacity/809.25 x Contract Quantity Table = Proportionally Adjusted Contract Quantity

For purposes of this formula, Available Project Capacity shall not exceed 809.25 Mw

Five (5) days prior to any Subsequent Capacity Test, Annual Capacity Test or Subsequent Annual Capacity Test (“Re-Test”), HDPP shall notify CDWR of its intention to perform such Re-Test. Unless CDWR dispatches the Project at a capacity and duration which allows HDPP to perform the Re-Test in the period prior to the date for which HDPP has notified CDWR of the intended Re-Test (the Notice Period), HDPP shall, if practicable, perform the Re-Test on the date indicated in its notice (a Notice Re-Test). In the event CDWR dispatches the Project at a capacity and duration which allows HDPP to perform the Re-Test in the Notice Period, HDPP shall, if practicable, conduct the Re-Test during such period (a Dispatch Re-Test). Notwithstanding CDWR’s dispatch instructions for the day on which a Notice Re-Test is to be performed, HDPP may dispatch the Project to the capacity and for the duration required to perform the Notice Re-Test and HDPP shall have the right to undertake any physical starts of the Project as necessary for each Notice Re-Test. Further, CDWR shall provide any incremental fuel and receive any associated revenue from energy sales related to any Notice Re-Test.

6. Transmission. (a) HDPP shall arrange and be responsible for transmission service, including any and all losses, to the Delivery Point, if any, and shall obtain CAISO Schedule

Coordinator services necessary to deliver the Product to the Delivery Point. HDPP shall be responsible for all charges due to the CAISO up to the Delivery Point, and CDWR shall be responsible for all charges due to the CAISO at and after the Delivery Point. HDPP shall be entitled to receive all payments from the CAISO, related to deviations of Project output from the Project's final hour-ahead CAISO schedule; provided, however, to the extent such a deviation results from a dispatch instruction that is directed by CDWR, CDWR shall be responsible for that portion of any charges due to the CAISO, and entitled to receive that portion of any payments from the CAISO that are attributable to the generation levels specified in such dispatch instruction. Notwithstanding anything to the contrary herein, CDWR shall be responsible for: (i) any CAISO charges assessed to HDPP but which are the result of CDWR's disposition of energy at or after the Delivery Point; and (ii) any CAISO charges associated with ancillary services.

(b) HDPP shall not be permitted to use the CAISO imbalance markets to effect delivery of energy hereunder except with respect to: (i) under-deliveries resulting from variations between the amount of energy scheduled and the amount of energy delivered due to physical variations in the operating levels of the generation equipment beyond the reasonable control of the Seller from the Project's final hour-ahead CAISO schedule or (ii) to effect intra-day deliveries of scheduled output that is curtailed or reduced as a result of one of the conditions set forth in (a)(ii)-(a)(vi) in the definition of "Product—Other" (an "Intra-Day Event"). Upon the existence of a liquid bilateral market for intra-day (hourly) energy supplies that can be used to supply substitute energy under this Agreement (the "Intra-Day Market"), HDPP upon an Intra-Day Event shall as soon as practicable after such Intra-Day Event procure and schedule with the CAISO such Substitute Energy necessary to meet the remaining portion of the schedule for such day. HDPP's failure to deliver Substitute Energy pursuant to this Special Condition 6(b) shall be deemed a failure to deliver the Contract Quantity under this Agreement and any appropriate adjustment to the Capacity Payment shall be made as provided for in this Agreement. In the event a Party has determined the existence of an Intra-Day Market, such Party shall so notify the other Party in writing as to its determination. If the Parties disagree as to the existence of the Intra-Day Market, the Parties shall perform as if the Intra-Day Market is not in existence pending the resolution of the issue through the dispute resolution process as provided in this Agreement. In the case where the Project trips off line, HDPP shall submit a Project Schedule change as soon thereafter as reasonably practical.

(c) Seller shall not knowingly submit schedules for the purpose of creating congestion and submit decremental bids in connection therewith.

7. Operational Constraints. CDWR's ability to schedule and dispatch the Contract Quantity shall be subject to the following constraints:

Minimum Run Time: 12 consecutive hrs/day at Minimum Load Level or greater.

Minimum Load Level: Shall be determined annually for the Project as a component of the Test performed in accordance with Special Condition 5. The methodology for determination of such Minimum Load Level is set forth on Exhibit V. If less than three combustion

turbines are expected to be available on any day, HDPP will notify CDWR of the resulting Minimum Load Level by 5:00 A.M. Pacific prevailing time on such day.

Ramp Rates from/to Minimum Load Level: 4 MW per minute

Start Time: 5 Hours

HDPP shall provide CDWR quantities of energy to be provided each of the five hours of the start up cycle as soon as practicable after finalization of start-up procedures by HDPP's Engineering Procurement Construction ("EPC") contractor.

Shut Down Time: 1 Hour

Shut Down Quantity: 143 MWhrs for the 1 hour shut down cycle.

No scheduling during Planned Maintenance Outage.

8. Availability. The capacity payment paid or payable in each month shall be subject to adjustment so as to equal the Adjusted Capacity Payment ("ACP").

Where:

ACP = lesser of: 1.0 and $\{1 - (\text{Target AF} - \text{AF})\} \times$ capacity payment paid or payable.

$\text{AF} = \{(\text{DPD} + \text{SE}) + \text{RAF}\} / \{\text{SOS} + \text{RAF}\}$

DPD = Deliveries from the Project for each contract month made pursuant to a schedule submitted by CDWR which, together with SE for such month, does not exceed SOS for such month

SE = Substitute energy deliveries for each contract month made pursuant to a schedule submitted by CDWR which, together with DPD for such month, does not exceed SOS for such month

SOS = the sum of hourly scheduled quantities in each contract month (whether day ahead or changed and accepted)

RAF = Reliability Adjustment Factors shall be the greater of zero (0) and 18,000 MWhrs minus SOS.

Target AF = .95.

An example of the above calculation is set forth on Exhibit VII.

Deliveries from the Project which have been properly scheduled by CDWR and which HDPP is required to deliver hereunder pursuant to Special Condition 16 but which are not delivered by HDPP pursuant to Section (a)(vi) of Product - Other shall be subtracted from SOS to the extent such deliveries have not been initiated or have been curtailed by such requirement.

Deliveries from the Project which have been properly scheduled by CDWR and

which HDPP is required to deliver hereunder pursuant to Special Condition 16 but which are not delivered by HDPP pursuant to Special Condition 12(j) shall be subtracted from SOS to the extent such deliveries have not been made due to CDWR's inability to deliver Fuel to the Project.

Notwithstanding the foregoing, ACP in the first three contract months following the Commercial Operation Date shall be calculated as follows:

ACP = lesser of: 1.0 and $[1 - \{(Target\ AF - AF) - (.3 \times Target\ AF - AF)\}] \times$
capacity payment paid or payable.

An example of the above calculation is set forth on Exhibit VIII.

9. Credit Assurances. On or before the Commercial Operation Date, HDPP shall have in place one of the following credit assurances, and shall maintain such credit assurance during the Delivery Period, which assurance HDPP shall select at its sole option:

(i) Credit Rating of unsecured long-term debt for HDPP of BBB- or better by &, or its successor and Baa3 or better by Moody's, or its successor, or

(ii) Security for HDPP's performance obligations in the form of (A) a mortgage on and security interest in the Project, (B) collateral assignment of contracts for fuel supply, support services, transmission rights, permits and related rights, (C) a right to receive notices of default from secured lenders and from parties to the assigned contracts, (D) a right to step in and cure defaults of HDPP to Project lenders, and (E) if rights under clause (D) are exercised, a right to step in and operate the Project. If there is a senior Project lender that already has a mortgage on and security interest in the Project, CDWR will accept a second mortgage and security interest, including usual and customary standstill rights which at a minimum will prohibit CDWR from taking any action to foreclose on the collateral until the senior Project lender has been paid in full. Subordination provisions must be reasonably satisfactory to the senior Project lender; or

(iii) A guarantee in favor of and in form attached hereto, from a related party that satisfies the credit criteria described in (i) above.

Upon thirty (30) days notice to CDWR, HDPP may alter the form of credit assurance provided hereunder as long as credit assurance in the form of 9(i), 9(ii) or 9(iii).

If (a) HDPP's Credit Rating falls below the level set forth above in 9(i) or (b) HDPP provides a guarantee as set forth in 9(iii) above and such guarantor's Credit Rating falls below the level set forth in 9(i), then HDPP shall have the right to post substitute credit assurance within fifteen (15) Business Days in the form set forth in 9(ii) above or either: a letter of credit, cash or, in the case of (a), a guarantee from a related party with a Credit Rating that meets the requirements set forth in 9(i). In the event that HDPP posts substitute credit assurance in the form of either a letter of credit or cash, the amount of such substitute credit assurance shall be the Termination Payment that would be payable if Seller were the Defaulting Party determined semi-annually.

10. Suspension and Termination for HDPP's Inability to Deliver from the Project and CDWR's Inability to Receive at the Delivery Point. (a) If the Project is physically unable to produce energy for twelve (12) consecutive months (which inability shall be unrelated to HDPP's governmental or regulatory authorizations or approvals), then, upon ten (10) days written notice, CDWR may suspend performance hereunder until HDPP is capable of resuming deliveries of at least 100MWh/hr for three (3) days from the Project. Upon resumption of deliveries from the Project, the Delivery Period shall automatically be extended for a period of time that is equivalent to the period of time during which performance under the Agreement has been suspended under this provision. If HDPP is physically unable to produce energy (which inability shall be unrelated to HDPP's governmental or regulatory authorizations or approvals), causing the Project to be unable to produce energy for twenty-four (24) consecutive months (such period may include a period of consecutive months for which CDWR has exercised its rights to suspend performance above), then CDWR may terminate this Agreement, upon written notice to HDPP provided no later than ten (10) days after such twenty-four month period, without further obligation or liability of either party for any cost or Termination Payment hereunder. If CDWR does not elect to terminate the Transaction as set forth above and HDPP resumes deliveries from the Project hereunder, then the Delivery Period shall automatically be extended for a period of time that is equivalent to the period of time during which performance under the Agreement has been suspended under this provision.

(b) If CDWR is physically unable to receive energy at the Delivery Point for twelve (12) consecutive months, then, upon ten (10) days written notice, HDPP may suspend performance hereunder until CDWR resumes receipt at the Delivery Point. Upon resumption of receipt at the Delivery Point, the Delivery Period shall automatically be extended for a period of time that is equivalent to the period of time during which performance under the Agreement has been suspended under this provision. If CDWR is physically unable to receive energy at the Delivery Point for twenty-four (24) consecutive months (such period may include a period of consecutive months for which HDPP has exercised its rights to suspend performance above), then HDPP may terminate this Agreement, upon written notice to CDWR provided no later than ten (10) days after such twenty four month period, without further obligation or liability of either party for any cost or Termination Payment hereunder. If HDPP does not elect to terminate the Transaction as set forth above and CDWR resumes deliveries from the Project hereunder, then the Delivery Period shall automatically be extended for a period of time that is equivalent to the period of time during which performance under the Agreement has been suspended under this provision.

The Parties agree that the events and circumstances addressed in this Special Condition 10 are not Force Majeure events.

11. Permits. HDPP shall use commercially reasonable efforts, at its expense, to acquire and maintain in effect, from any and all government agencies with jurisdiction over HDPP and/or the construction or operation of the Project, all required governmental and regulatory

authorizations, or approvals, in each case necessary at that time (i) for the construction of the Project; and (ii) for the operation of the Project at levels not materially different than the Contract Quantity. HDPP shall operate the Project in compliance with the Project's governmental or regulatory authorizations or approvals. If HDPP's ability to provide energy from the Project is prevented by such governmental or regulatory authorizations or approvals, or their absence, it may provide Substitute Energy if authorized to do so in "Product: Other" above.

12. Fuel Supply Arrangements. (a) HDPP Fuel Plan; Fuel Supply Periods. At least ninety (90) Days prior to the anticipated Commercial Operation Date and to the commencement of each succeeding Fuel Supply Period, HDPP shall provide in writing for CDWR's approval a proposed Fuel Supply Plan ("HDPP Fuel Plan") for the next succeeding Fuel Supply Period with respect to natural gas that meets the quality standards and specifications necessary for the Project to generate energy ("Fuel"). "Fuel Supply Period" means (i) the initial Fuel Supply Period commencing not later than the Commercial Operation Date and ending at the conclusion of the final Gas Day (as such term is defined in Kern River Gas Transmission Company's then-effective FERC Gas Tariff) in the earlier to occur of the month of October or March following the first anniversary of the Commercial Operation Date (such that the initial Fuel Supply Period shall be not less than one year in length and commences and concludes at the beginning of the winter (November through March) or summer (April through October) gas season), and (ii) each succeeding twelve month period commencing as of the conclusion of the immediately preceding Fuel Supply Period. Any HDPP Fuel Plan will provide that HDPP or its designee shall perform the function of fuel manager, and will include information describing how HDPP or its designee intends to procure Fuel and associated transportation, storage and/or other delivery services such that CDWR can evaluate the expected cost of Fuel needed to generate energy provided under this Agreement. The HDPP Fuel Plan will include, at a minimum:

1. the price per MMBtu of Fuel to be supplied to the Project (or a formula for determining the price per MMBtu of such Fuel);
2. the expected cost of transportation, storage, balancing, imbalance management or other services required to support Fuel deliveries to the Project in accordance with CDWR dispatch instructions;
3. mechanisms for coordinating CDWR dispatch instructions with day ahead and intra-day nominations of Fuel supply in accordance with the requirements of Kern River Gas Transmission Company's currently effective FERC Gas Tariff and the currently effective tariffs of transporters or storage service providers upstream of the High Desert Lateral;
4. the price per MMBtu (or a formula for determining the price per MMBtu) for Fuel that must be procured or disposed of intra-day to meet CDWR dispatch instructions, including all costs incurred in connection with changes in the supply of Fuel required to conform to a CDWR change in dispatch instructions; and

5. provisions specifying CDWR's obligations to pay the costs specified in the HDPP Fuel Plan of transportation or storage of Fuel required for the Project on any transportation or storage facilities upstream of the High Desert Lateral.

The Parties may meet at mutually agreeable times prior to the commencement of each next succeeding Fuel Supply Period to discuss any modifications to HDPP's proposed Fuel Supply Plan that CDWR reasonably requests and any Extended Term Obligations proposed by HDPP or CDWR pursuant to Special Condition 12(f). Nothing in this Special Condition 12 shall be construed as obligating HDPP to adopt a Fuel Supply Plan or to agree to any modifications to a Fuel Supply Plan that: (i) HDPP reasonably believes could interfere with its ability to provide energy from the Project; or (ii) HDPP reasonably believes, in its sole discretion, could potentially expose HDPP to risks, including credit, market or delivery risks, or liabilities that HDPP considers unacceptable. Any Extended-Term Obligation included in any Fuel Supply Plan shall be governed by Special Condition 12(f).

(b) Parties' Failure to Execute Fuel Supply Plan. In the event the Parties do not agree to adopt the HDPP Fuel Plan as proposed by HDPP or agreed upon by HDPP and CDWR by sixty (60) Days prior to the commencement of the initial Fuel Supply Period or any succeeding Fuel Supply Period, CDWR may elect, at CDWR's sole option, to provide, or cause to be provided, for the initial and any succeeding Fuel Supply Period, Fuel to the Project from CDWR's own Fuel purchases (a "CDWR Fuel Plan"). CDWR's election to provide, or cause to be provided, Fuel to the Project under this Special Condition 12(b) shall be expressed in writing to HDPP by no later than thirty (30) Days prior to the commencement of the initial or any succeeding Fuel Supply Period. Any CDWR Fuel Plan shall incorporate, and CDWR hereby agrees that it will be obligated to observe as terms of this Agreement, the following requirements and provisions:

1. CDWR or its designee shall be obligated to deliver Fuel to the Project at the meter and regulator facilities at which the High Desert Lateral interconnects with the Kern River Gas Transmission Company/Mojave Pipeline Company "Joint Facilities" and/or with the Pacific Gas & Electric Company "Line 300" in the vicinity of Kramer Junction, California (the "Fuel Delivery Points"), subject, however, to the conditions on deliveries into the High Desert Lateral from Line 300 relating to prevailing line pressures that are set forth in Exhibit "A" to the Transportation Service Agreement between Victorville-Gas, LLC and Kern River Gas Transmission Company under Rate Schedule KRF-L1;
2. CDWR or its designee shall be responsible and liable for (i) all costs and charges associated with CDWR's use of any gas transmission or storage facilities upstream of the High Desert Lateral in making deliveries of Fuel to the Project, including, but not limited to, any Extended-Term Obligations entered into pursuant to Special Condition 12(f), (ii) nominating and scheduling Fuel for transportation to the Fuel Delivery Points over any gas transmission or storage facilities upstream of the Fuel Delivery Points, on a day-ahead and intra-day basis, (iii) except with respect to circumstances involving a forced outage of the

Project, all penalties, charges, surcharges, cash-out charges or other costs associated with (a) imbalances between scheduled quantities and quantities (calculated using the Heat Rate) taken to support generation at the Project in accordance with CDWR's dispatch instructions given in accordance with this Agreement and (b) flows in excess of contract or tariff limits, on the High Desert Lateral and any gas transmission or storage facilities upstream of the Fuel Delivery Points, and (iv) compliance with all applicable provisions of Kern River Gas Transmission Company's then-effective FERC Gas Tariff and the then-effective tariffs of any providers of gas transmission or storage services furnished upstream of the Fuel Delivery Points in connection with deliveries under the CDWR Fuel Plan to the Project;

3. CDWR or its designee shall perform the function of fuel manager for the term of the CDWR Fuel Plan, and neither HDPP nor any affiliate of HDPP shall have any responsibility or liability for performance of or failure to perform any fuel manager function relating to the Project for the term of such CDWR Fuel Plan; and
4. CDWR and its designee shall release HDPP and its affiliates, officers, employees and agents from, and neither HDPP nor its affiliates, officers, employees and agents shall have, liability for any consequences of CDWR's failure to deliver Fuel or cause Fuel to be delivered to the Fuel Delivery Points including, but not limited to, liability for payment of damages, for costs of Substitute Energy obtained to substitute for energy that would have been generated by the Project, or for refund or credit of any Capacity Payment theretofore or thereafter paid or owed by CDWR pursuant to this Agreement.

(c) Default Fuel Supply and Pricing. If the Parties do not agree on a Fuel Supply Plan and CDWR does not elect to provide Fuel to the Project from CDWR's own Fuel purchases, HDPP or its designee will provide, at the price reported in *Gas Daily* for SoCal Gas, large packages, high end of the "Common" range (the "HDPP Spot Market Price"), Fuel necessary for the delivery of energy hereunder in accordance with CDWR's day-ahead dispatch instructions during the next succeeding Fuel Supply Period, or until the Parties have agreed to and executed a Fuel Supply Plan for such Fuel Supply Period. CDWR shall pay HDPP a fee for its fuel management services of \$.02 (two cents)/MMBtu for all Fuel delivered by HDPP pursuant to this Special Condition 12(c). The "HDPP Spot Market Price" specified in this Special Condition 12(c) shall be applicable solely to purchases of Fuel made to accommodate CDWR's Project dispatch instructions under the following conditions: (i) CDWR provides HDPP the dispatch instruction on which HDPP will base its Fuel nomination by 5:30 am PPT on the Business Day prior to Gas Day(s) of flow; (ii) dispatch instructions must result in Fuel nominations for flows on each Gas Day of a Weekend (Saturday through Monday) and/or Holiday Period (the Weekend and/or holiday(s) and next immediate Business Day) that do not vary over each Gas Day during such Weekend and/or Holiday Period; and (iii) the hourly flow within each Gas Day must be 1/24th of the daily nomination, or such greater hourly amount as may be allowed by Kern River Gas Transmission Company without incurring additional costs. The price for incremental Fuel supplied by HDPP within any day or Weekend or Holiday Period (or the

cost of disposing of Fuel not required within such day or Weekend or Holiday Period) in accordance with CDWR's requests for changes within such day from its pre-existing day-ahead dispatch instructions, or for Fuel nominations or flows that do not conform to the conditions set forth in the immediately preceding sentence under which the "HDPP Spot Market Price" is applicable (each such condition, a "Non-Conformance"), shall be the actual cost of any quantities of incremental Fuel required plus any incremental cost of delivering or disposing of incremental quantities of Fuel or quantities of Fuel not required on such Gas Day or Weekend or Holiday Period in accordance with CDWR's changes in its dispatch instructions or Non-Conformance that HDPP or its designee reasonably incurs in procuring or disposing of such Fuel quantities. However, in the event that the Parties are involved in good faith negotiations with respect to a Fuel Supply Plan for a Fuel Supply Period, CDWR may elect, upon giving reasonable advance written notice to HDPP, to provide Fuel necessary for the delivery of energy hereunder until (i) the Parties have agreed to and executed a Fuel Supply Plan for such Fuel Supply Period, (ii) the Parties have discontinued negotiations with respect to the Fuel Supply Plan for such Fuel Supply Period, or (iii) CDWR has elected to provide Fuel to the Project from CDWR's own Fuel purchases. In the event the Parties have not agreed to and executed a Fuel Supply Plan, CDWR has not elected to provide Fuel to the Project from CDWR's own Fuel purchases for the entire Fuel Supply Period, CDWR has not elected to supply Fuel from its own Fuel purchases during continuing negotiations with respect to a Fuel Supply Plan, and HDPP is unable, using commercially reasonable efforts, at any time during the Fuel Supply Period, to provide Fuel necessary for the delivery of energy hereunder at the HDPP Spot Market Price, then CDWR, upon giving reasonable advance written notice to HDPP, will provide Fuel necessary for the delivery of energy hereunder until such time as HDPP shall have identified by reasonable advance written notice as the time on which HDPP will be able to provide Fuel necessary for the delivery of energy hereunder at the HDPP Spot Market Price. Notwithstanding anything to the contrary set forth in this Special Condition 12, CDWR's failure to supply gas when it is obligated to do so pursuant to this Special Condition 12(c) shall not be grounds for relief from CDWR's obligations to make payment hereunder of the Capacity Payment or any other amount relating to the generating capacity made available by HDPP pursuant to this Agreement. Any costs associated with imbalances between quantities of gas nominated in accordance with CDWR's dispatch instructions for delivery at the Delivery Points under this Special Condition 12(c) and quantities actually consumed in the Project to support deliveries of energy to CDWR hereunder shall be for CDWR's account.

(d) CDWR Delivery of Fuel Notwithstanding Agreed Fuel Supply Plan. If HDPP is unable to provide Fuel to the Project during any Fuel Supply Period for which the Parties have executed a Fuel Supply Plan by which HDPP is obligated to supply Fuel to the Project, CDWR may provide Fuel to the Project in accordance with the provisions of this Special Condition 12(d). HDPP or its designee shall give written notice to CDWR by not later than thirty (30) minutes following receipt of CDWR's day-ahead dispatch instructions if HDPP or its designee will be unable to provide Fuel to the Project, and by not later than thirty (30) minutes following its receipt of such notice CDWR shall give written notice to HDPP or its designee specifying whether it intends to provide Fuel to the Project pursuant to this Special Condition 12(d). In the event that CDWR elects to provide Fuel to the Project pursuant to this Special Condition 12(d), it shall have the responsibility to act as fuel manager with respect to the provision of such Fuel, and any costs associated with imbalances between

quantities of gas nominated in accordance with CDWR's dispatch instructions for delivery at the Delivery Points under this Special Condition 12(d) and quantities actually consumed in the Project to support deliveries of energy to CDWR hereunder shall be for CDWR's account.

(e) CDWR Fuel Delivery Requirements Based on Heat Rate. In the event CDWR elects to provide Fuel pursuant to the terms of Special Condition 12(b), Special Condition 12(c) or Special Condition 12(d), CDWR's Fuel delivery obligations shall be equal to the sum of (A) the product of (1) the MWhs of scheduled Contract Quantity multiplied by (2) the Heat Rate, plus (B) a quantity of Fuel for losses on the High Desert Lateral (such quantity to be equal to Kern River Gas Transmission Company's currently effective percentage retention for fuel and lost and unaccounted-for under the then-effective Rate Schedule KRF-L1 multiplied by the quantity of Fuel actually tendered at the Fuel Delivery Points), *provided, however*, that HDPP shall have the right at its sole option to compensate CDWR for, and CDWR shall in such event supply, any additional quantity of Fuel required to support Project dispatch at the levels contemplated by this Agreement where the actual heat rate achieved by the Project is greater than the Heat Rate, such compensation to be calculated by multiplying the HDPP Spot Market Price for the relevant day(s) by the quantity of additional Fuel required beyond the CDWR Fuel delivery obligation specified in this Special Condition 12(e) because of the discrepancy between the actual heat rate achieved by the Project and the Heat Rate.

(f) Extended-Term Obligations. The Parties acknowledge that any Fuel Supply Plan may include obligations provided by either Party that extend beyond the applicable Fuel Supply Period ("Extended-Term Obligations"). Extended-Term Obligations shall be memorialized in separate agreements and may include, but are not limited to, long-term commitments for pipeline capacity, storage rights, or financial risk management products pertaining to the commodity price (such as fixed prices, costless collars, basis purchases, caps, or other price management mechanisms). Any Extended-Term Obligation that the Parties specifically approve in a separate agreement of approval shall be deemed effective and approved for the duration of the period to which it applies, regardless of whether such period extends beyond the term of any Fuel Supply Plan. Within forty-five (45) Days prior to the termination of a Fuel Supply Plan, CDWR may assume all effective and approved Extended-Term Obligations and all costs associated therewith (except for HDPP's firm transportation rights) provided that CDWR obtains a release from the counter party to the Extended-Term Obligations releasing HDPP from any future obligations HDPP has with regard to such Extended-Term Obligations. If any Agreement relating to an Extended-Term Obligation is terminated for default during the term of such Extended-Term Obligation, then the defaulting Party shall be obligated to bear and shall pay all costs associated with performance for the remaining term or the close-out of such Extended-Term Obligation, and the defaulting Party shall likewise be entitled to any benefits associated with performance for the remaining term or the close-out of such Extended-Term Obligation. Unless otherwise specified in the appropriate separate letter agreement of approval, any Extended-Term Obligations that constitute long-term commitments for pipeline capacity, storage rights, or any other physical handling of Fuel, shall be for the exclusive benefit of CDWR, all costs associated with such Extended-Term Obligations shall be exclusively for CDWR's account and HDPP shall not make use of any unused or excess capacity or rights for the benefit of

any other party. CDWR may, in its sole discretion, make use of any such excess capacity in connection with its larger fuel program, provided such use does not hinder HDPP or its designee in its ability to provide Fuel to the Project if it were originally contemplated that HDPP or its designee would have access to such Extended-Term Obligations in order to support deliveries of Fuel to the Project.

(g) Fuel Payment. Whenever HDPP is the provider of Fuel, CDWR shall pay HDPP monthly in arrears, as set forth under "Price; Fuel Costs", the Monthly Fuel Costs for energy supplied when CDWR is not providing Fuel, based on the price for Fuel and all costs associated with the delivery of Fuel set forth in such HDPP Fuel Plan (including the cost of gas retained by Kern River Gas Transmission Company as fuel and lost and unaccounted-for under the then-effective Rate Schedule KRF-L1 (calculated using the price Set forth in the HDPP Fuel Plan), and the cost of any then-effective Extended-Term Obligations), together with any fee for fuel management services (such monthly payment, the "Fuel Payment"). CDWR shall be solely responsible, without reimbursement from HDPP, for any costs or charges imposed on or associated with Fuel it provides the Project pursuant to Special Condition 12(b), Special Condition 12(c) or Special Condition 12(d). No HDPP Fuel Plan shall obligate CDWR to pay HDPP for fuel manager's services more than the equivalent of two cents per decatherm for all Fuel delivered by HDPP to the Project.

(h) Substitute Energy Fuel Price. CDWR shall be obligated to pay for all Substitute Energy supplied by HDPP or its affiliate on any day a Fuel Price equal to the product of the Heat Rate and, if an HDPP Fuel Plan is in effect, the price of Fuel listed in the HDPP Fuel Plan, or, if a CDWR Fuel plan is in effect, the price reported in *Gas Daily* for SoCal Gas, large packages, "Midpoint" (the "Gas Daily Midpoint").

(i) Fuel Imbalances. HDPP and CDWR shall each be responsible for any Fuel imbalances that each causes, and each Party shall be obligated to take commercially reasonable measures to minimize the incurrence of imbalances and any associated penalties; provided, however, that if HDPP is providing Fuel pursuant to a HDPP Fuel Plan in accordance with this Special Condition 12, HDPP shall arrange and deliver Fuel to accommodate CDWR's rights to dispatch as specified in Special Condition 16, subject to such imbalance management or intra-day Fuel procurement costs as shall be specified in the HDPP Fuel Plan, and shall take all commercially reasonable measures to minimize the incurrence of any penalties associated with intra-day changes in Fuel nominations required by CDWR's changes in dispatch instructions. In the event that on any Gas Day CDWR is providing Fuel to the Project and a Project forced outage occurs that is attributable to a cause other than CDWR's failure to deliver Fuel to the Project on such Gas Day, CDWR shall dispose of the quantity of Fuel not required by the Project for the remainder of such Gas Day by reason of the Project forced outage, taking commercially reasonable steps to maximize the value received for such Fuel and to minimize any imbalance costs, charges or cash-out penalties resulting from the Project forced outage, and HDPP shall pay for quantities of Fuel not required as a consequence of the Project forced outage an amount equal to the product of (A) the positive difference, if any, between (x) the HDPP Spot Market Price applicable to such Gas Day and (y) the commercially reasonable price at which CDWR actually disposes of the quantity of Fuel not required by reason of the Project forced outage, and (B) the quantity of Fuel not required by reason of the Project forced

outage. Payment of such price and any intra-day imbalance penalties, charges or cash-out costs associated with any intra-day imbalance resulting from the Project forced outage shall be the only obligation on the part of HDPP or its designee to compensate CDWR for Fuel-related obligations relating to any such Project forced outage. HDPP's obligation to compensate CDWR for Fuel not required by reason of an intra-day Project forced outage and any associated imbalance penalties, charges or cash-out costs shall not extend beyond the Gas Day on which the Project forced outage shall have commenced and if the Parties are operating under the CDWR Fuel Plan then for subsequent days of a forced outage any costs associated with the disposal of Fuel, imbalance penalties and cash-out costs shall be the responsibility of CDWR. Any natural gas imbalance penalties attributable to CDWR's dispatch of energy from the Project on the day(s) covered by the imbalance determination that are invoiced to CDWR or HDPP shall be documented by a non-related third party. Neither HDPP, its designee nor their affiliates shall be or become liable in managing imbalances under this Special Condition 12 for CDWR's costs of covering any Fuel-related hedges or for the contract price of Fuel to which CDWR may have committed. In addition, regardless of whether HDPP or CDWR is providing Fuel to the Project to support generation of energy to be delivered to or for the account of CDWR, HDPP or its designee shall provide, upon CDWR's request and to the extent such information is available, timely access to daily meter gas volumes and real time notifications of pipeline and/or account information that may affect the nomination and scheduling of Fuel or the dispatch of the Project.

It is the Parties' intent that the services provided by the fuel manager to CDWR shall include balancing provisions within each month that offer no less benefit than Kern River Gas Transmission Company's then effective FERC Gas Tariff would provide for the same period.

(j) Forced Outage Resulting From Nondelivery of Fuel. The Parties acknowledge and agree that notwithstanding anything to the contrary set forth in this Agreement, any inability by CDWR to deliver Fuel to the Project or any non-economic inability to deliver Fuel to the Project by HDPP on any day or portion thereof and the Project's resultant failure to produce any portion of the Contract Quantity shall be deemed a forced outage as contemplated in "Product: Other"(a)(ii). In the event of such forced outage occurring at a time when CDWR is supplying Fuel to the Project pursuant to this Special Condition 12, HDPP shall have no obligation to deliver energy from the Project or Substitute Energy for the duration of the first Gas Day of the resulting forced outage and no adjustment to the Capacity Payment shall be made as a consequence thereof. In the event the forced outage continues or is expected to continue beyond the first Gas Day following notice to HDPP by CDWR: (i) if the inability to deliver Fuel to the Project is applicable solely to CDWR, HDPP shall be obligated to deliver energy from the Project until such force outage has ended. In such event, the Fuel Price associated with such energy shall be the HDPP Spot Market Price; (ii) if the inability to deliver Fuel to the Project is applicable to HDPP, HDPP shall be obligated to deliver Substitute Energy until such forced outage has ended. The Fuel Price associated with such energy shall be the Gas Daily Midpoint. HDPP's failure to deliver Contract Quantity pursuant to this Special Condition 12(j) shall be deemed a failure to deliver Contract Quantity under this Agreement and any appropriate adjustment to the Capacity Payment shall be made as provided for in this Agreement. The Parties agree that the inability to deliver Fuel to the Project is not a Force Majeure event.

(k) CDWR's Delivery of Fuel. If CDWR is supplying Fuel to the Project in accordance with Special Condition 12(b), Special Condition 12(c) or Special Condition 12(d), (i) HDPP or its designee shall allow CDWR to nominate all Fuel volumes required as determined pursuant to Special Condition 12(e) and such volumes shall have priority over volumes nominated by HDPP, subject to transporter limitations in effect at that time; and (ii) HDPP or its designee shall be available to CDWR to coordinate CDWR's Fuel activity for all four gas nomination cycles each day. If a transporter curtailment is in existence during any period during which CDWR is supplying Fuel to the Project in accordance with Special Condition 12(b), Special Condition 12(c) or Special Condition 12(d), the available gas volumes under the transporter curtailment shall be apportioned between CDWR and HDPP in proportion to CDWR's energy dispatched for that period and HDPP's scheduled dispatch for that period.

(l) Replacement Fuel Price Index. In the event that (i) *Gas Daily* ceases to be published, or (ii) *Gas Daily* discontinues reporting prices for the points or in the formats referenced in this Special Condition 12, or (iii) the Parties agree that the prices quoted for the points or in the formats referenced in this Special Condition 12 no longer reflect a liquid market or do not accurately represent prices paid for natural gas for use in power generation in the SP-15 region in short-term, arm's length transactions involving quantities comparable to those to be purchased for consumption in the Project, then the Parties shall, within sixty (60) days of the occurrence of the event described in item (i), (ii) or (iii) above, as applicable, negotiate in good faith to select a replacement Fuel price index and pricing range (e.g., high, midpoint, low) that (x) accurately reflects transactions at the geographically closest liquid natural gas trading point at which substantial transactions involving natural gas for use in power generation in the SP-15 region are regularly conducted, adjusted as necessary for location basis, if any, and (y) is reported on a daily basis in a publication generally recognized in the natural gas industry. If the Parties fail to agree on such replacement Fuel price index within such sixty (60) day period, then the matter shall be referred for dispute resolution as prescribed in this Agreement. Pending agreement on an appropriate replacement Fuel price index, the previously specified Fuel price index, or the price last quoted prior to the cessation of publication of a discontinued index, shall be used, with adjustments to such prices to be made upon selection of the replacement price index to reflect use of such replacement index in place of the one previously employed.

13. Metering. The meter for the Project shall be on the high side of the Project transformer located in the Project's switchyard. Metering shall conform to CAISO standards or the equivalent. Any generation meter multiplier (GMM) adjustments shall be for CDWR's account (i.e. notwithstanding any required GMM adjustments, HDPP shall be deemed to have delivered the full metered amount of energy from the Project). HDPP shall provide CAISO metering settlement data to CDWR on a monthly basis, and, at CDWR's option and expense, real-time access to meter data via appropriate telecommunications equipment.

14. Starts. CDWR shall be entitled to request the sum of (a) 300 turbine Starts per year calculated on a rolling twelve month basis, and (b) any additional Starts reasonably determined by HDPP to be available to CDWR under the Project's air permit. No other party shall be entitled to cause or request a Start. A "Start" is defined as any hourly schedule with a

positive quantity following an hour when the turbine was not operating; provided, however, that, in accordance with Special Condition 7, a Start must include the entire Project unless one or more turbine[s] are not operating, in which case, a Start shall consist of only those turbines and portion of the Project that is available. A Start of the entire Project will include three (3) turbine Starts. CDWR acknowledges that, while each Start as defined hereunder is a physical start of the Project, HDPP may undertake additional physical starts of the Project to address events such as, for example, the Project experiencing a forced outage during a scheduled production period and requiring an additional start to resume deliveries. The additional starts described in the preceding sentence shall not constitute Starts hereunder and CDWR shall incur no charge for such start. CDWR shall pay a start charge of \$10,000 per turbine per Start.

15. Liquidated Damage For Knowing Failure To Deliver From the Project.

If (a) HDPP intentionally fails to deliver a material amount of energy from the Project to CDWR; (b) such failure to deliver is unexcused and HDPP did not believe in good faith such failure was excused (with a valid basis for such belief); and (c) such failure to deliver is a result of HDPP's affirmative determination not to deliver energy from the Project at the Delivery Point to CDWR in fulfillment of a properly submitted and accepted schedule pursuant to Special Condition 16, then HDPP shall pay CDWR, as liquidated damages and not as a penalty, the amount of Seven Million Five Hundred Thousand Dollars (\$7,500,000). Such liquidated damages shall be due and owing during the next billing cycle. The parties agree that damages at the time of breach would be very difficult to measure accurately and that the foregoing liquidated damage amount is a reasonable estimate of the amount necessary to compensate CDWR for the breach.

16. Scheduling. HDPP shall notify CDWR by facsimile (or such other method as agreed to by the Parties) prior to each day of the hourly capacity of the Project that is expected to be available for schedule or dispatch hereunder. Such estimate shall be non-binding and shall represent HDPP's engineering judgment. Subject to the Operational Constraints set forth in Special Condition 7, CDWR shall be entitled to schedule the Contract Quality and any Unit Contingent Energy available in hourly amounts. CDWR shall submit a schedule of all requested energy by facsimile in the form of Dispatch Notice attached as Exhibit IX hereto (or such other method as agreed to by the Parties) the earlier of (i) at least sixty minutes prior to the CAISO "Day-Ahead" scheduling deadline or (ii) 5:30 a.m. PPT. If permitted by CAISO scheduling deadlines, CDWR may submit to HDPP a schedule by facsimile in the form of a Dispatch Notice attached as Exhibit IX hereto (or such other method as agreed to by the Parties) to adjust a previously submitted dispatch schedule within the operating constraints set forth in Special Condition 7 (upwards or downwards for any hour) two hours and 15 minutes prior to the hour in which CDWR desires to effect such adjustment; provided however that HDPP shall not be required to accommodate such adjusted schedule to the extent HDPP reasonably believes acceptance of such schedule would adversely affect the Project; provided further that CDWR may submit only one schedule change for any given hour. All costs incurred due to intra-day changes in scheduling by CDWR shall be the responsibility of CDWR and CDWR shall reimburse HDPP to the extent of any such costs paid by HDPP. HDPP shall provide reasonable detail regarding such costs to CDWR in invoices provided hereunder. In the event CDWR does not provide to HDPP a schedule that complies with the requirements hereof for a particular day within the time required, CDWR

shall be deemed for all purposes herein to have requested zero (0) MW for each hour of such day; provided, however that HDPP shall use commercially reasonable efforts to accommodate any schedule that does not conform to the requirements hereunder but in no event shall HDPP be required to accept such schedule unless such schedule conforms in all material respects with the requirements hereunder. HDPP shall submit to CAISO separate schedules for energy from the Project (a "Project Schedule") and Substitute Energy (a "Substitute Energy Schedule"). In the event the CAISO or its successor modifies its practices such that the foregoing scheduling protocols cannot be reasonably implemented, the Parties shall coordinate to implement scheduling protocols consistent with the then current CAISO protocols consistent with the rights of the Parties hereunder.

Option Buyer: N/A

Option Seller: N/A

Type of Option: N/A

Strike Price: N/A

Premium: N/A

Exercise Period: N/A

This Confirmation Letter is being provided pursuant to and in accordance with the Amended and Restated Master Power Purchase and Sale Agreement dated March __, 2002 (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. This amended and restated confirmation letter supersedes the Confirmation dated March 9, 2001. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

EXECUTION COPY

HIGH DESERT POWER PROJECT, LLC

**DEPARTMENT OF WATER RESOURCES,
with respect to the Department of Water
Resources Electric Power Fund separate and
apart from its powers and responsibilities with
respect to the State Water Resources Development
System**

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

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CALIFORNIA ISO ZONE MAP

Effective Feb. 2000



CALIFORNIA INDEPENDENT SYSTEM OPERATOR (UDC / AREA / CONGESTION ZONE / DEMAND ZONE / LOAD GROUP) UPDATE: OCTOBER, 1999				
UDC / AREA	CONGESTION ZONES	DEMAND ZONES	LOAD GROUPS	NAME
PGAL	(INACTIVE)	PGE1	PGHB	PGE HUMBOLT
		PGE2	PGNF	NON-PTO (Shasta Cover Resort Improvement District)
		PGE3	PGSF	PGE SAN FRANCISCO
		PGE3	PGPN	PGE PENINSULA (NORTH)
		PGE3	PGNC	PGE NORTH COAST
		PGE3	PGNV	PGE NORTH VALLEY
		PGE3	PGSA	PGE SACRAMENTO
		PGE3	PGE1	PGE SIERRA
		PGE3	PGNB	PGE NORTH BAY
		PGE3	PGE3	PGE EAST BAY
		PGE3	PGE3	PGE OAKLAND
		PGE3	PGP2	PGE PENINSULA (SOUTH)
		PGE3	PGE3	PGE STOCKTON
		PGE3	PGSN	PGE STANISLAUS
		PGE3	PGYO	PGE YOSEMITE
ZP26	ACTIVE FEB. 2000	PGE4	PGF1	PGE FRESNO (NORTH)
		PGE4	PGF2	PGE FRESNO (SOUTH)
		PGE4	CW12	CALIFORNIA DEPT. OF WATER RESOURCES
		PGE4	NC12	NORTHERN CALIFORNIA POWER AGENCY
		PGE4	CS11	NON-PTO (CITY OF SHASTA LAKE)
		PGE4	PGKW	NON-PTO (COOK 'COOK' PORT OF OAKLAND)
		PGE4	PGKE	PGE KERN
		PGE4	PGLP	PGE LOS PADRES
		PGE4	PGF2	PGE FRESNO (SOUTH)
		PGE4	CW12	CALIFORNIA DEPT. OF WATER RESOURCES
		PGE4	NC12	NORTHERN CALIFORNIA POWER AGENCY
		PGE4	PGM4	NON-PTO (MSR)
		PGE4	SCNO	SCE NORTH
		PGE4	SCE1	SCE WEST
		SCE	SP15	SCE1
SCE1	SCE1			SCE WEST
SCE1	SCSO			SCE SOUTH
SCE1	SCEA			SCE EAST
SCE1	SCHD			SCE HIGH DESERT
SCE1	CW12			CALIFORNIA DEPT. OF WATER RESOURCES
SCE1	SC12			SCE SYLMAR
SCE1	MS12			NON-PTO (MSR)
SCE1	HW11			NON-PTO (HOPKINSON WATER DISTRICT)
SCE1	SCW1			NON-PTO (SOUTHERN CALIFORNIA WATER)
SCE1	SCW1			NON-PTO (ANZA, AZUSA, APS CITIES, BANNING, COLTON, RIVERSIDE, VERNON)
SCE1	SDG1			SAN DIEGO GAS AND ELECTRIC
SCE1	ANA1			CITY OF ANAHEIM
SCE1	PAS1			CITY OF PASADENA
SCE1	CS1			CITY OF SANTA CLARA
SCE1	SM1	SACRAMENTO MUNICIPAL UTILITY DISTRICT		
SCE1	MID1	MODESTO IRRIGATION DISTRICT		
SCE1	TID1	TURLOCK IRRIGATION DISTRICT		
SCE1	LD1	LASSEN MUNICIPAL UTILITY DISTRICT		
SCE1	RD1	CITY OF REDDING		
SCE1	CO11	CALIFORNIA OREGON TRANSMISSION PROJECT		

LEGEND

Demand Zones

- PGE1
- PGE2
- PGE3
- PGE4
- SCE1
- SDG1
- PAS1
- ANA1
- Internal to ISO Control
- External to ISO Control



EXHIBIT II

HDPP HEAT RATE

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6 -8
	Heat Rate					
Start Up Cycle	10.00	10.05	10.10	10.15	10.20	10.20
Shut Down Cycle	7.80	7.84	7.88	7.92	7.96	7.96
Minimum Load Level	7.70	7.74	7.78	7.82	7.86	7.86
Maximum Load Level	7.30	7.34	7.37	7.41	7.45	7.45
Maximum Load Level (w/ Duct Firing)	7.40	7.44	7.47	7.51	7.55	7.55
Annual Heat Rate Escalator	0.5%					

EXHIBIT III

DETERMINATION OF HEAT RATE

The purpose of this Exhibit is to illustrate the determination of hourly Heat Rates that correspond to the hourly Deliveries, where the hourly Delivery is:

- A) Equal to Minimum Load Level
- B) Greater than Minimum Load Level but Less Than the Maximum Load Level I
- C) Equal to or Greater Than Maximum Load Level I

- A) Minimum Load Level
When the hourly Delivery is equal to the Minimum Load Level, the Heat Rate is equal to 7.7 MM BTU / MW-Hr.

Example:

HDPP delivers 517 MWh in one hour on a day when the Minimum Load Level is equal to 517 MW. The Heat Rate during the hour is equal to the Minimum Heat Rate which is 7.7 MM BTU/ MW-Hr.

- B) Load Levels Greater Than Minimum Load Level and Less Than Maximum Load Level I
When the hourly Delivery is greater than the Minimum Load Level and less than the Maximum Load Level I, the Heat Rate will be calculated as a linear interpolation for the actual hourly Delivery between the Minimum and Maximum Load Level Is, and is calculated by:

$$HR_{INT} = HR_{MN} - \frac{\{Actual - Min Load\}}{\{Maximum Load I - Min Load\}} \times \{HR_{MIN} - HR_{MAX}\}$$

where:

- HR_{INT} = Interpolated Heat Rate at the Scheduled Quantity
- HR_{MAX} = Maximum Load Level I Heat Rate, 7.3 MM BTU / MW-Hr
- HR_{MIN} = Minimum Load Level Heat Rate, 7.7 MM BTU / MW-Hr
- Min Load = Minimum Load Level, MW
- Maximum Load I = Maximum Load Level I, MW
- Actual = Actual Delivered Power, MW

Sample Calculation:

Example: HDPP delivers a quantity of 600 MWh in one hour. Therefore the actual load level for that hour is 600 MW. The Minimum Load and Maximum Load I were determined as 517 and 685 MW, respectively. The Heat Rate for this hour is:

$$HR_{INT} = 7.7 - \frac{\{600 - 517\}}{\{685 - 517\}} \times \{7.7 - 7.3\}$$

$$HR_{INT} = 7.7 - 0.2$$

$$HR_{INT} = 7.5 \text{ MM BTU / MW-Hr}$$

C) Loads Greater Than Maximum Load I

When the hourly Delivery is greater than Maximum Load I, the Heat Rate is equal to 7.4 MMBTU / MW-Hr, the Maximum Load Level II Heat Rate.

Example:

HDPP delivers 700 MWh for one hour. The Maximum Load Level I is 685 MW. Therefore the Heat Rate for the hours during which the delivered capacity is 700 MW, is equal to 7.4 MMBTU / MW-Hr.

Note:

In all cases the hourly Delivery is calculated by dividing the delivered MWh by one hour.

Example:

713 MWh are delivered in one hour. The load level is therefore 713 MWh/ 1 hour = 713 MW.

EXHIBIT IV

HDPP ANTICIPATED MAINTENANCE DURATIONS

Cumulative Operating Hours	Equivalent Starts		Regular Outage			Combustion Inspection			Hot Gas Path Inspection			Major (w/ Steam Turbine) Inspection		
			Days	Size	Days	Size	Days	Size	Days	Size				
4,000			Spring Fall	10 10	750 750									
8,000	OR	400				Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						
12,000			Spring Fall	10 10	750 750									
16,000						Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						
20,000			Spring Fall	10 10	750 750									
24,000	OR	800							Spring CT1 & BOP CT1 Extended Spring CT2 Full Fall CT3 & BOP CT3 Extended	10 11 21 10 11	750 250 250 750 250			
28,000			Spring Fall	10 10	750 750									
32,000	OR	1,200				Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						
36,000			Spring Fall	10 10	750 750									
40,000						Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						
44,000			Spring Fall	10 10	750 750									
48,000	OR	1,600										Spring CT1, ST, BOP Spring CT2 Fall CT3 Fall BOP*	30 30 30 10	750 250 250 750
													*concurrent with Fall CT3	
52,000			Spring Fall	10 10	750 750									
56,000	OR	2,000				Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						
60,000			Spring Fall	10 10	750 750									
64,000						Spring CT1 & BOP Spring CT2 Fall CT3 & BOP	10 10 10	750 250 750						

EXHIBIT V
AVAILABLE CAPACITY TESTS

1.0 General Requirements

- 1.1 This Exhibit V specifies the Available Capacity Tests to demonstrate the electrical output of High Desert Power Project, L.L.C. (“HDPP”). Two Project Capacity Tests are included:
 - 1.1.1 Maximum Capacity with three combustion turbines at full load and with duct burners in operation,
 - 1.1.2 Minimum Plant Capacity
 - 1.1.2.1 with three combustion turbines in-service at the manufacturer’s recommended minimum load and
 - 1.1.2.2 with three combustion turbines in-service at the minimum load level at which the plant can be operated in a stable without violating its applicable air permits. This test will be performed in lieu of the test described in Section 1.1.2.1 above, after the expiration of EPC contractor and combustion turbine manufacturer warranties.
- 1.2 Each Available Capacity Test will be conducted according to the provisions of PTC 46, 1996 Edition as applicable to measuring electrical output.
- 1.3 HDPP is responsible for planning, scheduling and conducting the tests, including the preparation of any necessary test procedures.
- 1.4 Preliminary Available Capacity Test results will be delivered to the CDWR representatives on the day of the Available Capacity Test and shall be utilized as the test results until final results have been tendered thereafter. Final results will be provided by HDPP as soon as practicable.
- 1.5 Test instrumentation shall include both permanent plant instruments and temporary calibrated instrumentation :
 - 1.5.1 Plant Instrumentation
Permanent plant instrumentation will include revenue metering devices located in the HDPP switchyard. Where possible, data will be accessed through the Plant Distributed Control System (DCS).
 - 1.5.2 Temporary Additional Instrumentation
Temporary additional instrumentation will include: calibrated RTDs (4 mounted on each combustion turbine), 3 hygrometers (1 mounted on each combustion turbine). In addition to the temporary precision instrumentation a temporary data logger will monitor all the temporary instruments.

2.0 Design Conditions

For each Project Capacity Test, HDPP will correct the test data to reflect the following design conditions:

Fuel Type	Natural Gas
Ambient Temperature	59° F Dry Bulb
Relative Humidity	60 %
Barometric Pressure	14.7 psia
Combustion Turbine Load	Refer to Section 3.0

Duct Burners	Refer to Section 3.0
Evaporative Coolers	Available Project Capacity, On Minimum Load Level, Off
HRSG Blowdown	0 %
Lower Fuel Heating Value	20,665 BTU/lbm
Fuel Temperature at Plant Boundary	77degrees F
Frequency	60 Hz

3.0 Capacity Demonstration Tests

Capacity Test	Major Plant Equipment In-Service
1. Available Project Capacity	<ul style="list-style-type: none"> • Three Combustion turbines at maximum turbine output level • Duct Burner up to a Maximum of 150 MM BTU/hr • Steam Turbine Generator and required balance of plant
2. Minimum Load Level (while EPC contractor performance guarantees are effective and minimum load levels are 70% combustion turbine output). *	<ul style="list-style-type: none"> • Three Combustion turbines at manufacturers recommended minimum turbine output level for maintaining emissions compliance • Duct Burners off • Steam Turbine Generator and Balance of Plant • Evaporative Cooler Off
3. Minimum Load Level (conducted after EPC contractor and combustion turbine manufacturer warranties are expired.). <ul style="list-style-type: none"> • Reduce power output level of each of the three CT's simultaneously by 1% decrements (below 70% output), allow units to stabilize. • Record plant capacity and emission levels at each decrement. • Identify the minimum load level above which Project will remain in compliance with air emission permits, the CT emissions remain at or below the CT manufacturers guaranteed emission levels and all plant equipment is within manufacturers recommended limits (excepting the 70% CT load limit). • Increase load level minimum of 1%. • Re-record plant capacity established by 	<ul style="list-style-type: none"> • Duct Burners off • Steam Turbine Generator and required balance of plant. • Evaporator Cooler Off

above steps and use as minimum load level.	
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* The plant will be tested for Minimum Load Level at permitted emissions levels (including reasonable tolerances to facilitate environmental compliance on an ongoing basis) but in no event outside of equipment manufacturer recommended limits.

4.0 Test Procedures and Project Capacity Correction Curves

The Available Project Capacity Test shall be run for minimum four (4) hour period pursuant to the test procedures set forth in Section 1.3 of this Exhibit. The Minimum Load Level test shall be run for a minimum of one (1) hour. The test procedures will include correction curves and correction calculation procedures for the following parameters:

- 1. Project Capacity vs. Ambient Dry Bulb Temperature
- 2. Project Capacity vs. Relative and/or Specific Humidity
- 3. Project Capacity vs. Barometric Pressure
- 4. Project Capacity vs. Fuel Heating Value
- 5. Project Capacity vs. Evaporative Cooler Option

5.0 Test Interruptions

In the event that a Test is interrupted, the Test shall resume when practicable. Test results up to the time of the interruption will be considered valid.

6.0 Suspensions and Deviations

HDPP and CDWR may mutually agree when situations arise during the tests that may warrant deviations from the procedures. Agreements reached during these consultations (such as whether to discard erroneous data) shall be recorded, and acknowledged in writing by authorized representatives to be named in the procedures.

EXHIBIT VI

HDPP AVAILABLE PROJECT CAPACITY

<i>Year One</i>						
Available Project Capacity	Target Project Capacity	Adjustment Factor	Adjusted Capacity Payment	Adjusted Contract Quantity (January example)		
				12 -15 Hour	16 - 23 Hour	24 Hour
815	830	815 / 830=0.982	\$11,586,747	784	791	825
<i>Year Two</i>						
Test #1						
Available Project Capacity	Target Project Capacity	Adjustment Factor	Adjusted Capacity Payment	Adjusted Contract Quantity (January example)		
				12 -15	16 - 23	24
800	817.55	800 / 817.55=0.979	\$11,546,694	781	789	822
Test #2						
830	817.55	830 / 817.55=1.015	\$11,800,000	798	806	840
<i>Year Three</i>						
Test #1						
Available Project Capacity	Target Project Capacity	Adjustment Factor	Adjusted Capacity Payment	Adjusted Contract Quantity (January example)		
				12 -15	16 - 23	24
750	809.25	750 / 809.25=0.927	\$10,936,052	740	747	778
Final Test						
775	809.25	775 / 809.25=0.958	\$11,300,587	764	772	804

EXHIBIT VII

HDPP AVAILABILITY FACTOR CALCULATION

HOURLY SCHEDULED QUANTITY	DELIVERIES FROM PROJECT	DELIVERIES OF SUBSTITUTE ENERGY
1	0	100
2	0	100
3	0	100
4	0	100
5	350	200
6	550	N/A
7	600	N/A
8	730	N/A
9	730	N/A
10	730	N/A
11	730	N/A
12	730	N/A
13	730	N/A
14	730	N/A
15	730	N/A
16	730	N/A
17	730	N/A
18	730	N/A
19	730	N/A
20	600	N/A
21	600	N/A
22	600	N/A
23	450	N/A
24	450	N/A
TOTALS	14,960	600

FOR THIS DAY	
SOS =	14,960
DPD =	12,960
SE =	600

ASSUMING ALL 31 JULY DAYS EQUAL TO ABOVE	
SOS =	463,760
DPD =	401,760
SE =	18,600
RAF =	0

AVAILABILITY FACTOR CALCULATION (JULY)	
AF = (DPD+SE+RAF) / (SOS+RAF)	91%
Target AF =	95%
ACP = {1-(Target AF - AF)} X \$11.8mm	\$11,285,722

EXHIBIT VIII

HDPP AVAILABILITY FACTOR CALCULATION

HOUR ENDING	HOURLY SCHEDULED QUANTITY	DELIVERIES FROM PROJECT	DELIVERIES OF SUBSTITUTE ENERGY
1	450	0	100
2	450	0	100
3	450	0	100
4	450	0	100
5	550	350	200
6	550	550	N/
7	600	600	N/
8	730	730	N/
9	730	730	N/
10	730	730	N/
11	730	730	N/
12	730	730	N/
13	730	730	N/
14	730	730	N/
15	730	730	N/
16	730	730	N/
17	730	730	N/
18	730	730	N/
19	730	730	N/
20	600	600	N/
21	600	600	N/
22	600	600	N/
23	450	450	N/
24	450	450	N/
TOTALS	14,960	12,960	600

FOR THIS DAY	
SOS =	14,960
DPD =	12,960
SE =	600

ASSUMING ALL 31 JULY DAYS EQUAL TO	
SOS =	463,760
DPD =	401,760
SE =	18,600
RAF =	0

AVAILABILITY FACTOR CALCULATION	
AF = (DPD+SE+RAF) /	91%
Target AF =	95%
$ACP = \{1 - (\text{Target AF} - \text{AF}) \times 0.7\} \times \$12.1\text{mm} = \$11,761,200$	

