

MODESTO IRRIGATION DISTRICT
Request for Offers for 2024-2027
PCC1 Bundled Energy and Renewable Energy Credits

Introduction

The Modesto Irrigation District (MID) is a local publicly owned electric utility that provides both electric and water services. MID owns and operates facilities for the generation, transmission, and distribution of, and purchases and sells, electric power and energy at wholesale and retail levels. MID is a fully integrated, fully resourced utility that resides within the Balancing Authority of Northern California (BANC) balancing authority area and serves approximately 132,000 electric customers with a peak demand of approximately 760 MW.

MID seeks to purchase the following Portfolio Content Category 1 (PCC1) Bundled Energy and Renewable Energy Credits (PCC1 Bundled RECs) generated and delivered in California to meet MID's Renewable Portfolio Standard (RPS) for 2024 through 2027:

- 50,000 up to 200,000 per year of PCC1 Bundled RECs

This Request for Offers (RFO) is open to offers of RECs that are sourced from eligible renewable energy resources as defined by the California Energy Commission (CEC)¹. This RFO is not an offer to purchase and does not establish a purchase commitment or a promise or obligation of MID to purchase any product that is offered as a result of this process.

Desired Product Offers

MID seeks cost-effective PCC1 Bundled REC products to support its RPS and carbon free objectives for delivery from 2024 through 2027. PCC1 Bundled REC products must meet the applicable product offering definition in sections 3203 (a)(1)(A), (B), (C), or (D) of the CEC's Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (RPS Enforcement Regulations for POU's²) where the PCC1 products are produced and delivered directly to a California Balancing Authority.

¹ [CEC RPS Eligibility Guidebook.](#)

² [RPS Enforcement Regulations for Publicly Owned Utilities \(ca.gov\) \(Title 20 CCR §§ 3200 et seq.\).](#)

Product Vintage

<i>Delivery Year</i>	<i>PCC1 Bundled REC Product Vintage</i>
2024	2024
2025	2025
2026	2026
2027	2027

Proposal Timing

MID requests that proposed offers be submitted to RPD_Procurement@mid.org no later than **December 1, 2023, by 5:00 PM (PST)**.

PCC1 Bundled Quantities

Minimum delivery of 50,000 up to a maximum of 200,000 PCC1 Bundled RECs per year of renewable energy that meets the California RPS Program PCC1 product requirements for delivery in 2024-2027. All renewable energy deliveries must be sourced from a new or existing eligible renewable energy generating facility as defined by the CEC. If the respondent would like to offer PCC1 Bundled RECs from more than one eligible renewable energy resource to meet the requested amount of PCC1 Bundled RECs, please list each resource separately in Exhibit A.

Price

MID is soliciting offers with either of the following price structures:

Fixed Price Offers: Expressed in \$/MWh with no escalators during the term, inclusive of REC value.

Indexed + Fixed REC Price Offers: Expressed in \$/MWh; no escalation for the REC value plus a price based on a specified index for the value of energy at the specified Point of Delivery (e.g CAISO Locational Marginal Price (LMP) at delivery point PNode, or other relevant point of delivery price that is readily available for products delivered into other California balancing authorities).

Point of Delivery

PCC1 Bundled RECs: specify the point of interconnection with the applicable California Balancing Authority, CAISO LMP PNode (if located in the CAISO) or other delivery point. Cost of transmission to the delivery point is to be included in the price.

Scheduling

The seller of PCC1 Bundled RECs shall be the default Scheduling Coordinator.

Transfer of RECs

The transfer of PCC1 RECs from seller to buyer shall only be conducted using the Western Renewable Energy Generation Information System (WREGIS). WREGIS REC creation and any transfer fees are to be included in the Price.

How to Respond:

- Provide information summarizing your specific offer(s) by completing Exhibit A.
- Attach any additional information relevant to your offer.
- Please complete and submit multiple copies of Exhibit A for multiple products/periods.
- MID Resource Planning and Development staff will respond with an email to confirm your offer has been received.

Responses and/or questions should be addressed to: RPD_Procurement@mid.org

Contracting

MID’s preferred contracting methods are the EEI Agreement or WSPP Agreement, Service Schedule R, with confirm (see example in Exhibit B for PCC1 Bundled REC products).

Post-Response Negotiations

MID reserves the right to enter discussions with respondent to gain clarity on its offer, or to suggest a partial amendment to the offer.

Disclaimer and Confidentiality

MID reserves the right, without qualification and in its sole discretion, to reject any or all offers, accept multiple offers, and to terminate this request for offers in whole or in part at any time. Without limiting the foregoing, MID further reserves the right in its sole discretion, to decline to enter into any agreement with any counterparty for any reason.

It is not MID’s intent to publicly disclose individual respondent proprietary information obtained in response to this request. This request is intended to provide information for MID to select an offer to purchase PCC1 Bundled RECs, it should NOT be construed as a commitment by MID to enter into a contractual agreement. All costs to prepare a response in this process shall be the responsibility of the respondent.

Submittal Requirements

All respondents that respond to this RFO should provide a submittal letter signed by an authorized official of the offering company. The letter should include the period under which the terms and conditions of the response to the RFO will remain valid. Respondents may also include any additional information related to the proposed offer that may assist MID during its evaluation process.

RFO Schedule

Friday, November 17, 2023	MID issues short-term RPS PCC1 Bundled RECs RFO
Friday, December 1, 2023, 5:00 PM (PST)	Final pricing and volumes to be submitted to MID via email
Friday, December 8, 2023	Supplier selection/notification

General Contact Information

Thank you for considering MID’s RPS Request for Offers for Energy and Renewable Energy Credits. All submittals and questions should be submitted via email to the general RFO email address at:

RPD_Procurement@mid.org

EXHIBIT A



1231 Eleventh Street
 P.O. Box 4060
 Modesto, CA 95352
 (209) 526-7373

**Exhibit A
 Request for Offers
 2023-2027 PCC1 Bundled RECs
 November 17, 2023
 Bidder Response Template**

Buyer: Modesto Irrigation District

Seller: Entity Name: _____
 Contact: _____
 Phone #: _____
 e-mail: _____

Term: Start: January 2024, End: December 2027 with volumes delivered as agreed.

Volume and Product Price:

Delivery Year (2024, 2025, etc.)	Contract Price Refer to Exhibit B (indicate option)	Volume (MWh)	Project Name	RPS ID	Fuel Type	Point of Delivery	Balancing Authority

EXHIBIT B

**DRAFT RENEWABLE ENERGY CREDIT CONFIRMATION
FOR THE SALE AND PURCHASE OF PCC1 ENERGY**

This Renewable Energy Credit Confirmation for the Sale and Purchase of PCC1 (this “**Confirmation**”) confirms the Transaction between _____, (“**Seller**”) and Modesto Irrigation District, (“**Buyer**”) (each individually a “**Party**” and together the “**Parties**”), dated as of the last date signed below (the “**Confirmation Effective Date**”) for the purchase and sale of the Product (as defined herein) pursuant to the terms and conditions contained herein.

This Confirmation is governed by the Master Power Purchase and Sale Agreement (version 2.1., modified 4/25/00), as published by the Edison Electric Institute (the “**EEI Form**”) as modified by the Cover Sheet in Exhibit 2 attached hereto and incorporated by reference (collectively, the “**Master Agreement**”), all of which form a part of this Agreement. All provisions contained in or incorporated by reference in the EEI Form shall govern this Confirmation except as expressly modified herein or in Exhibit 2, as if the Parties had executed such an agreement based on the EEI Form (as if modifications or elections specified in the Exhibit 2 were made on the Cover Sheet). The terms and conditions set forth herein shall constitute a “Transaction” under the Master Agreement. In the event of any inconsistency between the provisions of the Master Agreement and the terms specified in this Confirmation, this Confirmation shall prevail for purposes of this Transaction. The Master Agreement and this Confirmation shall be collectively referred to herein as the/this “**Agreement**”. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the CAISO Tariff.

AGREEMENT

Transaction: Seller shall sell to Buyer, and Buyer shall purchase from Seller, during the Delivery Term (as defined below), Product produced by a certain generating facility owned or procured by Seller, as identified in this Confirmation, which qualifies as an ERR under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq.

Product: “**Product**” means As-Run electric energy (“**Energy**”) and associated Green Attributes, including but not limited to Renewable Energy Credits (“**RECs**”) that meet the California RPS compliance requirements of California Public Utilities Code Section 399.16(b)(1) and section 3203(a)(1)(A) of the California Energy Commission’s (“**CEC**”) Regulations Specifying Enforcement Procedures for the Renewables Portfolio Standard for Local Publicly Owned Electric Utilities (“**Portfolio Content Category Product 1**” or “**PCC1**”), produced during the Delivery Term by the Generating Facility listed herein (and bid into the CAISO on a day ahead basis for fixed price offers). Product does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

Seller: _____

Buyer: **Modesto Irrigation District**

Delivery Term: [January 1, 2024 through December 31, 2027].

Generating Facilities: The Generating Facility is identified below and further described in Exhibit 1. The Generating Facility may also be referred to herein as “**Project.**”

Generating Facility/Project Name	Resource ID	WREGIS ID
California Energy Commission (“CEC”) Certification Number	Capacity (MW)	COD

Delivery Point: CAISO Balancing Authority Area (“CBA”) as listed in Exhibit 1.

Scheduling: Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Buyer, to the Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff. Such Energy shall be sourced from the Generating Facility and shall be scheduled into the CAISO as generated in real time on an hourly basis.

Contract Quantity: Product associated with energy generated from the Generating Facility on an As-Run basis. The amount of Product delivered from Seller to Buyer during any applicable dispatch interval during the Delivery Term shall be limited to the actual output of the Generating Facility listed herein and shall not exceed xxxxx MWh in total over the course of the Delivery Term.

Contract Price: ***For Fixed Price Offers***
(option) “**Contract Price**” shall mean the combined price applicable to the Energy portion and the REC portion of the Product and shall equal \$xx/MWh.

“**Energy Contract Price**” shall mean the price applicable to the Energy portion of the Product and shall equal the CAISO Locational Marginal Price calculated at the PNode for the Delivery Point on a dollar-per-megawatt-hour (\$/MWh) basis based on actual settlement and no recalculations.

For Indexed + Fixed REC Price Offers
“**Energy Contract Price**” shall mean the price applicable to the Energy portion of the Product and shall equal the CAISO Locational Marginal Price calculated at the PNode for the Delivery Point on a dollar-per-megawatt-

hour (\$/MWh) basis.

“**REC Contract Price**” shall mean the price applicable to the REC portion of the Product and shall equal **\$xx/MWh**.

California RPS Provisions:

- (a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is pre-certified and certified by the CEC as an Eligible Renewable Energy Resource (“**ERR**”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard and the RPS Eligibility Guidebook, Ninth Edition, Chapter 5, Section A.2.a(1). To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. For purposes of this Agreement, “commercially reasonable efforts” shall not require expenditures by Seller in excess of the Capped Amount.
- (b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the RECs transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, and as may be modified by subsequent decision of the CEC or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.
- (c) Seller warrants that all necessary steps to allow the RECs transferred to Buyer to be tracked in the WREGIS will be taken prior to the first delivery under the contract.
- (d) This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

Transfer of RECs: Prior to the first delivery of RECs under this Confirmation, each Party shall take all necessary steps to allow the RECs transferred by Seller and received by Buyer to be tracked in WREGIS. The transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. After the final

certification of the Generating Facility as an ERR, Seller shall transfer RECs associated with the Contract Quantity from its WREGIS account to Buyer's WREGIS account. If Buyer's WREGIS account ID is not available as of the Confirmation Effective Date, Buyer shall provide such information to Seller promptly upon receipt of the same. Seller shall deliver all RECs on a monthly basis but no later than 120 days after the date of generation.

Vintage: Calendar Year(s): 2024, 2025, 2026, 2027.

Payment: To simplify the settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Buyer, the Parties agree that Seller shall schedule and deliver Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s) ("**Delivered Energy**"), and Seller shall receive payment for such Delivered Energy from the CAISO at the Energy Contract Price.

[Depending on selected Price structure:

For Fixed Price Offers

Buyer and Seller hereby agree that Seller will pass through the payment Seller receives from the CAISO to Buyer calculated as follows:

Payment Due from Seller to Buyer =
Delivered Energy * Energy Contract Price

The Buyer's payment obligation for Project Energy under this Transaction shall be calculated as follows:

Payment Due from Buyer to Seller =
Delivered Energy * Contract Price

For Indexed + Fixed REC Price Offers

Buyer and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price. All payments received by Seller from the CAISO will be credited in full satisfaction of Buyer's payment obligation for Project Energy under this Transaction. Payment to Seller shall be calculated as follows:

Payment Due from Buyer to Seller =
Delivered Energy * Energy Contract Price
+ Delivered Energy * REC Contract Price
- Delivered Energy * Energy Contract Price]

In addition to any audit rights that Buyer may have under the Master Agreement, Seller shall, upon Buyer's reasonable request, provide additional documentation (which may include meter data as recorded by a CAISO-certified meter) sufficient to confirm the volume of Delivered Energy.

Buyer shall transfer to Seller the aforementioned payment within ten (10) days following receipt of Seller's invoice (which shall be sent subsequent to each transfer of RECs), or the twentieth (20th) day of the month, whichever is later. If the due date is not a Business Day, then payment shall be due on the next Business Day. Invoices issued by Seller hereunder shall detail the RECs conveyed via WREGIS (i.e., Generating Facility Name, Vintage Month, CEC RPS ID, Delivered Energy, and REC Contract Price). Seller shall provide Buyer with a non-binding estimate of monthly meter data within ten (10) days after the end of each month.

**Environmental
Attributes:**

All Attributes. The Product is As-Run electric energy and associated RECs sourced from the Generating Facility identified in this Confirmation with no substitutions.

**Applicable
Program:**

State of California Renewables Portfolio Standard Program ("**California RPS**"), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity's retail sales should be supplied with electricity generated by ERRs.

Tracking System:

WREGIS.

**Additional Seller
Representations
and Warranties:**

Seller represents and warrants to Buyer that:

- (i) Seller has the right to sell the Product from the Generating Facility;
- (ii) Seller has not sold the Product to be transferred hereunder, or any Green Attribute associated therewith, to any other person or entity other than the Buyer;
- (iii) Energy and RECs to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that Seller is not currently selling and will not sell the electricity produced by the Generating Facility back to the Generating Facility;

- (v) Product transferred hereunder shall be free and clear of all liens or other encumbrances; and
- (vi) Seller shall reasonably cooperate with Buyer, and/or the CEC to provide any documentation required to support the Product's classification as PCC1.

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Buyer as part of the Portfolio Content Category 1 Product being delivered. This Section and the following Section shall survive the expiration or termination of this Confirmation.

Change in Law Provisions:

This Confirmation is executed for the express purpose of complying with the California RPS and California Public Utilities Code Section 399.16(b)(1). The Product shall be regulatorily continuing, requiring that Seller use commercially reasonable efforts to obtain compliance with changes in law in the California RPS occurring after the Confirmation Effective Date, provided that Seller costs associated with such compliance shall not exceed fifty thousand dollars (\$50,000) in total (the "**Capped Amount**"). Seller shall not be obligated to comply with changes in law with respect to Product that was delivered and accepted prior to the change in law if such Product complied as of the date of delivery and acceptance.

To the extent that a change in law renders the implementation of this Transaction impossible or impracticable, or otherwise materially changes, or revokes or eliminates, the California RPS, the Parties agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties as closely as possible under this Confirmation.

Reporting Obligation:

Buyer shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

Review:

To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

Counterparts: This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

Definitions/

Interpretations: For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to the California RPS or any one or both of the Parties or the terms hereof.

“As-Run” means that the remedy for non-delivery of the Product under Section 4.1 of the Master Agreement shall be applicable to this Confirmation except in the event and to the extent that, for any reason or no reason, a Generating Facility was not online to produce the Product.

“CAISO” means the California ISO.

“CAISO Tariff” means the CAISO FERC Electric Tariff.

“COD” means the Project’s expected Commercial Operation Date.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facility, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (c) the reporting rights to these avoided emissions, including but not limited to Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facility, (ii) production tax credits associated with the construction or operation of the Generating Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Generating Facility that are applicable to a state or federal income taxation

obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facility for compliance with local, state, or federal operating and/or air quality permits.

“WECC” means the Western Electricity Coordinating Council or its successor organizations.

“WREGIS” means the Western Renewable Energy Generation Information System, or its successor organization.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Confirmation Effective Date.

_____	MODESTO IRRIGATION DISTRICT
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

EXHIBIT 1

Unit Name:	
RPS ID:	
Facility Location:	
Facility Directly Interconnected to a CBA?:	
CBA Interconnection:	
Delivery Point (CAISO PNode if different than CBA Interconnection):	
Facility Generation Capacity (MW):	
Facility Fuel Type:	

EXHIBIT 2

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) (“*Master Agreement*”) is made as of the Confirmation Effective Date (“Effective Date”). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall be referred to as the “Agreement.” The Parties to this *Master Agreement* are the following:

Name: _____ (“Party A”)

Name: Modesto Irrigation District (“MID” or “Party B”)

All Notices:

E-mail:

Attn:

Phone:

Facsimile:

Duns:

Federal Tax ID Number:

All Notices:

Attn:

Phone:

Email:

Invoices:

Attn:

Phone:

Email:

Invoices/Credit/Collections:

Attn:

Phone:

Email:

Scheduling:

Attn:

Phone:

Email:

Wire Transfer:

To be provided by separate notice

BNK:

ABA:

ACCT:

Wire Transfer:

BNK:

ABA:

ACCT:

ACCT NAME:

Credit and Collections:

Attn:

Phone:

Email:

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

Attn:

Phone:

Facsimile:

Email:

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

Attn:

Phone:

Email:

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

Party A Tariff N/A

Party B Tariff N/A

Article 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: N/A

Party A: _____ Cross Default Amount \$ _____

Other Entity: _____ Cross Default Amount \$ _____

Cross Default for Party B: N/A

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 (as amended pursuant to this Cover Sheet)

Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify:

Option C Specify:

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party B if [Party B's][Party B's Guarantor's] Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if [Party B's][Party B's Guarantor's] is rated by neither S&P nor Moody's.

Other - specify:

(e) Guarantor for Party B:

Guarantee Amount:

8.2 Party B Credit Protection:

(a) Financial Information:

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

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A if [Party A's][Party A's Guarantor's] Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if [Party A's][Party A's Guarantor's] is rated by neither S&P nor Moody's.

Other - specify: _____

(e) Guarantor for Party A:

Guarantee Amount:

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

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

Part 1. GENERAL TERMS AND CONDITIONS.

(A) Article One: General Definitions. The following definitions are amended as set forth below:

(1) Section 1.3 is amended in its entirety to read as follows:

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (a) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (b) is not dismissed, discharged, stayed or restrained, in each case within 60 days of the institution or presentation thereof; (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 60 days thereafter; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.”

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

(3) Section 1.12 is amended in its entirety to read as follows:

“Credit Rating” means, with respect to any entity on any date of determination, the respective rating then assigned to its unsecured senior long-term debt or deposit obligations (not supported by third party credit enhancement), by S&P, Moody’s or such other rating agency or agencies as are

specified; and if no rating is assigned to such entity's unsecured, senior long-term debt or deposit obligations by such rating agency, the general corporate credit rating or long-term issuer rating, as applicable, assigned by such rating agency to such entity.

- (4) Section 1.50 is amended by changing "Section 2.4" to "Section 2.5."
- (5) Section 1.51 is amended by (i) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the following: "absent a purchase."
- (6) Section 1.53 is amended by (i) deleting the phrase "at the Delivery Point" from the second line, and (ii) deleting the phrase "at Seller's option" from the fifth line and replacing it with the following: "absent a sale".
- (7) Section 1.56 is amended by deleting the words "pursuant to Section 5.2" and by adding before the period at the end thereof the following: ", as determined in accordance with Section 5.2."
- (8) Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to."

(B) Article Two: Transaction Terms and Conditions.

- (1) Section 2.1 is amended by deleting the first sentence in its entirety and replacing it with the following: "A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties."
- (2) Section 2.3 is deleted in its entirety and replaced with the following:

"2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties."
- (3) Section 2.4 is amended to delete the phrase "either orally or" from the seventh line thereof.

(C) Article Five: Events of Default; Remedies.

- (1) Section 5.2 is amended by reversing the placement of "(i)" and "to".
- (2) Section 5.2 is amended by deleting the following phrase from the last line: "as soon thereafter as is reasonably practicable)." and replacing it with the following:

"then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party in a commercially reasonable manner by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-

Defaulting Party shall reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, and information obtained through a recognized exchange, clearinghouse, or reference entity, with such adjustments that the Non-Defaulting Party determines, acting in good faith and in a commercially reasonable manner, are applicable based on the specific terms of such Transaction or Transactions. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of a Settlement Amount results in an amount that would be due to the Defaulting Party (i.e., the Defaulting Party was in the money), then the Settlement Amount shall be deemed to be zero dollars (\$0.00). If quotations or relevant market data from third party sources are not readily available, the Non-Defaulting Party may reference to information of the types described above as are available from internal sources (including any of the Non-Defaulting Party's affiliates) if that information is of the same type used by the Non-Defaulting Party in the regular course of its business for the valuation of similar transactions."

(D) Article Ten: Miscellaneous

(1) **In Section 10.2, delete the phrase “(including any Confirmation accepted in accordance with Section 2.3)” from Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).**

(2) **Subsection (ix) of Section 10.2 is deleted in its entirety and replaced with the following:**

“(ix)(A) it is a ‘forward contract merchant’ within the meaning of the United States Bankruptcy Code; and (B) it is an ‘eligible contract participant’ as such term is defined in the Commodity Exchange Act, as amended (7 U.S.C. § 1(a)(12)).”

(3) **Section 10.5 is amended by deleting the phrase “which consent may be withheld in the exercise of its sole discretion” in the second line and replacing it with “which consent shall not be unreasonably withheld”.**

(4) **Section 10.6 is amended by changing “NEW YORK” to “CALIFORNIA”. Section 10.6 is further amended by deleting the last sentence.**

(5) **Section 10.8 is amended by inserting the following at the end thereof:**

“This Agreement may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Agreement by a PDF attached to an email shall be the same as delivery of a manually executed signature page. The Parties may rely on electronic and or scanned signatures as originals under this Agreement. Copies of this Agreement (and each amendment, modification and waiver in respect of it) are deemed acceptable and may be used in lieu of originals for all purposes, including, but not limited to admissibility, authenticity or other purposes related to legal proof.”

(6) **Section 10.11 is deleted in its entirety and replaced with the following:**

“10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the employees, lenders or potential lenders, investors or potential investors, counsel, accountants or advisors of a Party or its Affiliates to whom disclosure

is reasonably required (with respect to a Party, its “Representatives”)) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding or request by a regulatory authority; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, the non-disclosure obligations set forth in this Section 10.11; provided, that a breach of this Section 10.11 shall not give rise to a right to suspend or terminate any ongoing Transaction under this Agreement. Notwithstanding the foregoing, it shall not be deemed a breach of this Section 10.11 if a Party disclosed the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party is redacted and otherwise not disclosed. Each Party will cause its Representatives to comply with the non-disclosure obligations set forth in this Section 10.11.

Party A and Party B acknowledge and agree that the Master Agreement and any Transactions entered into in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word “Confidential.” However, the Parties failure to designate information as confidential does not waive or limit the Parties’ rights to object to the production of material or assert exemptions to the requested documents. The Parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential.

Upon request or demand of any third person or entity not a Party hereto to Party B pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party B will as soon as practical notify Party A in writing via email that such request has been made. In no event, will Party B provide Party A less than 30 days’ notice before it produces Confidential Information to any third person or entity. Party A will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Party B. If Party A takes no such action after receiving the foregoing notice from Party B, Party B shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Party A does take or attempt to take such action, Party B shall provide timely and reasonable cooperation to Party A, if requested by Party A, and Party A agrees to indemnify and hold harmless Party B, its officers, employees and agents (“Party B Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Party B Indemnified Parties for Party B’s refusal to disclose any Requested Confidential Information.”

(7) **Article 10 is amended by inserting the following as a new Section 10.12:**

“10.12 Venue. Each party hereto irrevocably (i) submits to the exclusive jurisdiction of the courts of the State of California and the United States District Court located in San Francisco, California; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum.”

(8) **Article 10 is amended by inserting the following as a new Section 10.13:**

“10.13 FERC Standard of Review; Mobile-Sierra Waiver.

- (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) and further refined in NRG Power Marketing v. Maine Public Utilities Commission, 558 U.S. 165 (2010) (the “Mobile-Sierra” doctrine).
- (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).”

SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS.

Schedule M is hereby deleted in its entirety and replaced with the following:

- (1) The Parties agree to add the following definitions to Article One:
- “**Act**” means the Joint Exercise of Powers Act of California (Government Code Section 6500 et seq.).
- “**Governmental Entity or Public Power System**” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.
- (2) The following sentence shall be added to the end of the definition of “**Force Majeure**” in Article One:
- “If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.”
- (3) The Parties agree to add the following section to Article Three:

“Section 3.4 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to this Master Agreement or any credit support provided with respect to this Master Agreement or the Collateral Annex from (a) suit, (b) jurisdiction of court (including a court located outside of the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).”

- (4) The Parties agree to add the following representations and warranties to Section 10.2:

“Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Governmental Entity or Public Power System’s obligations to make payments under this Master Agreement and each Transaction (a) are not subject to appropriation or similar action and (b) do not (1) constitute any kind of indebtedness of the Governmental Entity or Public Power System or (2) create any kind of lien on or security interest in any property or revenues of the Governmental Entity or Public Power System which, in either case (1) or (2), is proscribed by any constitution, charter, law, rule, regulation, government code, constituent or governing instrument, resolution, guideline, ordinance, order, writ, judgment, decree, charge, or ruling to which the Governmental Entity or Public Power System (or any of its officials in their respective capacities as such) or its property is subject.”

- (5) The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

“IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.”