

PG&E's spooky stories headed to your mailbox

By Rebecca Bowe and Rachel Sadon - October 30, 2009

At a Halloween-themed press conference on the steps of City Hall this afternoon, Supervisors Bevan Dufty and Ross Mirkarimi warned that PG&E plans to disseminate misleading information about the city's Community Choice Aggregation (CCA) program.

The attack comes on the heels of the Board of Supervisor's approval of a request for proposals for Clean Power SF, San Francisco's own fledgling CCA, which seeks to provide competitively priced and significantly greener energy than PG&E. The CCA would challenge PG&E's monopoly in the San Francisco Bay Area, and the utility is expected to fight it tooth and nail.

Sup. Dufty got a heads up from a PG&E employee this morning that mailers criticizing the program would be sent out tomorrow. Recalling last year's multimillion dollar campaign against Prop H, an initiative for public power, Dufty emphasized that the city does not nearly have the funds to match a misinformation campaign.

Tom Ammiano denounced PG&E and their tactics as "avaricious, criminal, morally corrupt" and "a throwback to robber barons."

Though the content of the mailers is unknown, it has already created a stir around City Hall and throughout the community that is advocating for community choice. At the press conference, which was scheduled with very little advance notice, Dufty and Mirkarimi were joined by Sup. David Campos, San Francisco Public Utilities Commission director Ed Harrington, state senator Mark Leno, and Sierra Club representatives Michael Borenstein and John Rizzo.

Mirkarimi, chair of the Local Agency Formation Commission (LAFCo), insisted that "San Francisco is steadfast in its commitment to Community Choice Aggregation," and stressed that "PG&E continues to mock our commitment to green energy and will do everything in their power to circumvent the process."

Emphasizing that Clean Power SF is not a takeover of PG&E, Harrington noted that under the program design, the powerful utility would still own the distribution system, send bills, and provide workers. The ordinance allows the city to solicit an energy supplier with the intent of "buying cheaper, cleaner power" While the CCA has a target goal of 51 percent renewable energy by 2017, PG&E already falls short of the mandated requirement of a 20 percent renewable mix.

Leno pointed out that the program offers choice to San Franciscans, who would have the ability to opt-out of the Clean Power SF program if they so desired. In contrast, PG&E is trying to stamp out the city's ability to create a CCA with a ballot initiative that could create impossibly high barriers to community choice. "As you know, PG&E has been gathering signatures for the ballot initiative to support another two-thirds vote threshold. It is anti-democratic and un-American to allow one-third of the population to veto what two-thirds wants."

David Campos noted that PG&E's response to this "pretty modest" endeavor demonstrates how threatened it is by any changes that could potentially jeopardize its monopoly.

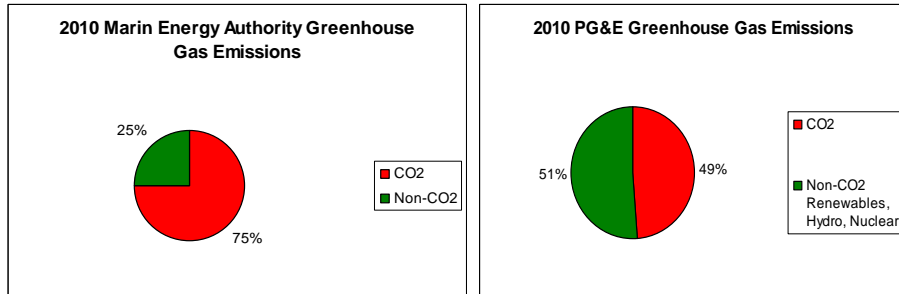
Mike Campbell, who directs of the city's CCA program through the SFPUC, told the Guardian later that he wasn't surprised to learn of PG&E's tactics. "So far, they've been quiet with our potential customers, but as we move forward, that won't be the case," Campbell noted. When asked how the SFPUC might respond, Campbell said they are beginning to work on the marketing component of the program. "We're going to have the benefit of offering the customers a choice," he said. "We believe San Franciscans will choose the environment."

Campbell did add, however, that he thought PG&E might frame its attack in such a way as to convince voters that the city had "flip-flopped" on Clean Power SF, because the language in the RFP is softer than in the original ordinance approving the creation of a CCA. The SFPUC advocated framing the overarching program goals as guidelines, rather than requirements, in the RFP, in an effort to attract more interest. At the time, Mirkarimi bristled at the change in language, but he and other LAFCo members went along with it in the interest of staying on schedule and giving themselves enough options to choose from.

"It seems like a short-sighted approach," Campbell said, while also saying that since he had not seen the mailer, he was "speaking in a vacuum" and speculating about PG&E's approach. "Because we can say, 'We're still greener than you.' The goals of the program remain the same."

LAFCo met in closed session several weeks ago to discuss legal options concerning the ballot initiative. Calls to City Attorney Dennis Herrera for comment were not returned as of press time.

Marin Energy Authority Greenhouse Gas Emissions Are Higher Than PG&E's In 2010

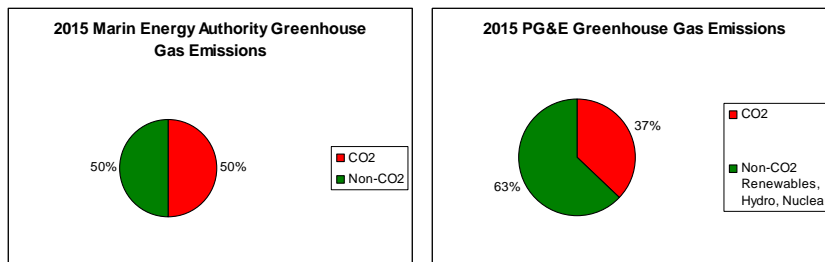


Sources: MEA Draft Contract, California Climate Action Registry, California Energy Commission power content label.

1

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

Marin Energy Authority Greenhouse Gas Emissions Remain Higher, Even In 2015



Sources: MEA and PG&E presentations, California Climate Action Registry, California Energy Commission power content label.

2

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

MEA Will Increase, Not Decrease, AB 32 Compliance Costs

- Where are the hidden greenhouse gas compliance costs?
- Here they are....."government charges"...

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

3

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

MEA Results In A GHG Cost, Not A GHG Benefit to Marin

- MEA will report 300,000 MTU per year higher greenhouse gas emissions to the California Air Resources Board under AB 32 consistent with the ARB's reporting rules and Marin's own GHG inventory.

"Retail providers and marketers shall include electricity transactions associated with both renewable and nonrenewable energy sources of power. (A) When reporting electricity transactions, retail providers and marketers shall: 1. Specify the amount of electricity in MWh..."—California Air Resources Board, AB 32 Reporting Regulation, Title 17, Code of California Regulation, Section 95111(b).

"Information on electricity and natural gas consumption for Marin County was provided by the California Energy Commission (CEC)..."—County of Marin, "Greenhouse Gas Emissions Analysis Report," June, 2003, p. 24.

- Even if MEA's electricity indirectly displaces higher greenhouse gas-emitting PG&E electricity, the reduced greenhouse gas emissions will go to PG&E's customers, not to MEA's customers, resulting in higher greenhouse gas compliance costs to MEA's customers

"It is important to understand that although these [greenhouse gas emissions] reductions may result from establishment of the CCA, they will in part actually accrue to the entire PG&E service area. The Business Plan anticipates that as the CCA load departs, PG&E will retire older, more expensive fossil fuel contracts thereby increasing the relative share of generation from large hydropower and nuclear plants, which are ostensibly carbon free. Under this system-wide perspective, there are scenarios where the CCA would lead to a net reduction in overall emissions, but PG&E's average GHG emissions per kWh would actually be lower than the CCA's emissions rate."—City of Berkeley Staff Report on Community Choice Aggregation, October 22, 2008, p.7.

4

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

The Draft Marin Energy-Shell Contract Contains No Electricity Prices

- Where are the prices?
- There are no prices...for electricity, renewables, or resource adequacy

5. PRICING.

[Per MEA policy no contract will be executed unless monthly generation costs to customers for the "Light Green" service will be at or below PG&E costs.]

5.1. Contract Price (Electricity): Buyer shall pay the following Contract Price for Energy, including related Ancillary Services, and CAISO scheduling services (expressed in USD per MWh) for all monthly Electricity usage that is within the Balanced Monthly Usage as set forth in the tables, below:

Year	Contract Price (in US\$/MWh)
2010	\$ _____
2011	\$ _____
2012	\$ _____
2013	\$ _____
2014	\$ _____
2015	\$ _____

- Where is the price guarantee?
- There is no price guarantee...nor is there any comparison to actual PG&E prices

PG&E written question to MEA: "**Finally, please confirm that, per Section 5, p. 3 of the Confirm of the Draft Shell- MEA contract, the contract prices charged by Shell under the contract will be revised monthly to ensure that "monthly generation costs to customers for the "Light Green" service will be at or below [actual] PG&E costs."**" MEA Oct. 16 response to PG&E: "**The provision you specified here is not in the current draft."**

5

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

The Marin Energy Authority-Shell Energy Contract Contains Hidden Costs

- Where are the additional hidden costs in addition to the contract prices? Here they are...

5.5. Pass-Through Charges: Seller shall be responsible for bidding and scheduling the loads of all Customers in accordance with Applicable Law, including CAISO tariffs. Seller shall only pass through to Buyer all CAISO Charges for providing Energy to the Delivery Point. Buyer's Customers will remain responsible for payment of delivery charges for transmission, distribution, public goods and other non-bypassable surcharges charged directly to Customers by PG&E.

Buyer shall be liable for all costs associated with delivering Energy from the Supply Point to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights required relating to the congestion from the Supply Point to the Delivery Point.

7.1. Usage Above Upper Limit: During any month of delivery, if Buyer's metered usage (expressed in MWh) exceeds the Upper Limit ("Excess Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price. For the Excess Quantity, Buyer shall reimburse Seller at the monthly Weighted Average Price plus all related CAISO Charges at the Delivery Point. Seller shall make commercially reasonable efforts to minimize the cost of any Excess Quantity purchased on behalf of Buyer.

7.2. Usage Below Lower Limit: During any month of delivery, if Buyer's metered usage (expressed in MWh) is less than the Lower Limit ("Underused Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price and shall credit Buyer's account by an amount equal to the Underused Quantity multiplied by the monthly Weighted Average Price. Seller shall make commercially reasonable efforts to maximize the value of Underused Quantity remarketed on behalf of Buyer.

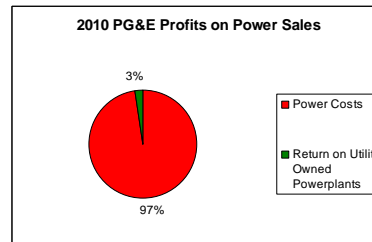
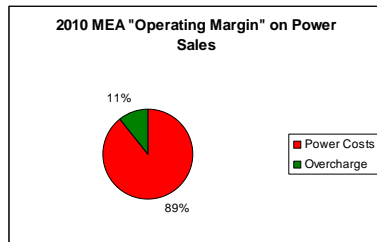
7.3. Resource Adequacy Capacity Usage Above Limit: During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement exceeds the Upper Limit ("Excess Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Resource Adequacy Capacity). For the Excess Resource Adequacy Capacity Quantity, Buyer shall reimburse Seller for its actual cost of buying the Excess Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to minimize the cost of Excess Resource Adequacy Capacity Quantity purchased on behalf of Buyer.

6

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Representatives present: Joe Nation, Chris Warner

The Marin Energy Authority Plans to Earn “Profit” on Power Sales Above Actual Cost

- MEA’s operating margin “overcharges” far exceed PG&E’s “profits” on the sale of the same amount of power to customers



Sources: MEA Year One Uses of Funds; PG&E authorized return on equity of 11.35% on 2009 Utility Owned Generation Rate Base; PG&E earns no return (no “profit”) on power purchases. PG&E total 2010 forecast power procurement and utility owned generation costs pro-rated based on Marin load as approx. 1% of total PG&E service territory load.

7

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

MEA Now Says It Will Need Credit Guarantees from Marin Governments for its CCA Program

- Where is the hidden joint and several liability of Marin towns and cities?
- Not here...

Member Risk Mitigation

- General funds continue to be insulated (“firewall” between MEA and its Members)
= State law, JPA agreement and Section 10.13 of EEI Agreement
- No risk or contribution from city, town or county budgets: CS “Other Changes” Section 17

- But here: <http://www.co.marin.ca.us/depts/BS/Archive/Meetings.cfm>
- MEA informs Marin Board of Supervisors that “credit guarantee” may be required from Marin governments for Marin Energy Authority debt, Oct. 13, 2009
- MEA Business Plan forecasts 2011 issuance of \$475 million in new debt to finance local renewable projects – MEA likely to require “credit guarantee” from MEA member governments for this long-term debt because Shell Energy contract gives Shell senior lien on customer revenues. (Marin Community Choice Aggregation Business Plan, April, 2008, p. 72; MEA-Shell Energy draft contract, Schedule M, Section 8.)

8

Presented by PG&E to the Town of San Anselmo 10/27/09
Representatives present: Joe Nation, Chris Warner

MEA May Need Additional \$20- \$40 Million Credit Guarantee to Finance CPUC Bond Requirement if Natural Gas Prices Go Back Up to 2008 Levels

- Where is the hidden \$20 million- \$40 million joint and several liability of Marin towns and cities for the CPUC bond amount?
- Not here...



- But here:

	1st Year Bond Amount Reqd.: (in \$000)	Full Bond Amount Reqd.: (in \$000)
* The admin fee for Marin's 80,000 accounts would be:	\$ 315.2	\$ 315.2
* With a 100% increase in natural gas prices (which is a level that was exceeded during the summer of 2008), the bond amount required would be:	\$ 19,092.8	\$ 37,870.4

November 4, 2009
Memo to MEA Board
From Barbara George, Women's Energy Matters

Women's Energy Matters has been closely involved in the process of developing MEA and promoting it to the public, and wants to ensure its full flowering. We request a delay of two weeks (until Nov. 19th or thereabouts) before MEA votes on the first Draft Contract for Energy Services Provider for Marin Clean Energy.

Any MEA contract is likely to face intense scrutiny in the current climate where PG&E and its allies are opposing Community Choice in Marin and seeking to smother it statewide with a 2/3 vote requirement. Quite apart from PG&E's opposition, local citizens and businesses have questions and concerns.

The public was informed mid-month that the lead bidder is Shell North America. We understand that other bidders will have a chance to meet the same terms at a better price or offer better terms at the same price up until Feb. 4th. However, it is possible that the Draft Contract would unnecessarily create barriers to other bidders.

Reportedly, the three "top tier" proposals met the criteria for startup and did not include local development, while proposals in Tier 2 and Tier 3 focused on local development but did not meet the "full requirements" for startup.

The public needs more time to consider (1) whether the Draft Contract has taken sufficient steps to allow for substitution (and nurturing) of local renewables and energy efficiency by other providers in later contracts, (2) whether the Draft Contract prematurely creates a preference for Shell that is not warranted, and/or (3) whether MEA should request Shell to take certain steps to reduce controversy over this particular bidder.

Background. The RFP focused on startup, during which MEA and the Energy Service Provider would ensure reliability and minimize risk, while supplying at least 25% renewable energy at rates at or below PG&E and 100% for customers who are willing to spend a little more. The RFP included an option for bidders to also provide proposals for local development of renewables and energy efficiency.

* * * * *

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November 5, 2009
Memo to MEA Board
From Barbara George, Women's Energy Matters

This is a continuation of our memo dated 11/4.

We would like a more complete picture of the financial resources (including revenue bonds) that will be needed to move forward on local clean energy development *during the five years of the Draft Contract*. For example, we request more information about the proposed project targets, costs and timelines of second and third tier clean energy developers.

This would help us to gain a better understanding of how the Draft Contract and the upcoming contract(s) for local resources will coexist.

* * * * *

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November 5, 2009

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Interim Director

RE: Resolution Affirming the Board's Policy that Program Agreement 1 Will Only be Approved if Customer Costs for the Light Green Energy Product Can Be At Or Below PG&E's Projected Cost. (Agenda Item #C-3, revised)

ATTACHMENTS: Resolution

Dear Board Members:

At the October 1, 2009 meeting of your Board, staff was asked to prepare a resolution affirming the Board's policy decision to set customer costs for the Light Green energy product at or below PG&E's projected costs for customers. The attached resolution is in response to this request and provides that the Board will not approve the draft power purchase agreement (referred to as Program Agreement 1) currently scheduled for approval on February 4, 2010 unless the customer costs for the Light Green energy product can be at or below PG&E's projected costs.

Recommendation: Approve resolution.

RESOLUTION NO. 2009-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE MARIN ENERGY AUTHORITY AFFIRMING THAT PROGRAM
AGREEMENT 1 WILL ONLY BE APPROVED IF CUSTOMER COSTS FOR
THE LIGHT GREEN ENERGY PRODUCT CAN BE AT OR BELOW PG&E'S
PROJECTED COSTS.**

WHEREAS, the Marin Energy Authority ("MEA") is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

WHEREAS, MEA members include the following Marin communities: the County of Marin, the City of Belvedere, the Town of Fairfax, the City of Mill Valley, the Town of Ross, the Town of San Anselmo, the City of San Rafael, the City of Sausalito and the Town of Tiburon; and

WHEREAS, the MEA Board has conducted an RFP process and a contract negotiation process for power purchase; and

WHEREAS, the MEA Board has developed a draft Power Purchase Agreement also known as "Program Agreement 1" with potential energy suppliers; and

WHEREAS, MEA technical advisors have determined that responses to the RFP included indicative costs that would allow the Marin Clean Energy program to offer the Light Green energy project at a customer cost that is at or below the projected PG&E customer cost; and

WHEREAS, MEA's mission is to provide renewable energy, cost stability and other customer benefits.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority that MEA will not approve and execute the Power Purchase Agreement known as "Program Agreement 1" with an energy supplier until confirmed pricing can be provided that will allow customer costs to be at or below PG&E project costs.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this 5th day of November 2009, by the following vote:

AYES NOES ABSTAIN ABSENT

City of Belvedere

Town of Fairfax

County of Marin

City of Mill Valley

Town of Ross

Town of San Anselmo

City of San Rafael

City of Sausalito

Town of Tiburon

CHAIR, MARIN ENERGY AUTHORITY BOARD



November 5, 2009

TO: Marin Energy Authority Board

FROM: Dawn Weisz, Interim Director

RE: Power Purchase Agreement (Agenda item #5, revised)

ATTACHMENTS: 1. Overview of Power Purchase Agreement
2. Edison Electric Institute (EEI) Master Power Purchase & Sale Agreement Cover Sheet
3. Confirmation

Dear Board Members:

On May 7th your Board approved and released a Request for Proposal (RFP) for full requirements electricity supply. This competitive solicitation process resulted in 12 bids for power with costs in the expected range described in the Marin Community Choice Aggregation (CCA) business plan. The power costs projected in the bid proposals would result in customer costs that are at or below PG&E's projected rates for the light green option (starting at 25% renewable energy, growing to 50% in four to five years). The deep green option (100% renewable energy) would also be available to customers for a slight premium above PG&E's projected rates.

On September 3rd your Board selected three of the twelve bidders for initial contract negotiations on a full requirements energy power purchase agreement (PPA). On October 1st your Board approved a draft contract for review by the member agencies and the public. Since that time the draft has been further modified based on continued negotiation meetings and input from many stakeholder groups, as well as MEA's internal support which includes:

- Milbank, Tweed, Hadley & McCloy LLP
- Navigant Consulting, Inc.
- Richards, Watson and Gershon, a professional corporation
- Nixon Peabody LLP
- MEA's Ad Hoc Technical Advisory Group
- MEA Interim Director along with legal, finance and project staff

Also since October 1st nine presentations have been made to the City/Town Councils in each member jurisdiction as follows:

10/5/2009	5:00 pm	City of San Rafael
10/6/2006	7:00 pm	City of Sausalito
10/7/2009	7:30 pm	Town of Fairfax
10/8/2009	6:30 pm	Town of Ross
10/12/2009	7:30 pm	Town of Belvedere
10/13/2009	10:00 am	County of Marin
10/19/2009	7:00 pm	City of Mill Valley
10/21/2009	7:30 pm	Town of Tiburon
10/27/2009	7:00 pm	Town of San Anselmo

Questions and feedback were exchanged in each of these meetings with Council members, members of the public, and stakeholder groups, including PG&E representatives.

In addition to the nine public hearings listed above, three other review processes have taken place. First, the contract was reviewed in a meeting of the city and town attorneys convened by Greg Stepanicich, MEA's General Counsel, and hosted by Patrick Faulkner, County Counsel for the County of Marin. Chris Chwang from Milbank was present in this meeting to explain and respond to questions and input on the draft contract. Recommendations from this meeting were incorporated into the current draft.

The draft contract has also been under review by the City Managers in a series of meetings with MEA staff and consultants. To provide for a more in-depth review, the City Managers group contracted with MRW and Associates to provide independent peer review, analysis and recommendations. This peer review effort was launched in early October and involved several meetings and information exchange between MEA staff and technical consultants. Recommendations from the City Managers and the peer review process have been incorporated into the current draft. The results of the peer review were also presented and discussed at the meeting of the Marin City Managers on October 29th.

The final draft contract approved by the Ad Hoc Contract Committee is attached here for consideration. Approval of the final draft contract will launch a 90-day review period for the final draft contract where each jurisdiction can choose whether or not to continue participation in MEA under the terms of the contract. Section 7.1.1.1 of the Joint Powers Authority Agreement forming the MEA provides that a copy of the proposed CCA energy contract shall be provided to each Party to the JPA Agreement at least 90 days prior to the consideration of the contract by the Board for final approval and execution. Therefore, the approval requested at this time is an authorization to submit the final draft contract to the MEA members for their review under Section 7.1.1.1. The requested action is not an approval of the final contract and imposes no legal obligations or commitments on the Board's part. The Board has the full discretion to reject or modify the contract when it is returned to the Board at its February 4 meeting. The Board also has the full discretion to enter into the proposed contract with another one of the two other full requirements bidders if they are willing to agree to the contract terms and are able to offer better pricing.

In the event that the contract is approved by the Board on February 4, 2010, it is likely that service would begin to the first phase of customers in June, 2010.

Staff has evaluated the draft contract with respect to whether environmental review is required under CEQA. Section 2.2 of the draft contract requires that at least 25% of the energy delivered to the MEA will be from Eligible Renewable Sources. The draft contract will not involve the construction of any new facilities. Section 2.3 of the

Confirmation, which is one element of the draft contract, states that “Seller covenants and agrees that no new facilities are required to be constructed in order for Seller to meet its supply obligation during the Delivery Period.” All of the energy provided to the MEA during the term of the contract will be provided from market purchases and existing facilities owned or operated by Shell.

Based on this evaluation of the draft contract, staff is proposing that the Board determine that the contract is categorically exempt from CEQA pursuant to Section 15308 of the State CEQA Guidelines. Section 15308, which is called a Class 8 categorical exemption, states:

“Class 8 consists of actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.”

The MEA is a regulatory agency that is entitled to rely on this exemption. The cases have found a variety of local public agencies to be regulatory agencies under Section 15308, including counties. The MEA is a joint powers authority created pursuant to Government Code Section 6500 et seq. and is a distinct public agency with its powers derived from the common powers of its members, consisting of the County and eight cities and towns. These common powers are subject to the procedural requirements applicable to the County. As a public agency, the MEA can serve as a lead agency under CEQA in approving and carrying out projects and has the power to impose mitigation measures to address environmental concerns.

The action proposed to be taken is authorized by state law and local ordinance. The approval of the energy contract will be one of the key steps in implementing a Community Choice Aggregation (“CCA”) program. Indeed, the CCA program could not be established without the contract. The election to implement a CCA program was taken by the member agencies of the MEA by ordinance in accordance with the requirements of a state law, Public Utilities Code Section 366.2.

The action proposed to be taken assures the protection of the environment. The MEA was formed to promote and protect the environment by adopting programs to maximize the use of renewable energy and promote energy efficiencies. Recital 3 of the Joint Powers Agreement forming the MEA states that the purposes of the Initial Participants entering into the Agreement include:

“...addressing climate change by reducing energy related greenhouse gas emissions and securing energy supply and cost stability, energy efficiencies and local economic benefits. It is the intent of this Agreement to promote the development and use of a wide range of renewable energy sources and energy

efficiency programs, including but not limited to solar and wind energy production.”

Section 2.4 of the Agreement sets forth the following purpose:

“The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to each Party to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs, and to exercise all other powers necessary and incidental to accomplishing this purpose. Without limiting the generality of the foregoing, the Parties intend for this Agreement to be used as a contractual mechanism by which the Parties are authorized to participate as a group in the CCA Program....”

As noted above, the draft contract requires that at least 25% of the energy provided be from Eligible Renewable Sources. Further the Deep Green program offered to customers will consist entirely of energy from renewable sources. It is estimated, based on the 2007 Marin Community Survey results, based on the experience of Palo Alto with a similar program, and based on other data points that 20% of the MEA customers will choose the Deep Green option.

In a 2007 survey conducted by Godbe Research in Marin County, 58% of those surveyed said they would be willing to pay 10% more than they were currently paying PG&E for electricity in order to purchase a mix of green, renewable energy from local government. This 10% is more than the projected additional cost of choosing the Deep Green option. Godbe Research applied an accepted discount factor to correct for potentially inflated purchasing intentions by the survey respondents. After applying these discount factors, the survey concluded that 23% of the respondents were willing to pay 10% more for green energy.

The survey number exceeds the 20% estimate used by staff for predicting the initial selection of the Deep Green option. In addition, the Deep Green option will be marketed from the beginning of the CCA program when customers are presented the choice of Light Green, Deep Green or opting out of the CCA program and staying with PG&E. We expect that the MEA should reach a higher penetration for its Deep Green program compared to electricity utilities that were already in existence and then had to market a new green program at a higher cost. In addition, the MEA will have a higher percentage of residential customers than Palo Alto, and residential customers are more likely than commercial/industrial customers to participate in the Deep Green option.

The amount of energy from Eligible Renewable Sources will exceed those presently or foreseeable offered by PG&E. Beginning in 2010, it is estimated that 15% of PG&E's energy content in providing electricity services will consist of Eligible Renewable Energy while the MEA will have an Eligible Renewable Energy content of at least 25%. By the end of the five year term of the proposed contract in 2015, PG&E's Eligible Renewable Energy content will increase to 20% while MEA's Eligible Renewable Energy content will increase to 50%. The California Public Utilities Commission is the source for the PG&E data. Staff has estimated that the MEA will reduce Greenhouse Gas emissions in Marin County by 175,000 tons per year in 2011 and by 534,000 tons per year in 2020. The MEA's CCA program will result in a 17% reduction in overall County Greenhouse Gas emissions and achieve two-thirds of Marin County's AB32 compliance by 2020. No

other current or proposed program in Marin offers a comparable level of Greenhouse Gas reduction. Staff also has made a comparison of Greenhouse Gas emissions by the MEA and PG&E in 2010 and 2015 (the start and end dates of the contract). In 2010, staff projects that 40% of MEA's energy will emit Greenhouse gases compared to 49% by PG&E. In 2015, the projection is that only 15% of MEA's energy will emit Greenhouse Gases compared to 37% for PG&E.

Finally, the draft contract does not contemplate any construction and would not represent any relaxation of standards that would allow for environmental degradation.

For all of the reasons stated above, staff recommends that the Board, when considering the final contract, find the contract to be categorically exempt from CEQA pursuant to Section 15308 of the State CEQA Guidelines. Staff also recommends that the Board find the contract exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines on the basis that it can be seen with certainty that there is no possibility that the proposed contract may have a significant effect on the environment, because there is no construction necessary to implement the plan, and it will reduce emissions as compared with the current status quo.

The Board will not be acting on staff's CEQA recommendations and making a final CEQA determination until the Board considers the final contract in February 2010.

Recommendation: Approve release of final draft contract to begin 90-day review period by member agencies.

Overview

Marin Energy Authority Draft Power Purchase and Sale Agreement

Attached you will find three components of the draft Power Purchase Agreement (PPA) for the Marin Energy Authority to secure power supply for the Marin Clean Energy program. The three components of the Agreement are described below. In addition, key terms of the contract are outlined below in the overview section.

1. EEI Master Power Purchase & Sale Agreement

This Edison Electric Institute (EEI) Agreement is a standard industry document used by public and private utilities across the United States for power purchase and sale.

2. EEI Master Power Purchase & Sale Agreement Cover Sheet

This document provides additional detail related to MEA's specific transaction, identifying exceptions, clarifications and areas of applicability which modify the standards terms and conditions of the Master EEI Agreement.

3. Confirmation

This document is referenced in the EEI Agreement and defines the commercial terms of MEA's transaction. Key details include energy quantities, pricing and delivery term. The Confirmation also contains the terms and conditions pertinent to renewable energy content and environmental attributes.

-----Contract Overview-----

General Contract Terms

- Contract is based on the industry-standard Edison Electric Institute (EEI), Master Power Purchase and Sale Agreement
- Contract insulates municipal funds/budgets before, during and after the delivery period
- Five year delivery period, beginning on June 1, 2010 and ending on May 31, 2015

Commercial Terms

- Full requirements product to be provided by the supplier, including all: electric energy, renewable energy, capacity, ancillary services (as required by the California Independent System Operator) and scheduling coordination services
- All MEA customers will receive at least 25% of energy deliveries from California Energy Commission eligible renewable resources
- Supplier must maintain a minimum, "investment grade" credit rating
- MEA's credit exposure is limited to customer receipts/revenues

- MEA will be allowed to substitute renewable energy generated by newly developed and/or purchased resources for contracted energy volumes based on mutually agreeable terms among the parties

Other Important Considerations

- Energy pricing will be refreshed prior to contract signing
- MEA will not execute PPA if costs will not support Light Green (25% renewable) generation at or below PG&E costs
- MEA customers may voluntarily participate in a competitively priced energy supply option that will provide 100% of energy deliveries from clean, renewable fuel sources – energy supplier will procure renewable energy volumes sufficient to support MCE’s “Deep Green” product

Finding Contract Provisions in Draft Agreement

- Contract energy price at or below PG&E’s generation charges for Light Green energy: Confirmation #5
- No risk or contribution from city, town, or county budgets: EEI Cover Sheet, Other Changes, #25
- Five year, full requirements contract (all energy, scheduling, load following, risk management) at a fixed price: Confirmation #2
- Substituting MEA owned or acquired assets is allowed: Confirmation #11
- Deep green at 100% renewable energy: Confirmation #2.2
- Guaranteed supply of power 24 hrs/day: Confirmation #2

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This Master Power Purchase and Sale Agreement ("Master Agreement") is made as of the following date: _____, 2010 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name ("_____ " or "Party A")

Name ("Marin Energy Authority" or "Party B")

All Notices:

All Notices:

Street: _____

Street: [3501 Civic Center Drive, Room 308]

City: _____ Zip: _____

City: [San Rafael, CA] Zip: [94903]

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

Cross Default for Party A:

Party A Cross Default Amount US\$50,000,000

Other Cross Default Amount \$ _____
Entity: _____

Cross Default for Party B:

Party B Cross Default Amount US\$500,000

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: __

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify:

Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Ratings from both S&P and Moody's fall below BBB and Baa2, respectively, or if Party A is not rated by either S&P or Moody's.

- Other:
Specify: _____

(e) Guarantor for Party A:

Guarantee Amount: _____

Article 10

Confidentiality

- Confidentiality Applicable

If not checked, inapplicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8. If not checked, inapplicable. Collateral description as follows:

Party B shall direct Pacific Gas & Electric ("PG&E") to deposit into a lockbox account, in favor of Party A, all of the proceeds of all of the customer account receipts (net of the amounts to be paid to PG&E) received by Party B from the sale of the Product to its customers. Party A shall receive, in accordance with an account control agreement, payments for its invoice for the previous calendar month and after Party A's invoice is paid, the amounts remaining in such lockbox shall be immediately released to Party B on the 25th of each calendar month. Party A acknowledges that revenues from customer account receipts may be subject to a lien securing secured loan facilities for Party B provided that Party A, Party B and the lender(s) of such secured loan facilities shall have agreed to an intercreditor agreement acceptable to Party A in

its reasonable discretion to the extent that Party A's lien on the amounts in the lockbox is at least pari passu with the lien of Party B's lender(s). The Parties agree that the lockbox account shall be in the name of Party B, and any interest earned thereon shall accrue in favor of Party B.

Other Changes

- 1) In Section 1.1, add the following sentence at the end of the definition of "Affiliate": "

The Parties hereby agree and acknowledge that the members of Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

- 2) In Section 1.27 delete the word "transferable" in the first line and insert the following after the last sentence:

"The value of the Letter of Credit shall be its principal amount (the "Value"), provided that if the Letter of Credit expires within thirty days after the date its Value is being determined, its Value shall be zero. If a Party has delivered more than one form of Performance Assurance to the Secured Party, when a return of Performance Assurance is to be made, the Secured Party may elect which form to transfer." The issuer of any Letter of Credit shall be rated, at all times when such Letter of Credit is outstanding, no less than A by S&P and A by Moody's.

- 3) Section 1.50 (Recording) is hereby deleted in its entirety.
- 4) In Section 2.1, delete "orally or, if expressly required by either Party with respect to a particular Transaction," in the 2nd line.
- 5) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

"Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, the Party A acknowledges that no employee may amend or otherwise materially modify this Master Agreement or

Confirmation without the approval of the board of Party B, and that the only employees with authority to act on behalf of Party B shall be limited based on the certified incumbency delivered to Party A pursuant to Section 10.15.”

- 6) In Section 2.4, delete “either orally or” after “agreed to” in the 7th line.
- 7) Section 2.5 is hereby deleted in its entirety.
- 8) In Section 5.1 (a) change “three (3) Business Days” to “five (5) Business Days”.
- 9) In Section 5.1(d) add the following after “Bankrupt”:

“,provided, however, if the presentation of an involuntary petition for the winding-up or liquidation of a party (an "Involuntary Proceeding") is commenced, such Involuntary Proceeding shall be not be a Default in respect of that party unless the Involuntary Proceeding has not been withdrawn, dismissed, discharged, stayed or restrained within 60 days of its commencement and in such event the other party shall be entitled to exercise its rights and remedies under this Agreement in respect thereof;”

- 10) In Section 5.1(g) add the following at the end of Section 5.1(g):

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

- 11) 5.4 Notice of Payment of Termination Payment. Add the following at the end:

“The Termination Payment shall bear interest at the Interest Rate from the date upon which notice is effective until paid. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this

Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed and that the Defaulting Party has returned any Performance Assurance of the Non-Defaulting Party's that is held simultaneously or before the Non Defaulting Party makes any Termination Payment hereunder."

12) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to twenty-four (24) months.

13) In Sections 8.1(b) and 8.2 (b) change "three (3) Business Days" to "five (5) Business Days".

14) In Sections 8.1(d) and 8.2(d) on line 5, change "three (3) Business Days" to "five (5) Business Days".

15) The following new section 8.2(f) shall be added to Section 8.2:

"Upon the occurrence of an Event of Default by Party A under the Master Agreement, Party A shall reimburse Party B for (i) the costs associated with the posting and payment of the CCA Bond which is posted by Party B and (ii) any actual reentry fees assessed by PG&E in connection with such Event of Default by Party A regardless of the amount of the security posted. The term "CCA Bond" means the bond required to be posted, in form and substance satisfactory to Party B in its sole discretion, pursuant to the Settlement Agreement in Rulemaking R.03-10-003 (Phase 3 – Community Choice Aggregation Bond Proceeding). The CCA Bond [shall be/has been] posted [no later than [____], 20__] and Party B shall advise Party A of the amount of such CCA Bond promptly after an Event of Default."

16) In Section 10.1, the phrase "by either Party upon thirty (30) days' prior written notice" shall be deleted and replaced by "upon mutual agreement of the Parties".

17) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

"Each party acknowledges and agrees that (i) certain transaction(s) hereunder constitute a "forward contract" providing a "contractual right" within the meaning of such

terms under Title 11 of the United States Code, as amended (the "Bankruptcy Code"); (ii) it is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any transaction that constitutes a "forward contract," (iii) all payments made or to be made by one party to the other party pursuant to this contract constitute a "settlement payment" within the meaning of the Bankruptcy Code; (iv) all transfers of adequate assurance, prepayment or similar performance assurance by one party to the other party under this contract constitute a "margin payment" within the meaning of the Bankruptcy Codes; (v) each party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code; (vi) Electricity delivered hereunder constitutes a "good" under Section 503(b)(9) of the U.S. Bankruptcy Code; and (vii) the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

- 18) In Section 10.5 change "transfer, sell, pledge, encumber or assign" to "pledge, encumber or collaterally assign".
- 19) In Section 10.6 change "State of New York" to "State of California" and add the following after the last line: "EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM."
- 20) Section 10.8 General. Add at the end of the second to last sentence: "and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) Arbitration provisions, if applicable, (vi) the obligation of either Party to make payments hereunder, (vii) Section 10.6 and (viii) Section 10.13 shall also survive the termination of the Agreement or any Transaction."

21) In section 10.9 and insert the words “copies of” after the word “examine”. In line 9, change twelve (12) months to twenty-four (24) months.

22) Section 10.10 Bankruptcy Issues. Delete Section 10.10 in its entirety and replace with the following: “The Parties intend that (i) all Transactions constitute a “forward contract” within the meaning of the United States Bankruptcy Code (the “Bankruptcy Code”) or a “swap agreement” within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (iii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (iv) this Agreement constitutes a “master netting agreement” within the meaning of the Bankruptcy Code.”

23) The following sentence shall be added at the end of Section 10.11:

“Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the California Public Records Act (Government Code Section 6250 et seq.)”

24) The following Mobile-Sierra clause shall be added as Section 10.12:

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” 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).

(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).

25) The following new Section shall be added as Section 10.13:

Party A hereby acknowledges and agrees that Party B is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 19, 2008 (the "Joint Power Agreement") and is a public entity separate from its members. Party B shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and Seller agrees that it shall have

no rights and shall not make any claim, take any actions or assert any remedies against any of Party B's members in connection with this Agreement or any of the Transactions.

26) The following new Section shall be added as Section 10.14: 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 itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

27) The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A 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 Joint Power Agreement and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Joint Power Agreement and other applicable laws, (iii) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Joint Power Agreement or other relevant constitutional, organic or other governing documents and applicable law, (iv) Party B's obligations to make payments hereunder are, except as otherwise specifically set forth herein or in the account control agreement or any other agreement documenting the security of Party B to Party A, unsubordinated obligations which enjoy

first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Joint Power Agreement and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Joint Power Agreement and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all of Party B's obligations hereunder and under each Transaction, and (v) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B which, in either case, is proscribed by any provision of the Joint Power Agreement or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

28) The Parties agree to add the following representations and warranties to Section 10.2:

Party A represents, warrants and covenants to Party B continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows; (i) no new facilities are required to be constructed in order for Seller to meet its supply obligation under this Agreement, and (ii) Seller shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including the California Environmental Quality Act ("CEQA") and any other applicable California environmental statutes relating to the construction and operation of such facilities. The foregoing representation shall not limit Party A's ability to use newly built facilities to supply the Product hereunder provided such facilities have satisfied all Applicable Law,

including CEQA and any other applicable California environmental statutes relating to the construction and operation thereof. Party A further agrees to waive any claims against Party B for failure to perform Party B's obligations under this Master Agreement or under any Confirmation to the extent that such failure is a result of Party A's violation or breach of the foregoing representations, warranties and covenants or as a result of litigation against Party B as a result of Party A's violation or breach of the foregoing representations, warranties and covenants.

- 29) The following sentence shall be added at the end of Section 10.9: Party A agrees to cooperate with Party B's audits in connection with this Master Agreement and the Confirmation, which shall commence on the first Business Day of January and June of each year. To the extent that an audit reveals that Energy Party A sold to Party B was incorrectly classified by Party A as Eligible Renewable Energy or Renewable Energy, Party A (i) shall pay for all audit costs incurred by Party B and (ii) shall, at Party A's cost, deliver to Party B replacement Eligible Renewable Energy or Renewable Energy in a quantity equal to the incorrectly classified Energy.
- 30) The following shall be added as a new Section 10.15: Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party A (i) certified copies of the Joint Powers Agreement and such relevant ordinances, resolutions, public notices and other public documents issued by Party B evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement, (ii) a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, subject to the limitations set forth in Section 2.1 and (iii) opinions of legal counsel for Party B, in form and substance reasonably satisfactory to Party A, with appropriate qualifications, assumptions and limitations, regarding such the following matters: (A) Party B is a validly existing community choice aggregation ("CCA"), (B) Party B has the power and authority to execute, deliver and perform the Master Agreement and the

proposed Confirmation, (C) the execution, delivery and performance by Party B of the Master Agreement and the proposed Confirmation does not contravene: (x) applicable law, or (y) the Joint Powers Agreement of Party B, and (D) the Master Agreement has been executed and delivered and is enforceable against Party B in accordance with its terms.

31) The following shall be added as a new Section 10.16: Party A's Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B certified copies of its certificate of formation, good standing certificate, resolutions, incumbencies, its FERC authorization under Section [205] of the Federal Power Act and such other documents reasonably requested by Party B evidencing the necessary authorizations with respect to the execution, delivery and performance by Party A of this Master Agreement and any Confirmations executed in connection therewith.

32) The following shall be added as a new Section 10.18: The New Two-Third Vote Requirement For Local Public Electricity Providers Initiative. The Parties acknowledge the pendency of the initiative entitled "The New Two-Thirds Vote Requirement For Public Electricity Providers" (the "NTVR Initiative"). The foregoing acknowledgement is for informational purposes only and shall not allocate any risk to either Party regarding the validity or enforceability of the Master Agreement or the proposed Confirmation. Each of the Parties hereby agree and acknowledge that the other Party makes no representations and warranties with respect to the potential impact of the NTVR Initiative on this Agreement. Each Party agrees to pay for its own costs and expenses associated with any actions or suits arising from the NTVR Initiative.

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

Party A

Party B **Marin Energy Authority**

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.

<i>For Seller's Use Only</i>	
Trade Date	
Seller's ID	

CONFIRMATION

Reference:

Master Power Purchase and Sale Agreement
 Between <Company Legal Name> ("Seller")
 And Marin Energy Authority ("Buyer")
 As of <Month, Day, Year> (the "Effective Date")
 Transaction Date: <Month, Day, Year>

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

WHEREAS, Buyer is an independent public agency formed in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) and established by that certain Joint Powers Agreement, effective as of December 19, 2008 ("Joint Powers Agreement") to protect the environment by furthering the environmental goals of AB 32, the Global Warming Solutions Act of 2006 (the "GWSA"), and reducing greenhouse gas emissions by studying, promoting, developing, conducting, operating and managing energy and energy-related climate change programs, including but not limited to the CCA program;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, the Buyer submitted Buyer's CCA Implementation Plan ("Implementation Plan") and Statement of Intent to the CPUC;

WHEREAS, pursuant to the GWSA, the State of California has established a timetable to implement measures reduce greenhouse gas emissions;

WHEREAS, pursuant to its regulatory authority and the purposes of the Joint Powers Agreement, Buyer required as part of its Request for Proposals that at least 25% of the Full Requirements Product Supply include Eligible Renewable Energy;

WHEREAS, Buyer, pursuant to this Confirmation, will be taking a regulatory action that will purchase Renewable Energy to promote the regulatory goals established in the GWSA and thereby qualify for Class 8 categorical exemption under Section 15308 of Title 14 of the California Code of Regulations;

WHEREAS, Buyer issued a Request for Proposals for Full Requirements Product Supply for Buyer serving as the CCA;

WHEREAS, Buyer selected Seller to supply the Full Requirements Product for Buyer serving as the CCA;

WHEREAS, Buyer will in turn supply the Full Requirements Product for use by the Members; and

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Full Requirements Product to Buyer, and Buyer shall take and pay for such supply of Full Requirement Product, including, subject to satisfaction of the conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS.** Defined terms shall have the meanings set forth in this Confirmation or as set forth below:

"Ancillary Services" means those ancillary services, including but not limited to those described in FERC Order No. 888, that may from time to time be required by FERC to be supplied by CAISO.

"Applicable Law" means any statute, law, treaty, rule, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction; or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time.

"CAISO" means the California Independent System Operator Corporation or the successor organization to the functions thereof.

"CAISO Charges" mean those amounts [(other than for imbalance Energy)] billed by CAISO and associated with the procurement and delivery at the Delivery Point of any full requirements product through the CAISO market to CCA Customers as such charges may be adjusted from time to time pursuant to the Tariff.

"Capacity" means the net generating capability of a generating resource or generating resources. Capacity is expressed in MW.

"Capacity Requirement" means Capacity as required for Buyer to meet its RAR.

"Commercially Reasonable Efforts" for the purposes of this Confirmation, "commercially reasonable efforts" or acting in a "commercially reasonable manner" shall not require a Party to undertake extraordinary or unreasonable measures.

"Customers" means any account designated, from time to time, by Buyer as being served by Buyer, and identified to Seller pursuant to this Confirmation.

"Energy" means real (not reactive) electric energy in the form of three-phase alternating current having a nominal frequency of approximately 60 cycles per second, a harmonic content consistent with the requirements of the Institute of Electrical and Electronic Engineers Standard No. 519, and a voltage content consistent with the guidelines applied by the Control Area in which the applicable generating resource resides. Energy is measured in MWh.

"Eligible Renewable Energy Source" means any renewable energy source that qualifies for the RPS.

"Environmental Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to any Renewable Energy Source or Renewable Energy. Environmental Attributes include but are not limited to renewable energy credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) 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; (3) the reporting rights to these avoided emissions, such as 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 Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from a Renewable Energy Source, (ii) production tax credits associated with the construction or operation of a Renewable Energy Source and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to a 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 a Renewable Energy Source for compliance with local, state, or federal operating and/or air quality permits. If the Renewable Energy Source is a biomass or biogas facility and Seller receives any tradable Environmental Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Environmental Attributes to ensure that there are zero net emissions associated with the production of electricity from such Renewable Energy Source.

"Governmental Authority" means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

"Imbalance Charge" means any scheduling penalties, imbalance penalties, overpull or unauthorized overrun penalties, operational flow order penalties, cash out charges, banking charges or similar penalties, fees or charges, assessed by, or oversupply credits or payments due with respect to a failure to comply with balance and/or scheduling requirements of any applicable entity, specifically excluding any distribution charges imposed by PG&E on the delivery of the Energy hereunder.

"Other Renewable Energy Source" means any renewable energy source that is not an Eligible Renewable Energy Source, including wind, hydro-electric, geothermal, biogas including landfill gas, digester gases and gas conversion or gasification technologies, direct combustion biomass, biodiesel power producing facilities, photovoltaic, solar thermal, fuel cells using eligible renewable fuels, qualifying municipal solid waste conversion, tidal current, ocean wave, and ocean thermal technology; provided, however, that in no event shall coal or nuclear resources be deemed to be "Other Renewable Energy Source".

"Product" means any products provided by Seller to Buyer under this Confirmation.

"Renewable Energy Certificates" or "RECs" means a certificate of proof representing renewable and/or environmental attributes associated with energy production, issued through the accounting system established by the California Energy Commission under Public Utilities Code Section 399.13, that one unit of electricity was generated and delivered by an Eligible Renewable Energy Resource and such REC satisfies the requirements of RPS.

"Renewable Energy" means electricity generated from Renewable Energy Sources.

"Renewable Energy Source" means any Eligible Renewable Energy Source or Other Renewable Energy Source.

"Renewables Portfolio Standard" or "RPS" means that quantity of renewable energy resources that Buyer is required to procure pursuant to Applicable Law.

"Resource Adequacy Requirement" or "RAR" means those resource adequacy requirements that Buyer is required to comply with pursuant to Applicable Law.

"SC Agreement" means the Scheduling Coordinator Agreement by which Buyer appoints Seller as its scheduling coordinator with the CAISO.

"System Power" refers to the Energy resource mix for electricity in the State of California net of electricity sold to consumers as specific purchases.

"Tariff" shall mean the electric tariff filed by CAISO with the Federal Energy Regulatory Commission, as such document is amended and replaced by CAISO from time to time.

"Weighted Average Price" shall mean a price determined on a monthly basis as a function of Buyer's actual energy consumption and the corresponding CAISO Real-Time PG&E LAP Price. [The Parties to agree to the specific formula for calculating the actual weighted average price].

2. PRODUCT.

2.1 Seller Supply Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the "Full Requirements Product," which is comprised of:

- (a) a quantity of electrical Energy determined in accordance with this Confirmation;
- (b) a quantity of Renewable Energy as set forth in Section 2.2;
- (c) a quantity of Capacity equal to the Capacity Requirement;
- (d) Ancillary Services required to supply the foregoing electrical Energy identified in this Section 2.1 (the "Full Requirements Energy") to the Delivery Point;
- (e) distribution losses incurred in supplying Full Requirements Energy at the Delivery Point; and
- (f) CAISO scheduling coordination services as set forth in the SC Agreement.

2.2 Renewable Energy. During the Delivery Period, Seller shall provide to Buyer Renewable Energy in amounts sufficient to ensure that (i) Customers participating in Buyer's (a) "Light Green" service receive at least 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources, and (b) "Deep Green" service receive 25% (and 26.5% during the Delivery Period in 2015) of their Energy from Eligible Renewable Energy Sources and 100% of their Energy from Renewable Energy Sources and (ii) Buyer meets any RPS obligations. The Renewable Energy sold by Seller to Buyer shall also include any and all Environmental Attributes associated with such Renewable Energy. If due to any action by the CPUC or any state, federal or local governmental authority or agency, or any change in Applicable Law which occur after the execution date hereof (a "Change in Law"), the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Renewable Energy on economic terms equal to those in force on the execution date hereof. In the event the Parties cannot reach agreement on any amendments to this Confirmation within 60 days following the Change in Law, Seller shall perform its obligations hereunder with regard to Renewable Energy in accordance with the Applicable Law immediately prior to the Change in Law.

2.3 No New Construction. Seller covenants and agrees, during the Delivery Period, that (a) no new facilities are required to be constructed in order for Seller to meet its supply obligation, and (b) it shall not construct any new facilities to meet its supply obligation hereunder unless such new facility has satisfied all Applicable Law, including CEQA and any other applicable California environmental statutes relating to the construction and operation of such facility.

2.4 Non-Renewable Energy. The Energy provided under this Confirmation may be procured from unit-specific sources, provided such resources are not coal or nuclear, under terms and conditions to be agreed between the Parties. To the extent unit-specific resources have not been agreed to by the Parties, Seller will use System Power to provide the required Energy.

3. DELIVERY PERIOD. This Confirmation shall be in full force and effect as of the Transaction Date. The terms set forth herein shall apply from the Start Date through the End Date:

Start Date:	End Date:
June 1, 2010	May 31, 2015

4. LOCATION AND DELIVERY POINT.

Market Area	Supply Point	Delivery Point	Buyer's Local Utility
CAISO	NP15 EZ Gen Hub	PG&E LAP	PG&E

5. PRICING.

5.1. **Contract Price (Electricity):** Buyer shall pay the following Contract Price for Energy, including related Ancillary Services (on a pass-through basis), and CAISO scheduling services (expressed in USD per MWh) for all monthly Electricity usage that is within the Balanced Monthly Usage as set forth in the tables, below.

Year	Contract Price (in US\$/MWh)
2010	\$ _____
2011	\$ _____
2012	\$ _____
2013	\$ _____
2014	\$ _____
2015	\$ _____

5.2. **Contract Price (Renewable Energy):** Buyer shall pay the following Premium (Renewable Energy) (expressed in USD per MWh) for all monthly Renewable Energy which is in addition to the Contract Price (Electricity), including related Ancillary Services (on a pass-through basis), and CAISO scheduling services (expressed in USD per MWh) for all monthly Electricity usage as set forth in the tables, below

Year	Eligible Renewable Energy Premium (in US\$/MWh)	Other Renewable Energy Premium (in US\$/MWh)
2010	\$ _____	\$ _____
2011	\$ _____	\$ _____
2012	\$ _____	\$ _____
2013	\$ _____	\$ _____
2014	\$ _____	\$ _____
2015	\$ _____	\$ _____

5.3. **Contract Price (Resource Adequacy Capacity):** Buyer shall pay the following Contract Price (Resource Adequacy Capacity) (expressed in USD per kilowatt) on a monthly basis for Capacity as set forth in the tables below:

Year	System Resource Adequacy Capacity (in US\$/kW/month)	Bay Area Resource Adequacy Capacity (in US\$/kW/month)	Other PG&E Resource Adequacy Capacity (in US\$/kW/month)
2010		\$ _____	\$ _____
2011		\$ _____	\$ _____
2012		\$ _____	\$ _____
2013		\$ _____	\$ _____
2014		\$ _____	\$ _____
2015		\$ _____	\$ _____

5.4. **Balanced Monthly Usage:** The term “Balanced Monthly Usage” shall mean the volume of Energy that is between the “Lower Limit” and the “Upper Limit” as defined and set forth below: [add exhibit with the Baseline hourly volumes]

Balanced Monthly Usage Limits	
Lower Limit (the “Lower Limit”) (Percent below Buyer’s Baseline Monthly Usage)	Upper Limit (the “Upper Limit”) (Percent above Buyer’s Baseline Monthly Usage)
«TableStart:TotalContractedQuantity» «lower_limit»%	«upper_limit» «TableEnd:TotalContractedQuantity»%

5.5. **Pass-Through Charges:** Seller shall be responsible for bidding and scheduling the loads of all Customers in accordance with Applicable Law, including the Tariff. Seller shall pass through to Buyer all CAISO Charges for providing Energy at the Delivery Point. Buyer’s Customers will remain responsible for payment of delivery charges for transmission, distribution, public goods and other non-bypassable surcharges charged directly to Customers by PG&E. Buyer may request a review of the relevant records of Seller to confirm the accuracy of any costs passed-through to Buyer hereunder. Seller shall provide such records for Buyer’s review during normal business hours and copies of such records at Buyer’s cost and subject to any applicable confidentiality restrictions.

- 5.6. **Distribution Losses:** Buyer shall be responsible for the costs of additional Energy, Renewable Energy and Capacity provided by Seller necessary to cover Distribution Losses, which shall be determined as follows: for energy by using the distribution loss factors required for settlements with the CAISO during the billing period; for Renewable Energy by using the distribution loss factors required by the California Public Utilities Commission for Renewable Portfolio Standards compliance for the compliance year; and for capacity by using the distribution loss factors required by the California Energy Commission for Resource Adequacy compliance for the compliance year.
6. **CONTRACT QUANTITY.** Seller shall service 100% of Buyer's Energy requirements. Energy prices pursuant to this Confirmation will relate to the quantities set forth in the table below (the "Contract Quantities"):

The Contract Price relates to the Contract Quantities at (choose one)				
<input checked="" type="checkbox"/> the Supply Point <input type="checkbox"/> the Delivery Point <input type="checkbox"/> Buyer's Meter				
Commodity				
Month	Energy Baseline Monthly Usage (MWh)	Renewable Energy Baseline Annual Usage (MWh)		Resource Adequacy Obligation (in kW/month)
«ContractedQuantity» «date»	«monthly_usage»	«annual_usag e»		«Calc_Demand_RA»«TableEnd: ContractedQuantity»

Buyer shall be liable for all costs associated with delivering Energy from the Supply Point to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from the Supply Point to the Delivery Point. [For unit-specific Energy delivered hereunder pursuant to Section 2.4, Buyer shall be liable for all costs associated with delivering Energy from the generation point (the load aggregation point) to the Delivery Point and Seller shall assist Buyer (at Buyer's cost) with obtaining all Congestion Revenue Rights ("CRRs") required relating to the congestion from such generation point to the Delivery Point.]

7. **MONTHLY BILLING SETTLEMENT.** For monthly volumes within the Balanced Monthly Usage, Seller shall invoice Buyer at the Contract Price for the actual monthly usage.
- 7.1. **Usage Above Upper Limit:** During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) exceeds the Upper Limit ("Excess Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Electricity). For the Excess Quantity, Buyer shall reimburse Seller at the monthly Weighted Average Price plus all related CAISO Charges at the Delivery Point.
- 7.2. **Usage Below Lower Limit:** During any month of delivery, if Buyer's metered usage for Energy (expressed in MWh) is less than the Lower Limit ("Underused Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Electricity) and shall credit Buyer's account by an amount equal to the Underused Quantity multiplied by the monthly Weighted Average Price.
- 7.3. **Resource Adequacy Capacity Usage Above Limit.** During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement exceeds the Upper Limit ("Excess Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer an amount equal to the Upper Limit multiplied by the Contract Price (Resource Adequacy Capacity). For the Excess Resource Adequacy Capacity Quantity, Buyer shall reimburse Seller for its actual cost of buying the Excess Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to minimize the cost of Excess Resource Adequacy Capacity Quantity purchased on behalf of Buyer provided that Seller shall not enter into any such transactions for such purchases without Buyer's consent and acceptance of such transactions.
- 7.4. **Resource Adequacy Capacity Usage Below Limit.** During any month of delivery, if Buyer's received Capacity with respect to its Resource Adequacy Requirement is less than the Lower Limit ("Underused Resource Adequacy Capacity Quantity"), Seller shall invoice Buyer for an amount equal to the Lower Limit multiplied by the Contract Price (Resource Adequacy Capacity) and shall credit Buyer's account for the revenues obtained by Seller from remarketing the Underused Resource Adequacy Capacity Quantity. Seller shall make commercially reasonable efforts to maximize the value of Underused Resource Adequacy Capacity Quantity remarketed on behalf of Buyer provided that Seller shall not enter into any such transactions for remarketing without Buyer's consent and acceptance of such transactions.
8. **SEMI-ANNUAL RENEWABLE ENERGY RECONCILIATION.** No later than [January 1st and June 1st] of each calendar year during the term of this Confirmation, Buyer shall provide Seller with notice stating Buyer's then-current estimate of Buyer's compliance with the Renewable Portfolio Standards for such calendar year together with documentation setting forth amounts of Renewable Energy which were required to be delivered for the preceding six-month period pursuant to Section 2.2. Following delivery of this notice, the Parties shall work together promptly to determine whether they anticipate Seller to be compliant or not with the requirements set forth in Section 2.2 for such calendar year and the Parties shall work together in good faith to determine appropriate actions to ensure that Seller will deliver sufficient amounts of Renewable Energy to be compliant with the requirements set forth in Section 2.2.

8.1 **Excess Renewable Energy.** In the event the Parties anticipate that Buyer will purchase more Renewable Energy than required by Section 2.2 for such calendar year, Buyer may, in its sole discretion, to the extent permitted under Applicable Law, bank and carryover such excess Renewable Energy for use in the succeeding calendar year. In the event banking is not permitted by Applicable Law, then Seller shall remarket such excess Renewable Energy for Buyer and shall credit Buyer's account by an amount equal to the amount received by Seller for such sales efforts. Seller shall make commercially reasonable efforts to maximize the value of such excess Renewable Energy remarketed on behalf of Buyer provided that Seller shall not enter into any such transactions for remarketing without Buyer's consent and acceptance of such transactions.

8.2 **Deficient Renewable Energy.** In the event the Parties anticipate that Buyer will purchase less Renewable Energy than required by Section 2.2 for such calendar year, Seller shall seek to procure such additional quantities of Renewable Energy required by Buyer in such calendar year. Seller shall make commercially reasonable efforts to minimize the cost of the purchases of additional Renewable Energy purchased on behalf of Buyer provided that Seller shall not enter into any such transactions for procuring additional Renewable Energy without Buyer's consent and acceptance of such transactions. Seller shall use commercially reasonable efforts to secure such Energy at a price no greater than the Contract Price (Renewable Energy); provided, however that Buyer shall pay Seller the actual costs of such additional Renewable Energy (whether such costs exceed the Contract Price or not).

9. **CAPACITY REDUCTION.** Buyer shall notify Seller as soon as possible if there is to be a permanent decrease in the Capacity Requirement ("Capacity Reduction"). In addition, Buyer shall be deemed to have a Capacity Reduction if reduced capacity is shown on the most recent long-term forecast. Any Capacity associated with a Capacity Reduction shall be remarketed by Seller using its commercially reasonable efforts to maximize such value and no such transactions shall be executed without consultation with, and approval by, Buyer. Buyer shall pay Seller all costs Seller incurs in effectuating the Capacity Reduction, including any costs associated with hedging and other fees, costs, expenses and losses relating to selling or otherwise disposing of the Capacity, reduced by any revenues or gains realized thereby (in the aggregate, the "Resale Costs"), and Seller shall credit Buyer with an amount equal to the actual sales price for such capacity less the Resale Costs). The Parties will cooperate to use commercially reasonable efforts to reduce the cost to Buyer of a Capacity Reduction.

10. **LOAD SERVED.** The services and the Product described under this Confirmation shall be provided to the Customer accounts specified by Buyer. During the initial commencement of this Confirmation, the Customers will be switched to CCA service over an approximately 30-day period in accordance with the applicable meter read cycle for such Customer. At the end of each month, Buyer shall provide to Seller updated account information for Customers to be served during the upcoming month. Buyer shall also provide to Seller a daily report of Customer sales based on the meter data reported by the utility distribution company. Buyer shall prepare invoices to the Seller based on such daily reports. Buyer shall also deliver notice of any Customers which are no longer part of the Buyer's Marin Clean Energy program.

11. **RESOURCE SUBSTITUTION.** Buyer may independently gain control or enter into contractual obligations with respect to specific electric supply or demand-side resources procured from other third parties or independently developed by Buyer (Buyer Facilities). The Parties agree that incorporation of the Energy, Capacity, and Renewable Energy from such Buyer Facilities into this Agreement shall be in the sole discretion of Buyer, subject solely to adjustment of the price for Energy, Capacity, and Renewable Energy set forth in this Agreement hereto payable by Buyer to Seller to reflect all reasonable and actual documented costs Seller incurs in connection therewith, including, reimbursement from Buyer for any costs associated with hedging and other fees, costs, and losses directly incurred by Seller in reducing the Energy, Capacity, and Renewable Energy otherwise provided to Buyer pursuant to this Agreement, such costs to be offset by any revenues or gains of Seller realized thereby. Seller agrees to use commercially reasonable efforts to minimize such costs to Buyer.

The Buyer may pursue the development of Buyer Facilities during the term of this Agreement. Buyer shall have the right, on and after December 31, 2010, to provide Seller not less than one hundred and eighty (180) days written notice that Energy, Capacity, or Renewable Energy will be available to be incorporated into this Agreement. Unless otherwise agreed between the Parties, within ten (10) Business Days of receipt of such notice, the Seller shall notify the Buyer in writing of the costs to Seller determined in accordance with this Section 11 to be incurred in connection with incorporating such Energy, Capacity, or Renewable Energy into this Agreement. Immediately upon receipt of such written cost determination, the Buyer shall have the right (but not the obligation) to direct the Seller in writing to incorporate such Energy, Capacity, or Renewable Energy into this Agreement at the agreed upon price. In the event that Buyer Facilities are expected to become operational or effective during the term of this Confirmation, the Parties shall work in good faith to amend the underlying credit agreements in place between Seller and Buyer and its lenders so that amounts paid by Buyer's customers to PG&E and then into the lockbox arrangement discussed in Schedule M of the Master Agreement shall be apportioned as security between the Parties and/or Buyer's lenders based on the quantity of energy delivered by Buyer to its customers from the Buyer Facilities as compared with the energy delivered pursuant to this Confirmation.

As supplemented by this Confirmation including its Appendices, if any, all other Terms and Conditions contained in the Agreement remain in full force and effect.

This Confirmation is subject to the Schedule(s) identified below and that are attached hereto:

Appendix I - Schedule of Operational Services

SELLER

Sign: _____

Print: _____

Title: _____

MARIN ENERGY AUTHORITY

Sign: _____

Print: _____

Title: _____

<i>For Seller's Use Only</i>	
Trade Date	
Seller's ID	

Appendix I
Schedule of Operational Services

Reference:
Master Power Purchase and Sale Agreement
Between <Company Legal Name> ("Seller")
And Marin Energy Authority ("Buyer")
As of <Month, Day, Year> (the "Effective Date")
Transaction Date: <Month, Day, Year>

1. Description of Operational Services ("Services"). In conjunction with the attached Confirmation, Seller shall provide the Services listed below:
 - (a) Forecasting: Seller shall be responsible for preparing and submitting short-term load forecasts of Energy and Capacity for less than one year as Buyer's "Scheduling Coordinator" (as such term is defined by CAISO) necessary to meet its energy supply obligations to Buyer. The Parties shall mutually agree from time to time on the assumptions and models to be included in the short-term and long-term forecasts prepared hereunder. Buyer shall provide settlement quality meter data, resource data and load data as reasonably requested by Seller necessary for the preparation of the forecasts. Seller shall not be liable for any costs or losses incurred by or charged to Buyer as a result of Seller's forecasting obligations so long as Seller has performed its obligations in accordance with prudent industry practices. In the event an administrative agency requests clarification of forecasts provided by Seller hereunder or otherwise requires Buyer to substantiate such forecasts, Seller shall in good faith assist Buyer in responding to the administrative agency's request and assist Buyer in defending the reasonableness of such forecasts (such assistance shall exclude payment of any costs or expenses incurred by Buyer in responding to such inquiries).
 - (b) Scheduling Services: Seller shall be responsible for submitting schedules and bidding Product in accordance with the obligations of a Scheduling Coordinator as defined by the CAISO, including the scheduling and bidding for loads of all Customers served by Buyer. Seller shall perform the scheduling and bidding scheduling and bidding services in accordance with the Tariff, protocols and business practices. Seller shall establish a separate "Scheduling Coordinator" identification to isolate CAISO charges related to providing energy supply services to Buyer. Seller shall adjust schedules as necessary to assist in coordinating the transition of Resource Adequacy obligations between PG&E and Buyer. Seller shall provide the services required pursuant to this sub-paragraph in accordance with the terms of a Schedule Coordinator Services Agreement to be executed between the Parties.
 - (c) Load Balancing Services: Seller shall be responsible for and shall pay, and shall reimburse or credit Buyer if Buyer pays, all Imbalance Charges resulting from the supply of Product between the Energy Minimum and Energy Maximum, except to the extent such Imbalance Charges are a result of Buyer's failure to perform hereunder, including but not limited to the failure to receive Energy, or under the SC Agreement, or are a result of an event of Force Majeure.
 - (d) Filing: Seller shall file with CAISO all schedules and meter data reports required to be filed by the scheduling coordinator for Buyer.
 - (e) Regulatory Reporting. Seller will provide information to Buyer necessary for Buyer to timely comply with monthly, annual and periodic regulatory reporting requirements for RPS and Resource Adequacy requirements and as otherwise required by Applicable Law with respect to any Product.
2. Buyer's Obligation.
 - (a) Forecasting: Buyer shall prepare appropriate long-term load forecasts for Energy and Capacity greater than one year and Seller will assist and coordinate with Buyer in its preparation of such long-term load forecasts and Buyer shall submit such long-term load forecasts as required by the CPUC, CEC the CAISO or any other applicable regulatory body, including those required of a CCA (including all updates and revisions, the "Long-Term Forecast") and promptly provide Seller with a copy thereof, provided that every ninety (90) days Buyer shall provide Seller with either a new Long-Term Forecast or a statement that no changes to the most recent Long-Term Forecast have occurred. Seller shall have the right to request clarification regarding any change made to the Long-Term Forecast.
 - (b) Information: Buyer shall timely provide any information as reasonably required by Seller to perform the Services.

SELLER

MARIN ENERGY AUTHORITY

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____