

50-275/323

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13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re) Case No. 01-30923 DM
17 PACIFIC GAS AND ELECTRIC COMPANY,) Chapter 11
a California corporation,)
18 Debtor.)

19)
20 Federal I.D. Number 94-0742640)
21)
22)

**AMENDED DECLARATION OF
STEFANIE KATZ IN SUPPORT OF
MOTION OF SEMPRA ENERGY
TRADING CORP. FOR RELIEF
FROM STAY AND FOR ADEQUATE
PROTECTION [11 U.S.C. § 362(d)(1),
LOCAL BANKRUPTCY RULES
4000-1 AND 9013-1]**

23)
24) Hearing:
DATE: June 27, 2001
25) TIME: 1:30 p.m.
CTRM: 235 Pine Street, 22nd Floor
San Francisco, California
26) JUDGE: Hon. Dennis Montali
27)
28)

ADD: Bids Ogc Mail Center

ADD

1 I, Stefanie Katz, declare:

2 1. I am Vice President of Sempra Energy Trading Corp. ("SET"), the moving party
3 herein. I make this declaration in support of SET's Motion for Relief from Stay and for Adequate
4 Protection. I have personal knowledge of the facts set forth herein and, if called upon to testify, I
5 would and I could competently testify thereto.

6 2. In 1998, SET and Pacific Gas and Electric Company (the "Debtor" and, together with
7 SET, the "Parties") entered into a Master Gas Agreement, pursuant to which SET sold natural gas to
8 the Debtor. A true and correct copy of the Master Gas Agreement is annexed hereto as Exhibit 1.

9 3. At or about the same time, the Parties also entered into a Gas Transmission and
10 Service Agreement (the "GTSA") which allowed the Parties to borrow and later return natural gas to
11 each other at various times. A true and correct copy of the GTSA is annexed hereto as Exhibit 2.

12 4. In the event that the Parties find themselves in a situation where SET owes natural gas
13 to the Debtor or the Debtor owes natural gas to SET, the GTSA purports to impose "imbalance"
14 penalties pursuant to one of its related schedules, the G-BAL. A true and correct copy of Schedule
15 G-BAL is annexed hereto as Exhibit 3.

16 5. In the more than three years since the Parties executed the GTSA and have operated
17 under its related schedules, including the G-BAL, the Debtor *never once* has imposed imbalance
18 penalties on SET until now. Indeed, in some cases, the Debtor prolonged the imbalance by
19 requesting SET to defer its delivery to a later point in time.

20 6. In mid-1999, the Parties entered into certain market participation agreements with
21 both the California Independent System Operator Corporation and the California Power Exchange
22 Corporation. Pursuant to these agreements, SET sold electrical energy to the Debtor in the California
23 markets.

24 7. Then, in July 1999, the Parties entered into the International Swaps Dealers
25 Association agreement (the "ISDA"). A true and correct copy of the ISDA executed by SET and the
26 Debtor collectively are annexed hereto as Exhibit 6.

27 8. By mid-January 2001, SET was owed approximately \$70 million from the Debtor for
28 electricity. As a result of the Debtor's default thereunder, on January 18, 2001, SET notified the

1 Debtor that SET had canceled, liquidated and terminated all transactions under the Master Gas
2 Agreement and the ISDA and effected all applicable setoffs. Approximately one week later, the
3 Debtor objected to SET's setoff and, thereafter, the Debtor demanded that SET deliver the disputed
4 natural gas. At the same time, the Debtor purported to assert imbalance penalties under the GTSA
5 against SET.

6 9. SET objected to the Debtor's position but, nevertheless, attempted to engage in
7 discussions to resolve the outstanding issues. Although the Parties exchanged letters, no resolution
8 of these issues occurred. Finally, in late March, the Debtor acknowledged that the Parties' dispute
9 also involved the Master Gas Agreement and the ISDA. The Debtor then invoked the dispute
10 resolution procedures set forth in the GTSA. Within a week, and before that procedure had even
11 begun, the Debtor filed its bankruptcy petition.

12 10. In late April 2001, the Debtor advised SET that the purported imbalance charges were
13 continuing to accrue. However, the Debtor also advised SET that the Debtor would only hold SET
14 liable for such amounts if SET failed to return all the natural gas the Debtor claimed that SET still
15 owed.

16 11. Since the Debtor's April 6, 2001 bankruptcy filing, SET has continuously offered to
17 resolve the dispute and cure the penalties by, among other things, delivering the disputed natural gas.
18 Except for a Stipulation agreed to by the Parties pursuant to which SET will deliver the natural gas
19 demanded by the Debtor on a going forward basis commencing in June 2001, the Debtor has
20 responded by rejecting SET's attempts to cure the purported penalties.

21 I declare under the penalties of perjury under the laws of the United States that the
22 foregoing is true and correct. Executed this 4th day of June 2001, at Stamford, Connecticut.

23
24
25 
26 Stefanie Katz
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28

Exhibit 1

PG&E Core Agreement No. 5752
Dated: January 1, 1998

MASTER GAS PURCHASE AND SALES AGREEMENT

between

PACIFIC GAS AND ELECTRIC COMPANY
On Behalf of Its Core Customers

and

SEMPRA ENERGY TRADING CORP.

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MASTER GAS PURCHASE AND SALES AGREEMENT

THIS AGREEMENT is made entered into and dated as of January 1, 1998 (Effective Date), by and between PACIFIC GAS AND ELECTRIC COMPANY (PG&E Core), a California corporation, and SEMPRA ENERGY TRADING CORP., a Delaware corporation ("Company"), sometimes referred to collectively as "Parties" or singularly as "Party".

WHEREAS, PG&E Core and Company may from time to time enter into natural Gas purchase, sale, and/or exchange transactions as either Buyer or Seller pursuant to which natural Gas is delivered and received at one or more mutually agreeable delivery points as hereinafter defined; and

WHEREAS, the Parties desire to set forth certain terms and conditions applicable to any future natural Gas purchase, sale and/or exchange Transactions;

NOW, THEREFORE, in consideration of the premises and mutual benefits and covenants contained herein, PG&E Core and Company mutually agree as follows:

Article I DEFINITIONS

- 1.1 Baseload Gas: Gas supplies sold and purchased on a Firm basis for a period of one month or less.
- 1.2 Business Day: Shall mean any day except Saturday, Sunday or Federal Reserve Bank holidays.
- 1.3 Confirmation Notice: A written notice substantially in the form of Exhibit A, attached to the Agreement, which confirms or documents the terms of a Transaction (sale or purchase of natural gas) agreed to by the Parties pursuant to this Agreement, which Transaction shall be binding upon the Parties at the time it was entered into. More than one Confirmation Notice, each confirming one Transaction, may be effective at any one time.
- 1.4 Daily Contract Quantity (DCQ): Means the daily quantity of Gas to be delivered and taken as set forth in Exhibit A.

- 1.5 Delivery Period: Will be the period during which deliveries are to be made as set forth in Exhibit A.
- 1.6 Delivery Point: For all Gas delivered, will be such points as are mutually agreed upon between the Parties as set forth in Exhibit A.
- 1.7 Firm: Shall mean that either Party may interrupt its performance without liability only to the extent that such performance is prevented for reasons of *Force Majeure*, provided, however, that during *Force Majeure* interruptions, the Party invoking *Force Majeure* may be responsible for any Imbalance Charges as set forth in Article 16, Transportation, Nominations and Imbalances, related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 1.8 Force Majeure: Shall have the meaning set forth in Article 10, Non-Performance, herein.
- 1.9 Gas: Shall mean any mixture of hydrocarbons and non-combustible gases in a gaseous state consisting primarily of methane.
- 1.10 Gigajoule or "GJ": Means one billion (1,000,000,000) Joules.
- 1.11 Goods and Services Tax (GST): For purposes of this Agreement, the tax imposed under the Excise Tax Act (Canada), as may be amended from time to time.
- 1.12 Governmental Authority: Any and all governmental authorities and agencies having jurisdiction over a particular matter referenced in this Agreement.
- 1.13 Imbalance Charges: Shall mean any fees, penalties, costs or charges (in cash or kind) assessed by a Transporter for failure to satisfy the Transporter's balance and/or nomination requirements.

- 1.14 Interruptible: Shall mean that either Party may interrupt its performance at any time for any reason, whether or not caused by an event of *Force Majeure*, with no liability except such interrupting Party may be responsible for any Imbalance Charges as set forth in Article 16, Transportation, Nominations and Imbalances, related to its interruption after the nomination is made to the Transporter and until the change in deliveries and/or receipts is confirmed by the Transporter.
- 1.15 Liquidated Damages: Means, in relation to a given Transaction, the amount to be paid by the Party that is in default of its obligation to perform thereunder to the Party not in default of its obligation to perform thereof. Such an amount to be calculated in accordance with the provisions of Article 10, Non-Performance, herein.
- 1.16 MMBtu: One million (1,000,000) British thermal units (Btu's). For purposes of conversion, one MMBtu shall be equal to 1.054615 Gigajoules (GJ).
- 1.17 Multi-Month Gas: Gas supplies sold and purchased on a Firm basis for a period greater than one month.
- 1.18 NOVA: Means NOVA Gas Transmission Ltd. or its successor.
- 1.19 Price: Means the Price stated in Exhibit A subject to the provisions of Article 5, Price, herein.
- 1.20 Swing Gas: Gas supplies sold and purchased on a day-to-day basis.
- 1.21 Transaction: Means a particular agreed upon purchase and sale of Gas between the parties.
- 1.22 Transporter: Means all Gas pipeline companies, or physical facilities thereof, transporting Gas for the Parties upstream or downstream, respectively, of the Delivery Point pursuant to a particular Exhibit A.

Article 2
PROCEDURES

- 2.1 The Parties will use the following procedure respecting Confirmation Notices for Baseload Gas or Multi-Month Gas, but not for Swing Gas. Should the Parties come to an agreement regarding a Gas purchase or sale Transaction for a particular Delivery

Period, PG&E Core shall promptly confirm the Transaction in a Confirmation Notice sent by U.S. Mail, or other delivery service or by facsimile to Company by the close of the Business Day following the date of the agreement. If a Confirmation Notice is contrary to Company's--the other party's understanding of the agreement, Company will notify PG&E Core via facsimile of its understanding of the agreement before the close of the second Business Day following receipt. Unless PG&E Core is so notified, a Confirmation Notice shall be final and binding on both Parties, absent manifest error. The failure to send a Confirmation Notice for any Transaction shall not void the enforceability of any Transaction actually entered into. More than one Confirmation Notice may be in effect at any time reflecting different transactions.

- 2.2 Oral discussions that lead to an agreement regarding a Transaction may be used as evidence to show that a transaction is effective and binding on the Parties, provided that such discussions are audio recorded pursuant to Article 15.8 hereof.
- 2.3 The entire agreement between the Parties will be those provisions contained in this Agreement, and any effective Confirmation Notice and any audio recordings or transcripts made pursuant to Article 15.8. In the event of a conflict between the terms of any Confirmation Notice and the terms of this Agreement, the terms of the Confirmation Notice shall govern (except with respect to Article 10, Non-Performance.) In the event there is no effective Confirmation Notice for a Transaction, audio recordings may be utilized by the Parties to establish the terms thereof.

Article 3 DELIVERY POINT

- 3.1 The Delivery Point shall be as mutually agreed to by Buyer and Seller as set forth in Exhibit A and shall be identified by one or more pipeline receipt point, mnemonic, pool number, or other identifiers from which Buyer will take delivery of the Gas on Buyer's Transporter. Notwithstanding the above, if Buyer's Transporter is NOVA, the actual point of delivery will be determined by NOVA through NOVA's inventory transfer process. However, for the purposes of determining extraction rights at the CO₂ Extraction Plant, the Parties will assume that Buyer will take delivery of the Gas immediately downstream of the NOVA mainline receipt point.
- 3.2 Any Gas sold and purchased at Kingsgate shall be delivered by Seller or Seller's Transporter to Buyer's Transporter on the United States side of the international border at the interconnection of Alberta Natural Gas (ANG) and PG&E Gas Transmission-

Northwest (Eastport, Idaho) where Buyer will take title of the Gas, unless otherwise agreed.

Article 4
QUANTITY

- 4.1 Seller shall deliver and sell and Buyer shall receive and purchase the quantity of Gas in either MMBtu per day or Gigajoules per day, as mutually determined and agreed upon as set forth in Exhibit A. Each Party will notify the other Party by telephone of any change in the quantities of Gas to be delivered or received.

Article 5
PRICE

- 5.1 Buyer shall pay Seller the mutually agreed Price for the agreed upon quantity of Gas delivered to Buyer or for Buyer's account at the Delivery Point. This price shall be paid in the currency set forth in the Exhibit A and shall be inclusive of all fees, expenses, and taxes applicable to the production, acquisition, transportation, and processing attributable to the Gas before the Delivery Point.
- 5.2 Seller shall pay or cause to be paid all taxes, fees, levies, penalties, licenses or charges imposed by any Government Authority ("Taxes") on or with respect to the Gas prior to the Delivery Point(s). Buyer shall pay or cause to be paid all Taxes on or with respect to the Gas at the Delivery Point(s) and all Taxes at and after the Delivery Point(s). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes. Any Party entitled to an exemption from any such Taxes or charges shall furnish the other Party any necessary documentation thereof.
- 5.3 For Gas delivered to Buyer in Canada, Buyer will pay to Seller the GST on a monthly basis in addition to the Price of the Gas, if required by law. Buyer agrees that any Gas "zero rated" for purposes of GST will be exported from Canada by Buyer. Upon request, Buyer shall provide Seller with exemption certificate(s) or proof of export from Canada in a form acceptable to the appropriate Taxing Authority for tax-exempt or zero-rated sales of Gas under any Exhibit A hereunder. Seller shall remit GST in the manner prescribed by law, provide suitable evidence of that payment to the Buyer, and use commercially reasonable efforts to cooperate with Buyer's efforts to obtain a GST

refund.

Article 6
PAYMENTS

- 6.1 On or before the fifteenth (15th) day of each calendar month, Seller shall render to Buyer an invoice stating the total quantity of Gas delivered during the immediately preceding month, the amount due, and if applicable, Seller's GST number and the amount of GST due. Buyer, subject to receiving a confirming statement from Buyer's Transporter for the quantity of Gas actually delivered, shall pay Seller the amount due on or before the twenty-fifth (25th) day of each month or, if the 25th falls on a weekend and/or holiday, by the first Business Day prior to the 25th (Due Date). However, if Seller's invoice is not received by the 15th, the Due Date for any GST portion of the payment shall be ten (10) Business Days after a complete invoice is received. Payment will be made by electronic transfer of funds (wire transfer, or as mutually agreed automated clearinghouse transfer, or other method). Payment deadlines shall be deemed met when the electronic transfer is initiated by Buyer's financial agent to Seller or Seller's designee in accordance with Seller's Payment information in Article 13, Notices, on or before the Due Date. If Buyer's Transporter's confirming statement is not available to Buyer by the twentieth (20th) day of the month, then Buyer will pay Seller based on Buyer's good faith estimate of deliveries hereunder. The estimated quantities will then be corrected to reflect actual total quantities on the following month's statement, or as soon thereafter as available.
- 6.2 If, on any day, Gas is sold by Seller to Buyer at different prices and/or under more than one Exhibit A but at the same Delivery Point, and the actual quantities of Gas delivered and received for the day are less than the quantities nominated for said day, then, for payment purposes, said delivered quantities of Gas shall be allocated on a percentage equivalent basis with the quantities nominated as Multi-Month and Baseload supplies. If the quantities delivered and received exceed the combined Multi-Month and Baseload supplies nominated for that day, then the delivered quantities in excess of the Multi-Month and Baseload supplies will be allocated to any Swing purchases on a percentage equivalent basis with the Swing quantities nominated.
- 6.3 In the event either Party shall fail to pay any amount due the other Party hereto when the same is due, interest thereon shall accrue at the lesser of the maximum lawful rate, or the rate per annum equal to the Bank of America 'Reference Rate' for interest (per

annum) on the first day of the calendar month of the Due Date plus 2%, from the date the unpaid amount was due until paid. However, interest shall not accrue if the failure to make a payment or an adjustment to a previous statement is the result of (i) a delay or adjustment of Buyer's Transporter's statement or report, (ii) an error, as described in Sections 5.4 and 5.5 herein, or (iii) the action of a Governmental Authority, unless the payment of interest is so mandated by the Governmental Authority.

- 6.4 Payments for Gas purchased hereunder shall be made in accordance with Buyer's Transporter's statements. If either Party believes, in good faith, there is an error in Buyer's Transporter's statement, Buyer shall pay in full based on Buyer's Transporter's statement, and both Parties shall endeavor in good faith to resolve any such error with Buyer's Transporter.
- 6.5 In the event an error is discovered in a payment rendered hereunder, the appropriate correction shall be made. Claims for errors shall be made promptly and in writing, but in no event more than two (2) year after the month of delivery, however, any refund and/or adjustment resulting from the orders, rules or regulations issued by a Governmental Authority shall be made promptly in accordance with such orders, rules, or regulations.
- 6.6 Each Party hereto shall have the right during normal business hours to examine copies of relevant extracts of the books and records of the other only to the extent necessary to verify the accuracy of any statement, charge, computation, payment, or demand made under this Agreement. Except as provided for herein, neither Party is required to disclose to the other Party, any information or data that it deems confidential or proprietary in its sole, good faith discretion. Any information that either Party discloses which it considers to be confidential shall be marked "CONFIDENTIAL". The other Party agrees that such confidential information shall be used solely for the purposes specified in this Agreement and shall not be disclosed to any third Party except as provided for in Article 15, Miscellaneous, herein.

6.7 When making a payment to a Party hereunder, the paying Party shall have the right to offset that payment by any amounts owed to it by the other Party ("Owing Party") provided that adequate documentation is provided with payment which indicates the owed amount that has been offset.

Any difference (the "net settlement" of account balances) resulting after offsetting the total amount each party owes to the other Party shall be paid by the Party owing the greater amount, paying such difference to the Party hereto owing the lesser amount, by wire transfer on the 25th day of the month following the month of deliveries. If the 25th falls on a Saturday, Sunday or holiday other than a Monday, payment shall be made on the preceding banking day. If the purchase, sale or exchange contract calls for payment based upon seller's best gas volume estimates, where actual volumes are not available, that should be included in the net settlement amount.

In the event that any invoice or portion of any invoice as a result of the Transactions governed by this Agreement cannot be timely verified and approved for payment by net settlement in the current month such invoice or portion of an invoice shall not be held for payment by net settlement in the current month but shall be settled by net settlement, as soon as verified, by prompt payment on the net settlement payment date as set forth in Article 6.7(a) above. However, each party agrees to use every reasonable effort to achieve the objective of timely verification of invoices in order to permit payment of such invoices by the current month net settlement process.

Article 7
FINANCIAL RESPONSIBILITY

7.1 Each Party shall meet or exceed the other's credit requirements during the term of this Agreement, and shall provide any financial information as requested by the other Party for the purposes of establishing creditworthiness. Either Party may require a payment guarantee or parent company's guarantee, in form and substance acceptable to the other Party, and such guarantee shall be construed and to be enforced under the laws of the State of California.

- 7.2 If any Party fails to maintain satisfactory creditworthiness, or when reasonable grounds for insecurity of payment arise, either Party may demand adequate assurance(s) of payment. Adequate assurance means sufficient security for the term specified in this Agreement or in the applicable Confirmation Notice, and may include, but is not limited to, a standby irrevocable letter of credit, a prepayment, a security in an asset acceptable to the other Party or a guarantee by a creditworthy entity.
- 7.3 If either Party fails to give adequate assurances or satisfactory security to the other Party within two (2) Business Days of a reasonable request by the other Party, then the other Party may suspend, or refuse to enter into, any and all Transactions, until such time that credit is established to the other Party's satisfaction, or may terminate this Agreement without prior notice in accordance with the provision in 11.2.

Article 8
WARRANTY, TITLE AND INDEMNITY

- 8.1 Title to the Gas shall pass from Seller to Buyer at the Delivery Point. Seller warrants it will have the right to sell the Gas delivered hereunder, that the title on such Gas will be free from liens and adverse claims of every kind, and that it will indemnify, protect, and hold Buyer harmless from and against any and all adverse claims or encumbrances on said Gas. In the event of an adverse claim, Buyer may in addition to all its other rights, suspend its obligation of payment. Seller shall be deemed to be in exclusive control and possession of the Gas and responsible for any damage or injury caused thereby until the Gas has been delivered to Buyer, or for Buyer's account, at the Delivery Point. In addition, Seller warrants that it will have any governmental authorizations required for the delivery and sale of said Gas at the Delivery Point.
- 8.2 Without limiting the obligation of Seller, Buyer agrees to indemnify Seller and save it harmless from all suits, actions, debts, accounts, damages, costs, losses, liabilities and expenses arising from or out of claims of any or all persons to the Gas delivered hereunder or other charges thereon, which claims arise or charges attached after Title passes to Buyer.

Article 9
TERM

- 9.1 The terms and conditions of this Agreement shall be effective from the date first written above and shall remain in full force and effect unless terminated. Either Party may, at its sole option, terminate this Agreement effective thirty (30) days after giving written notice to the other Party. Any liabilities or obligations outstanding hereunder as of the termination of the Agreement shall survive such termination.

Article 10
NON-PERFORMANCE

- 10.1 Under this Agreement, a *Force Majeure* shall be an event which could not have been reasonably anticipated or controlled that prevents performance in whole or in part of this Agreement. However, for the purpose of a Baseload and Multi-Month Transactions, the term *Force Majeure* shall not include: (i) any preferential right by third Parties to purchase or call back Gas; (ii) any increases or decreases in the cost or resale price of Gas or market demand for Gas; (iii) any increases or decreases in the cost of processing or transporting Gas; (iv) any non-performance or interruption of Interruptible transportation service, unless firm transportation is also curtailed on the affected pipeline; and (v) any non-performance by Seller's Gas supplier.

Furthermore, the term *Force Majeure* shall mean, to the extent that transportation on any pipeline or Seller's supply of contract Gas is curtailed or interrupted as a result of any of the following occurrences, (i) acts of God including, without limitation, epidemics, landslides, lightning, earthquakes, fire, storms, floods or washouts; (ii) strikes, lockouts or industrial disputes or disturbances; (iii) arrests and restraints of ruler or people or interruptions by reason of government or court orders or the necessity for compliance with any court order, law, statute, ordinance of regulation promulgated by any governmental authority having or asserting jurisdiction; (iv) acts of the public enemy, wars, riots, blockades or insurrections; (v) inability to secure labor or inability to produce, supply, or transport Gas by reason of allocations promulgated by authorized governmental agencies; (vi) explosions, breakage or accident to machinery or lines of pipe at sources of supply or in pipelines; (vii) freezing of wells or pipelines in a broad geographical area; (viii) shutting-down facilities for the making of repairs, alterations, tests or maintenance at sources of supply or on pipelines

(including, without limitation, delays which are caused by the delay in receiving major items of equipment or necessary services); and any other cause of the type or kind aforesaid.

- 10.2 A *Force Majeure* shall not be deemed to occur (i) to the extent it is caused by the negligence or contributory negligence of the Party claiming the event; (ii) if the Party claiming the event, upon first becoming aware of its occurrence and nature, fails to provide prompt notice of such to the other Party; (iii) if the Party claiming the event fails to exercise, to the extent which is reasonable under the circumstances, due diligence to remove or overcome any disability to its performance caused by it.
- 10.3 If a Party fails to fulfill its obligation to sell or purchase Gas hereunder and such failure is not due to a *Force Majeure*, this shall be considered non-performance. Provisions for non-performance for Baseload and Multi-Month transactions shall be specified below. Additionally, non-performance on Baseload or Swing Gas transactions may result, at the performing Party's sole option, in the non-performing Party's suspension from eligibility for future Multi-Month and Baseload sale and purchase arrangements for a period of up to one year or longer. Non-performance on Baseload or Swing Gas shall not be grounds for termination of any existing Multi-Month or Baseload purchase agreements, except as provided under Article 11, Default, below.
- 10.4 Except for an event of *Force Majeure* of the Agreement, any Party that does not fulfill 100% of its obligation shall pay the other Party a Liquidated Damages Fee, which shall be calculated using the formulas set forth below. The calculation is based on the Price for the specified Daily Contract Quantity, and a fixed US \$0.12 per MMBtu. The Parties hereto acknowledge and agree that the amounts which may be payable hereunder Article 10.4 shall be conclusively deemed to be Liquidated Damages and shall not be construed as a penalty. No Party shall be liable to the other Party for loss of profit, punitive, exemplary, or consequential damages.

The formula for the Seller's Liquidated Damages Fee, paid to Buyer, shall be as follows:

$$\begin{aligned} LD &= (DD + US\$0.12) \times FV \\ DD &= (BDP - CP) \end{aligned}$$

The formula for Buyer's Liquidated Damages Fee, paid to Seller, shall be as follows:

$$\begin{aligned} LD &= (DD + US\$0.12) \times FV \\ DD &= (CP - SDP) \end{aligned}$$

Definitions:

- LD = Liquidated Damages Fee. The minimum non-performance fee, if the Daily Differential (DD) is less than zero, shall be US\$0.12 per MMBtu times the Failed Volume (FV).
- DD = Daily Differential. If the Daily Differential is negative, then zero will be used.
- FV = Failed Volume. The volume of Gas that was either undelivered or untaken and not excused by an event of *Force Majeure*.
- CP = Contract Price (as defined in Exhibit A)
- BDP = Buyer's Daily Price. For AECO Gas, the AECO daily index shall be used. For San Juan Gas the highest daily basin price, either San Juan or Permian will be used.*
- SDP = Seller's Daily Price. For AECO Gas, the AECO daily index shall be used. For San Juan Gas the lowest daily basin price, either San Juan or Permian will be used.*

- The Canadian price will be determined by using Canadian Enerdata Ltd.'s, publication Canadian Gas Price Reporter Canadian Domestic Gas Price Report. The daily Canadian price will be from the table Daily Spot Gas Price at AECO C & Nova Inventory Transfer, Avg. Price US\$/MMBtu.
- The daily San Juan price will be determined by using Intelligence Press, Inc., NGI's Daily Gas Price Index from the Cashmarket Prices table. The daily Permian price will be the average West Texas, El Paso Permian price. The daily San Juan price will be the average Rocky Mountains, El Paso - San Juan price.

Article 11
DEFAULT

- 11.1 Notwithstanding any other provision hereof, a "Default" shall occur if either Party (the "Defaulting Party") shall: (a) become bankrupt or insolvent, however evidenced, or be unable to pay its debts as they fall due; (b) file a petition or otherwise commence a proceeding under any bankruptcy, insolvency, reorganization or similar law, or have any such petition filed or proceeding commenced against it; (c) have a liquidator, administrator, receiver, conservator or trustee appointed with respect to it or any substantial portion of its property or assets; (d) fail to pay or perform when due any material obligation to the other Party (the "Performing Party"); or (e) fail to provide adequate assurance of its ability to perform all of its outstanding obligations to the Performing Party under this Agreement within two Business Days of a demand thereof when the Performing Party has reasonable grounds for insecurity. After a Default, the Performing Party shall have the right on two Business Days prior written notice to the Defaulting Party (except in the case of a Default specified in clause (b) above, in which case no notice is required) if there has been no cure, to cancel and liquidate this Agreement and all Exhibits and Amendments attached hereto.

- 11.2 Within (2) two Business Days after cancellation of this Agreement, the Defaulting Party shall pay to the Performing Party a settlement payment in an amount equal to the Performing Party's Loss. For the purposes of this Article, "Loss" means the amount determined by the Performing Party in a commercially reasonable manner to be its total actual losses and costs resulting from such Default and the Defaulting Party's failure to perform its obligations hereunder, including, without limitation, the cost of replacing the Defaulting Party's obligations with respect to Gas not yet delivered. In addition, the Defaulting Party shall be responsible for all costs and expenses incurred by the Performing Party as a result of that Default (including, without limitation, reasonable attorneys' fees and disbursements). However, in no event shall either Party be liable for consequential, exemplary, punitive, indirect, or, except as provided herein, incidental damages. The Performing Party may set off any or all amounts which the Defaulting Party owes to it against any or all amounts which it owes to the Defaulting Party. The Performing Party's rights under this Article are in addition to, and not in limitation or exclusion of, any other rights which the Performing Party may have under the terms of this Agreement. This provision is applicable regardless of negligence or fault.

Article 12

GOVERNMENTAL RULES, REGULATIONS AND AUTHORIZATIONS

- 12.1 This Agreement shall be subject to all valid applicable laws, orders, rules, and regulations of any Governmental Authority having jurisdiction in the sale and purchase of Gas hereunder and this Agreement shall be construed consistently with all applicable laws, orders, rules, and regulations to the extent possible. If and to the extent that any court of competent jurisdiction determines it impossible to construe any provision of this Agreement consistently with any applicable law, order, rule, or regulation and consequently holds that provision to be invalid, such holding shall in no way affect the validity of the other provisions of this Agreement, which shall remain in full force and effect.
- 12.2 Buyer and Seller agree to file on a timely basis all of their respective applications, affidavits, statements, reports and notices required under the rules or regulations of any Governmental Authority having jurisdiction in the sale and purchase of Gas hereunder and shall, upon request, provide each other with any information necessary to comply with the reporting or filing requirements of any Governmental Authority having jurisdiction.

Article 13

ASSIGNMENT

- 13.1 The provisions of this Agreement will be binding upon and inure to the benefit of the successors and assigns of each of the Parties hereto. Neither Party shall assign any of its rights or obligations hereunder without the consent of the other Party unless such an assignment is to an affiliate, subsidiary or successor-in-interest of all or part of the business of the assignor and such entity has a credit status which is at least as high as that of the assignor. Any consent required by this Article 13.1 shall not be unreasonably withheld.

Article 14
NOTICES

Any notice, request, demand, or statement provided for in this Agreement shall be in writing and deemed given when transmitted via telecopy to the telecopier number of the Parties as follows or when delivered by courier to the applicable address below:

PACIFIC GAS AND ELECTRIC COMPANY

Billings and Statements

Pacific Gas and Electric Company
P.O. Box 770000 - Mail Code B5F
San Francisco, California 94177
Attention: Gas Accountant Analyst
Telephone No. (415) 973-1157
Facsimile No. (415) 973-9213

Notices and Correspondence

Street Address:
Pacific Gas and Electric Company
Gas Procurement
P.O. Box 770000 - Mail Code B5F
San Francisco, California 94177
Attention: Contract Administrator
Telephone No. (415) 973-0928
Facsimile No. (415) 973-9213

Federal Express/Courier Address

Gas Procurement
77 Beale Street - Mail Code B5F
San Francisco, California 94105
Attention: Contract Administrator

SEMPRA ENERGY TRADING COMPANY

Billings and Statements

Sempra Energy Trading Corp.
58 Commerce Road
Stamford, CT 06902
Attention: Gas Accountant Analyst
Telephone No. (203) 355-5000
Facsimile No. (203) 355-5001

Notices and Correspondence

Street Address:
Sempra Energy Trading Corp.
58 Commerce Road
Stamford, CT 06902
Attention: Contract Administrator
Telephone No. (203) 355-5000
Facsimile No. (203) 355-5001

Payments (for electronic funds transfer)

Payment under this Agreement by either Buyer or Seller shall be made in transferable funds to the receiving Party's account. Payment account information, or future modifications of payment information, shall be provided in writing within 20 (twenty) days notice prior to payment receipt.

Questions on electronic funds transfers
PG&E Cash Mgmt. - (415) 973-7066

Article 15
MISCELLANEOUS

- 15.1 No waiver by either PG&E Core or Company of any default of the other under this Agreement shall operate as a waiver of any future default, whether of like or different character or nature.
- 15.2 This Agreement may be amended only by a written instrument executed by the Parties hereto, except as provided in Article 14, Notices, herein.
- 15.3 The headings of Articles throughout this Agreement are inserted for reference purposes only, and are not to be construed or taken into account in interpreting the terms and provisions of any Article, nor to be deemed in any way to qualify, modify or explain the effects of any such term or provision.
- 15.4 **THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.** The Parties agree to submit to the jurisdiction of the courts of the State of California for the construction, interpretation and enforcement of such laws as they relate to this Agreement. This Agreement was prepared by both Parties hereto and not by any Party to the exclusion of the other Party. Any ambiguities shall not be construed against either Party; instead an effort shall be made to reconstruct the intent of the Parties in effecting this Agreement.
- 15.5 Each Party agrees that it will maintain this Agreement, and all parts and contents thereof, in strict confidence, and that it will not cause or permit disclosure of same to any third Party without the express written consent of the other Party; provided, however, disclosure by a Party is permitted in the event and to the extent (a) required by a court or agency exercising jurisdiction over the subject matter hereof, by law, order, rule or regulation, or (b) as necessary to obtain transportation of the Gas covered by this Agreement. In such event, the disclosing Party shall require appropriate non-disclosure commitments from the Parties receiving confidential information. Notwithstanding the above, PG&E Core may disclose this Agreement to the staff of the California Public Utilities Commission on a confidential basis pursuant to Section 583 of the California Public Utilities Code.

- 15.6 Neither Party shall have nor be considered to have rights of or exclusive dealings with the other Party regarding the purchase or sale of Gas by reason of execution or operation of this Agreement and nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third Party. References to either Party or Parties shall include their respective designees or agents.
- 15.7 Except as provided for herein, neither Seller nor Buyer shall be liable for damages arising out of the sale or purchase of Gas hereunder.
- 15.8 Each Party consents to the audio recording of its employees' conversations with the other Party and any audio recording, or audio recordings with written transcripts thereof, may be submitted to any court for the purpose of establishing any matter relating to a Transaction and such audio recording (including transcript) shall be deemed to be a "writing" for purposes of applying California Uniform Commercial Code, section 2-201 to establish the enforceability of a Transaction. Any audio recording or transcripts thereof shall be made available to the other Party upon written request.

Article 16

TRANSPORTATION, NOMINATIONS, AND IMBALANCES

- 16.1 Unless otherwise agreed by the Parties in an Exhibit A-Confirmation Notice:
- (a) Seller will have the sole responsibility for nominating and transporting Gas, or ensuring that the Gas is nominated and transported, to the Delivery Point, as set forth in Exhibit A.
 - (b) Buyer will have the sole responsibility for nominating and transporting Gas, or ensuring that the Gas is nominated and transported, at and after the Delivery Point, as set forth in Exhibit A.
- 16.2 The Parties will coordinate their nomination activities, giving sufficient time to meet the deadlines of the affected Transporter(s). Each Party shall give the other Party timely prior notice, sufficient to meet the requirements of all Transporter(s) involved in the Transactions, of the quantities of Gas to be delivered and purchased each Day. Should either Party become aware that actual deliveries at the Delivery Point(s) are greater or lesser than the Scheduled Gas, such Party shall promptly notify the other Party.

16.3 The Parties will use all reasonable efforts to avoid imposition by any Transporter, including Pacific Gas and Electric Company's California Gas Transmission Department, of Imbalance Charges or Operational Flow Order (OFO) or Emergency Flow Order (EFO) noncompliance charges or similar charges. If a Buyer or Seller receives an invoice from a Transporter that includes such charges, the Parties shall determine the validity as well as the cause of such charges. If the charges were incurred as a result of Buyer's actions or inactions (which shall include, but shall not be limited to, Buyer's failure to accept quantities of Gas equal to the Scheduled Gas), then Buyer shall pay for such charges, or reimburse Seller, within ten (10) days of Buyer's receipt of Seller's invoice, for such charges paid by Seller to the Transporter. If the charges were incurred as a result of Seller's actions or inactions (which shall include, but shall not be limited to, Seller's failure to deliver quantities of Gas equal to the Scheduled Gas), then Seller shall pay for such charges or reimburse Buyer, within ten (10) days of Seller's receipt of Buyer's invoice, for such charges paid by Buyer to the Transporter.

Article 17
QUALITY AND MEASUREMENT

17.1 All Gas delivered shall meet the quality and heat content requirements of the Transporter. The Gas delivered hereunder will be at the operating pressure required by Transporter. Measurement of Gas quantities hereunder shall be in accordance with the established procedures of the Transporter. The unit of quantity measurement for purposes of this Agreement will be specified in the applicable Exhibit A.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year hereinabove written.

PACIFIC GAS AND ELECTRIC COMPANY

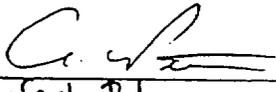
By: 

Name: Trista Berkovitz
Title: Manager- Gas Procurement

Date: 6-2-99

csb/gk

SEMPRA ENERGY TRADING CORP.

By: 

Name: Carl Peterson
Title: Vice President

Date: 7/2/99

Exhibit A, dated _____ is entered into pursuant to the Master Gas Purchase and Sales Agreement between PG&E Core and _____, dated _____ 1999. Core Agreement No. _____.

We are pleased to confirm the oral agreement of _____, 1998 between PG&E, and _____ as described below:

1. Buyer: _____
2. Seller: _____
3. Delivery Period: Begin: _____
End: _____
4. Daily Contract Quantity (DCQ): { _____ GJ/day or _____ MMBtu/day }
5. Price: CS / GJ or USS / MMBtu
{Index, if applicable}
6. Performance Obligation: {e.g., Firm or Interruptible }
7. Flex: (if applicable) Buyer shall have the right to reduce Buyer's nomination by up to 100% of the CQ for any designated days during each month of the Term.
8. Delivery Point: _____
9. Contract Terms:

This Transactions shall be governed by the terms and conditions contained in the Master Gas Purchase and Sales Agreement, PG&E CORE Agreement No. _____, and the terms and conditions set forth herein Exhibit A. In the event of a conflict between the terms in this Exhibit A and the terms of the Agreement, the terms of Exhibit A will govern.

10. Special Provisions:

ACCEPTED AND AGREED

PACIFIC GAS AND ELECTRIC COMPANY

SEMPRA ENERGY TRADING CORP.

Signature: _____

Signature: _____

Name: David W. Clare
Title: Director - Gas & Transportation Trading

Name: _____
Title: _____

Date: _____

Date: _____

Exhibit 2

GAS TRANSMISSION SERVICE AGREEMENT

This Gas Transmission Service Agreement (GTSA) is made by and between PACIFIC GAS AND ELECTRIC COMPANY (PG&E), a California Corporation, and SEMPRA ENERGY TRADING CORP. (Customer), a Delaware Corporation. PG&E and Customer each shall be referred to herein as a Party and together as Parties.

Subject to the provisions of this GTSA and the applicable PG&E gas Rules and Rate Schedules, PG&E agrees to make available to Customer the following categories of service:

Gold Coast Transportation Services
Golden Gate Market Center Services, including Storage Services

Election of any or all of such services by Customer and acceptance and authorization by PG&E shall be evidenced by the signatures of Customer and PG&E on the Exhibit(s) under this GTSA which shall describe the specific terms and conditions of the service transactions to be performed.

1. TERM

1.1 This GTSA shall be effective upon the date that both parties have executed the agreement, or on March 1, 1998. The initial term shall be twelve (12) months. Thereafter this GTSA shall continue from month to month unless terminated by either Party upon thirty (30) days' prior written notice to the other. Notwithstanding the above: (a) Neither Customer nor PG&E may unilaterally terminate this GTSA prior to the termination date for service set forth in any Exhibit executed by Customer and PG&E under this GTSA, and (b) PG&E may terminate this GTSA at any time in accordance with Paragraph 6.3 hereof or in accordance with PG&E's gas Rule 25 and may do so without thirty (30) days' prior written notice to Customer.

2. RATES AND CONTRACT QUANTITIES

2.1 The rate(s) to be charged for service(s) provided pursuant to this GTSA shall be as specified in the Exhibit(s) incorporated hereunder and applicable Rate Schedule(s), and Customer shall pay PG&E each billing period for all services rendered at the agreed-upon price.

2.2 PG&E shall have the unilateral right to apply at any time to the appropriate regulatory authority and, subject to approval thereof, make effective changes in the rates and charges applicable to services provided under this GTSA, the Rate Schedule(s) pursuant to which service hereunder is rendered, or any provisions of the applicable PG&E gas Rules.

2.3 The contract quantities for all services provided pursuant to this GTSA shall be as specified in the Exhibits incorporated hereunder.

3. BILLING AND PAYMENT

3.1 Bills shall be rendered and payments shall be due in accordance with gas Rule 25, Section C.

3.2 If an error is discovered in any bill rendered by PG&E, the amount of such error shall be adjusted, provided that a valid claim therefore is made within twelve (12) months from the date of the bill containing the original error.

3.3 Either Party may submit a billing dispute for resolution in accordance with Section 9; however, PG&E's remedies for late payments pursuant to Section C of gas Rule 25 shall be available notwithstanding such dispute resolution process.

4. GAS QUALITY AND OPERATING PROCEDURES

4.1 Gas delivered to PG&E by or on behalf of Customer pursuant to this GTSA shall meet the gas quality specifications set forth in PG&E gas Rule 21, as may be amended from time to time.

4.2 Customer shall conform to the operating procedures set forth in all applicable PG&E gas Rules in effect during the term of this GTSA.

5. WARRANTY OF TITLE AND RISK OF LOSS

5.1 Customer warrants, for itself and its successors, that it will have at the time of delivery of gas to PG&E good title to such gas and that all gas delivered to PG&E for performance of service hereunder shall be eligible for all requested service under applicable rules, regulations, or orders of the California Public Utilities Commission (CPUC), or other agency having jurisdiction. Customer shall indemnify PG&E and save and hold PG&E harmless from all claims, demands, suits, actions, damages, losses, expense (including attorneys' fees) and costs connected with regulatory, administrative, or judicial proceedings arising from any breach of this warranty, or any breach of this indemnification provision.

5.2 Risk of loss of gas delivered to PG&E pursuant to an Exhibit incorporated hereunder shall pass to PG&E upon delivery of such gas to PG&E and shall pass from PG&E to Customer upon delivery from PG&E to or on behalf of Customer.

6. GOVERNMENTAL AUTHORITY

6.1 All of the provisions of this GTSA shall be subject to all present and future applicable federal or state laws, orders, rules and regulations of governmental authorities having jurisdiction. This GTSA shall at all times be subject to such changes or modifications by the CPUC as the CPUC may, from time to time, direct in the exercise of its jurisdiction.

6.2 The Parties recognize that PG&E has entered into transactions hereunder based on its good faith understanding that all acts, obligations, and services performed or to be performed by PG&E hereunder, and the charges therefore, are exempt from the regulation of the Federal Energy Regulatory Commission (FERC), except those interstate transactions that are permitted under PG&E's blanket certificate issued pursuant to Section 284.224 of the FERC's regulations. These interstate transactions shall be provided subject to the provisions of Part 284, Subpart C of the FERC's regulations as may be amended from time to time.

6.3 PG&E retains the right to terminate immediately the offering or furnishing of any services hereunder if the continued performance of such services could reasonably be determined to jeopardize continuance of PG&E's Hinshaw Exemption pursuant to Section 1 (c) of the Natural Gas Act.

7. ASSIGNMENT

7.1 Assignment of GTSA: This GTSA shall be binding on and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that neither Party shall assign or transfer this GTSA or any part thereof, or any right or obligation hereunder, without the written consent of the other Party, which consent may not be withheld unreasonably. Notwithstanding the above, assignment of the entire interest and obligations of PG&E hereunder may be made to a parent or affiliate of PG&E, or to an entity succeeding to all or substantially all of the business properties and assets of PG&E, following written notice to Customer, and without the written consent of the Customer.

7.2 Assignment of Exhibits: Notwithstanding Paragraph 7.1, Customer may assign individual Exhibits incorporated hereunder to third parties who have executed a GTSA with PG&E subject to the following conditions:

7.2.1 Such assignments may consist of all or a portion of Customer's contract quantity and all or part of Customer's remaining contract term as set forth in the subject Exhibit. In order to effect assignment of an individual Exhibit, Customer must provide PG&E with written notice using an Assignment of Gas Transmission Services (Form No. 79-867) bearing the proposed assignee's authorized signature and must obtain PG&E's written consent.

7.2.2 If PG&E determines that the proposed assignee satisfies PG&E's creditworthiness requirements as specified in gas Rule 25, PG&E shall approve the assignment and thereafter the assignee shall be responsible for the performance of all obligations and duties pursuant to the assigned Exhibit and shall make any payments due under the assigned Exhibit directly to PG&E.

7.2.3 If PG&E determines that the proposed assignee does not satisfy PG&E's creditworthiness requirements, PG&E will approve the assignment if Customer agrees in writing to be secondarily liable for non-performance under the Exhibit by the assignee and if PG&E determines that Customer is sufficiently creditworthy.

8. DISPUTE RESOLUTION

8.1 Any dispute, claim, or need for interpretation arising out of or relating to this GTSA which cannot be resolved after good faith discussions between the Parties within thirty (30) days of written notice from either Party to the other that there is such a dispute, claim, or need for interpretation shall be resolved in the manner set forth in Paragraphs 8.2 and 8.3, which shall be in lieu of litigation before any regulatory agency or in any state or federal court except to the extent that (i) both Parties agree to bring the matter before the CPUC; (ii) the matter is within the jurisdiction of the CPUC, and (iii) the CPUC is willing to accept the matter for resolution.

8.2 At either Party's request, the Parties shall submit their dispute to non-binding mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association (AAA). The Parties shall establish specific ground rules for the mediation at least fourteen (14) days in advance of the mediation meeting. The mediation shall be held in San Francisco, California, and shall commence within thirty (30) days of a Party's request for mediation. Each Party shall bear its own mediation costs. The costs and expenses of the mediator shall be divided equally between the Parties.

8.3 If no settlement is reached as a result of the procedures prescribed in Paragraph 8.2, the matter shall be submitted to binding arbitration pursuant to the Commercial Arbitration Rules of the AAA (including any rules for expedition of the hearing process); provided, however, such rules shall be modified as necessary to reflect the following:

8.3.1 Unless the Parties otherwise agree, the arbitration panel shall be composed of three persons. Each Party shall nominate one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall act as the presiding arbitrator or chair of the panel. If either Party fails to nominate an arbitrator within thirty (30) days of receiving notice of the nomination of an arbitrator by the other Party, such (second) arbitrator shall be appointed by the AAA at the request of the first Party. If the two arbitrators so selected fail to select a third arbitrator, the third arbitrator shall be appointed by the AAA. Should a vacancy occur on the panel, it shall be filled by the method by which that arbitrator was originally selected.

8.3.2 The arbitration shall be held at a location to be agreed to by the Parties, or, failing such an agreement, at San Francisco, California.

8.3.3 The arbitrators shall hold a preliminary meeting with the Parties within thirty (30) calendar days of the appointment of the third arbitrator for the purpose of

determining or clarifying the issues to be decided in the arbitration, the specified procedures to be followed, and the schedule for briefing and/or hearings. The arbitrators shall hold a hearing and, within one hundred and twenty (120) calendar days of the preliminary meeting (except in extraordinary cases), shall issue a written decision, supported by a majority of the arbitrators, and include findings of fact and conclusions of law. Such decision shall thereafter be deemed to be part of this GTSA and incorporated by reference herein.

8.3.4 If one or both of the Parties have a substantial need for discovery in order to prepare for the arbitration hearing, the Parties shall attempt in good faith to agree on a minimum plan for expeditious discovery. Should they fail to reach agreement, either Party may request a joint meeting with the presiding arbitrator to explain points of agreement and disagreement, and the presiding arbitrator shall thereafter promptly determine the scope of discovery and the time allowed therefore.

8.3.5 Pending such written decision and findings of facts and conclusions of law as set forth in subparagraph 8.3.3, the Parties shall continue to operate under the GTSA as on the date the arbitration was requested; however, the decision by the panel should consider specifically the appropriateness of retroactive adjustments to the date the dispute first arose.

8.3.6 The allocation of costs of arbitration shall be considered and determined by the panel in connection with its decision, and, for example, the entire costs of such proceeding, including reasonable attorneys' fees (for in-house and outside counsel) may be awarded to the prevailing Party.

8.3.7 The United States District Court for the Northern District of California or a Superior Court of the State of California may enter judgment upon the panel's decision, either by confirming the decision or by vacating, modifying, or correcting the decision. The Court may vacate, modify, or correct any such decision only: (i) if there exist any of the grounds referred to in the United States Arbitration Act, or (ii) to the extent that the panel's conclusions of law are erroneous.

8.3.8 In the event it is necessary to enforce an arbitration award, all costs of enforcement, including reasonable attorneys' fees (for in-house and outside counsel), shall be payable to the prevailing Party.

8.4 The resolution of disputes subject to this Section 8 shall be governed, and the arbitrators shall render their decision in accordance with, the substantive laws of the State of California, without regard to its choice of law rules. Notwithstanding the foregoing, questions concerning the arbitrability of any issue under this dispute resolution clause shall be governed exclusively by the United States Arbitration Act.

8.5 Neither Party shall be liable under this GTSA for any punitive or exemplary damages.

9. FORCE MAJEURE

9.1 The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockage, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, the necessity for making non-routine repairs, non-routine alterations to machinery or lines of pipe, freezing lines of pipe, acts of civil or military authority (including, but not limited to, courts, or administrative or regulatory agencies), and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension and which, by the exercise of due diligence, that Party is unable to prevent or overcome.

9.1.1 It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above

requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts when such course is inadvisable in the discretion of the Party having the difficulty.

9.1.2 It is understood and agreed that "force majeure" as used herein shall not include, nor are exclusions limited to, scheduled and routine maintenance and repairs of machinery and lines of pipe, operational flow orders or emergency flow orders in accordance with PG&E gas Rule 14, financial considerations, or the unavailability of upstream or downstream transportation or supply.

9.2 In the event Customer or PG&E is rendered unable, wholly or in part, by force majeure to carry out its obligations under this GTSA, it is agreed that, upon such Party giving notice and reasonably full particulars of such force majeure in writing (or by facsimile or telephone if confirmed in writing within seventy-two (72) hours) to the other Party within five business days of the onset of the force majeure condition, then the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the effects of the cause, and the Party subject to such cause shall remedy it so far as possible with all reasonable dispatch; provided, however, that no force majeure shall be cause for delay in the payment for services rendered prior to its inception.

10. NOTICE

10.1 Unless expressly provided herein to the contrary, any notice called for in this GTSA shall be in writing and shall be considered as having been given if delivered by facsimile (if followed in a timely manner by confirming documents), courier, or registered mail, with all postage or charges prepaid, to either PG&E or Customer at the address designated below.

10.2 Routine communications, including monthly statements and payment, shall be considered duly delivered when received by ordinary mail or by facsimile (if confirmed by telephone communication and followed by confirming documents).

10.3 Customer's daily nominations shall be considered as duly delivered when received by ordinary mail, facsimile, or electronic data interchange.

10.4 The addresses of the Parties to be used for notices are as follows:

Formal Communications, Offers and Acceptances

Name: Ms. Stefanie Katz
Company: Sempra Energy Trading Corp.
Department: Energy
Address: One Greenwich Plaza
Greenwich, CT 06830
Telephone No.: (203) 861-3669
Facsimile No.: (203) 861-3827

Pacific Gas and Electric Company
Manager, Products and Sales
P. O. Box 770000, Mail Code N15A
San Francisco, CA 94177
Telephone No.: (415) 973-7974
Facsimile No.: (415) 973-0881

Billing Communications

Name: Mr. Carl Peterson
Company: Sempra Energy Trading Corp.
Department: Energy
Address: One Greenwich Plaza
Greenwich, CT 06830
Telephone No.: (203) 861-3765
Facsimile No.: (203) 861-3827

Pacific Gas and Electric Company
Manager, Products and Sales
P. O. Box 770000, Mail Code N15A
San Francisco, CA 94177
Telephone No.: (415) 973-7974
Facsimile No.: (415) 973-0881

Payments

Name: Mr. Carl Peterson
Company: Sempra Energy Trading Corp.
Department: Energy
Address: One Greenwich Plaza
Greenwich, CT 06830
Telephone No.: (203) 861-3765
Facsimile No.: (203) 861-3827

Pacific Gas and Electric Company
Payment Processing Center
P. O. Box 770000, Mail Code B5C
San Francisco, CA 94177
Telephone No.: (800) 743-5000

Operating Communications

Name: Mr. Carl Peterson
Company: Sempra Energy Trading Corp.
Department: Energy
Address: One Greenwich Plaza
Greenwich, CT 06830
Telephone No.: (203) 861-3765
Facsimile No.: (203) 861-3827

Pacific Gas and Electric Company
Gas Transportation Supervisor
P. O. Box 770000, Mail Code B16A
San Francisco, CA 94177
Telephone No.: (415) 973-2424
Facsimile No.: (415) 973-0649

10.5 Either Party may from time to time change or designate any other name or address for such purposes upon timely notice by the Party requesting such change.

11. ADDITIONAL PROVISIONS

11.1 This GTSA and the obligations of the Parties hereunder shall be controlled by, interpreted, and construed in accordance with the laws of the state of California without regard to the principles of conflicts of law or other principles that might refer the governance of the construction of this GTSA to the law of another jurisdiction.

11.2 This GTSA in all respects shall be and remains subject to applicable PG&E gas Rules and Rate Schedules in effect during the term of this GTSA as they may change from time to time.

11.3 PG&E shall not be required to perform or to continue to perform service under this GTSA if Customer becomes insolvent, or fails to establish or confirm its creditworthiness within a reasonable period following PG&E's request. Customer agrees to provide PG&E, initially and on a continuing basis as requested by PG&E, evidence of Customer's creditworthiness as a condition of Customer's eligibility to receive service under this GTSA.

11.4 No consent or waiver, express or implied, by either Party to any breach or default by the other Party in the performance of obligations hereunder shall be deemed or construed to be a consent to or waiver of any other breach or default, whether of a like or of a different character. Failure on the part of either Party to complain of any act or failure to act by the other Party or to declare the other Party in default, regardless of how long such failure continues, shall not constitute a waiver by such Party of any of its rights hereunder.

11.5 No Party shall be obligated to finance, construct, add to, alter, or modify any facilities in connection with the receipt or performance of services pursuant to this GTSA.

11.6 This GTSA is intended to be solely for the benefit of the Parties and their permitted successors and assigns, and, except as may be specifically set forth herein, is not intended to and shall not be construed to confer upon any other party any other rights or benefits. Nothing in this GTSA shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party.

11.7 Nothing in this GTSA shall be deemed to create any rights or obligations between the Parties hereto after the termination or expiration of this GTSA; however, termination or expiration of this GTSA shall not relieve either Party of the obligation to correct any volume

imbalances; or relieve Customer of the obligation to pay any amounts due to PG&E for service provided prior to the date of termination or expiration.

11.8 PG&E shall have no liability to any Customer, or any assignee thereof, for any curtailment or interruption of service or losses of gas pursuant to this GTSA, PG&E's gas Rules or rate schedules. The liability of PG&E for any curtailments or interruptions or gas losses otherwise arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the gas services or facilities furnished by PG&E shall in no event exceed an amount equal to any applicable pro rata charges for the period during which the services or facilities are affected by the mistake, omission, interruption, delay, error or defect and under no circumstances shall PG&E be liable to Customer, or assignee thereof, for consequential, indirect or punitive damages for an interruption or curtailment of service or losses of gas, whether arising in contract, Tort (including negligence) or otherwise; provided, however, that the provisions hereof shall not apply to damages caused by willful misconduct, fraudulent conduct or violations of law.

11.9 Unless otherwise provided, all substances, whether or not of commercial value and including all liquid hydrocarbons of whatever nature, that PG&E recovers in the normal course of providing service to Customer hereunder, shall be PG&E's sole property, and PG&E shall have no obligation to account to Customer for any value that may attach or be said to attach to such substances.

11.10 Any provision of this GTSA that is prohibited by or unenforceable in any applicable jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

11.11 PG&E may accept facsimile copies of this GTSA and any other notices or agreements hereunder, and the same shall be binding on Customer as though they were original signed documents. PG&E may accept the signature of any representative of Customer on any such agreement or notice, and the same shall be binding on Customer without any obligation on PG&E's part to verify that the person so signing has authority to bind Customer provided that Customer may, and has the affirmative obligation to, provide PG&E with a list of people authorized by Customer to execute such documents or agreements with PG&E, and, if Customer provides such a list, PG&E shall limit its acceptance of and reliance on such documents accordingly.

11.12 This GTSA and the Exhibits executed by Customer and PG&E under this GTSA constitute the entire agreement of the Parties on the matters set forth herein, and may be amended or modified only by an instrument in writing executed by both Parties (except changes to names and addresses in Paragraph 10.4).

IN WITNESS WHEREOF, the Parties hereto have caused this GTSA to be executed and in effect.

FOR SEMPRA ENERGY TRADING CORP. [Ⓢ]
Signature [Signature]
Name CAROL L. THOMAS
VICIA THOMAS
Title of Authorized Representative
Date 1/29/98

FOR PACIFIC GAS AND ELECTRIC COMPANY:
Signature [Signature]
Name DANIEL F. THOMAS
MANAGER, PRODUCTS AND SALES
Title of Authorized Representative
Date 2/18/98

Incorporated Attachment(s): Applicable Exhibit(s)
Illustrative Attachments: Gas Rules 1, 14, 21, 25, 26



SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS

APPLICABILITY: This rate schedule provides the terms and conditions pursuant to which PG&E will endeavor to balance volumes of gas it receives into its pipeline system with the volume it delivers to End-Use Customers and to Off-System Delivery Points. In addition, this schedule provides for balancing PG&E's Market Center volumes. Under this schedule, PG&E will calculate, maintain, and carry imbalances; provide incentives for Customers to avoid and minimize imbalances; facilitate elimination of imbalances; and cash out imbalances. Schedule G-BAL applies to PG&E's Core Procurement Department transactions on behalf of PG&E's core procurement Customers, and to all Customers taking services under Schedules G-CT (or other core rate schedule(s) where procurement service is provided by a third party), to Schedules G-NT, G-EG, G-COG, G-NGV4, G-WSL, G-AFT, G-SFT, G-NFT, G-AA, G-NAA, G-AFTOFF, G-AAOFF, G-NFTOFF, G-NAAOFF, G-PARK, G-LEND, and to procurement service provided by PG&E to Customers under Schedule G-CSP. (T)

Imbalances generally will be maintained at the delivery point. (D)

This schedule is the default supply schedule for Noncore End-Use Customers who do not execute a Natural Gas Service Agreement (NGSA) (Form No. 79-756), pursuant to the terms of Schedules G-NT, G-COG or G-CSP. (D)

TERRITORY: Schedule G-BAL applies everywhere PG&E provides natural gas service. (L)

BALANCING AGGREGATION: Noncore End-Use Customers may elect to aggregate Cumulative Imbalances for multiple premises, or they may assign their balancing obligations to a Balancing Agent, as described below. If the Cumulative Imbalances are aggregated or assigned to a Balancing Agent, PG&E will aggregate individual Balancing Service accounts into a single Balancing Service account, with both the usage and the deliveries aggregated. A single Tolerance Band, as defined below, shall apply to the aggregated quantities. (L)

BALANCING AGENT: The Balancing Agent is the party financially responsible for managing and clearing imbalances described in Schedule G-BAL. The Balancing Agent shall be responsible for all applicable balancing, capacity allocation and constraint obligations, charges, and credits related to gas service. The following are Balancing Agents: Core Transportation Agent (CTA), PG&E Core Procurement Department, Noncore Balancing Aggregation Agent (NBAA) Agent, a Noncore End-Use Customer or Wholesale Customer that is not part of an NBAA. All Balancing Agents are subject to creditworthiness requirements. (N)

For deliveries to a Core Transportation Group, the CTA will be responsible for any imbalances. For deliveries to storage and to off-system points, the Customer holding the Gas Transmission Service Agreement (GTSA) (Form No. 79-866) will be responsible for imbalances.

For deliveries made to Noncore End-Use Customers, the Noncore End-Use Customer will be responsible for imbalances; however, Noncore End-Use Customers may designate a Balancing Agent to manage and assume responsibility for the Noncore End-Use Customer's obligations under this schedule. (N)

A Noncore End-Use Customer may change its Balancing Agent no more than once per month. (D)
(L)

(Continued)

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42359



SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

MONTHLY
BALANCING
OPTION:
(Cont'd.)

CUMULATIVE IMBALANCE FOR NONCORE CUSTOMERS:

A Balancing Agent's Cumulative Imbalance shall be the difference, for each calendar month, between metered usage (adjusted for shrinkage) and the actual monthly gas deliveries, plus any adjustments and tolerance carried forward from prior months.

A Cumulative Imbalance quantity will be stated each month on the Cumulative Imbalance Statement.

CUMULATIVE IMBALANCE FOR CORE PROCUREMENT GROUPS:

For a Core Procurement Group (which includes PG&E's Core Procurement Department and Core Transport Groups, as defined in Schedule G-CT (CP Group)), PG&E will determine the Cumulative Imbalance as follows:

PG&E will provide each CP Group with Core Load Forecasting and Determination Service, which will include 24-hour and 48-hour forecasts prior to the Gas Day. As part of this service, PG&E will also provide a Gas Day estimated usage (Determined Usage) for the CP Group. Determined Usage will be based on the historical usage of the CP Group's customer mix, adjusted for climatic and operational conditions.

For a CP Group, the Cumulative Imbalance shall be the difference, for each calendar month, between Determined Usage (adjusted for shrinkage) and the actual monthly gas deliveries plus any Operating Imbalance and tolerance carried forward from prior months.

OPERATING IMBALANCE FOR CORE PROCUREMENT GROUPS:

For CP Groups, each Core End-Use Customer's cycle billed usage will be divided by the number of days within the billing cycle, then weighted on a daily basis to match the daily fluctuations of the CP Group's Determined Usage within the same billing cycle (Daily Weighted Usage).

The Operating Imbalance for each CP Group is the difference between the sum of each day's Determined Usage within a calendar month and the sum of each day's Daily Weighted Usage for each of the Core End-Use Customers for that calendar month. The Operating Imbalance Carryover is the accumulation of untraded monthly Operating Imbalances plus prior month accounting adjustments.

Each month, PG&E will provide the CP Group with an Operating Imbalance Statement. That Operating Imbalance Statement will be processed within two (2) months following the processing of the Cumulative Imbalance Statement for the same month. The processing delay ensures that most of the billing cycle usage for the calendar month has been measured and billed. If a CP Group incurs a Cumulative Imbalance cashout and the subsequent Operating Imbalance indicates that the Group's deliveries more closely matched the Group's actual gas use, then PG&E will reverse the cashout to the extent applicable.

(L)

(T)

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

MONTHLY
BALANCING
OPTIONS:
(Cont'd.)

CASHOUT FOR MONTHLY BALANCING:

Monthly imbalances after trading is completed, which exceed the Monthly Tolerance Band are cashed out for both the commodity component and the transportation component.

(L)
(N)
|
(N)

The Commodity Cashout for each month is based on the following four (4) imbalance categories: Over-deliveries and under-deliveries in the imbalance range of greater than five percent (5%) and less than or equal to ten percent (10%) of usage (Tier I Cashout), and over-deliveries and under-deliveries in the imbalance range of greater than ten percent (10%) of usage (Tier II Cashout). The amount of gas in each category is multiplied by the appropriate price as determined below to calculate the commodity cashout portion of the bill.

(T)
(L)
|
(T)
(N)
|
(N)

The Transportation Cashout for each month is based only on the under or over-delivery greater than five percent (5%). This amount is multiplied by the appropriate transportation cashout price as determined below to calculate the transportation cashout portion of the bill. In the case of an overdelivery, this will be a credit.

(N)

SELF-
BALANCING
OPTION:

The Self-Balancing option requires daily balancing within specified limits. To participate in Self-Balancing, the Balancing Agent must have an NBAA or CP Group.

To elect Self-Balancing, the Balancing Agent must sign a Self-Balancing Amendment (Form No. 79-971) and the NBAA or CTA agreement will be subject to the terms of Self-Balancing for the period identified in the Amendment.

SELF-BALANCING CREDIT:

The Self-Balancing option allows a Balancing Agent to receive a credit. The Self-Balancing credit is \$0.0050 per decatherm multiplied by the actual recorded monthly usage. Credits will be provided to the Balancing Agent on a monthly basis, subject to adjustments.

LIMIT ON SELF-BALANCING PARTICIPATION:

When a Balancing Agent elects Self-Balancing, their share of the balancing storage assets will be assigned to and marketed through PG&E's at-risk unbundled storage program. The amount of storage assets allocated to PG&E's at-risk unbundled storage program is based on the Balancing Agent's End-Use Customer's annual average usage as a percentage of PG&E's average annual system usage. PG&E will allow the election of Self-Balancing until the storage balancing assets of 1.1 Bcf of inventory, 25 MMcf per day of injection and 35 MMcf per day of withdrawal are reached. If these limits are reached, PG&E will restrict further elections for Self-Balancing until capacity is made available or the OFO Forum raises the limits.

(N)
|
(L)
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(L)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

SELF-BALANCING OPTION: (Cont'd.)

DAILY IMBALANCE LIMITS FOR SELF-BALANCING:

A Balancing Agent electing Self-Balancing will be subject to two (2) imbalance limits each day:

1. The Daily Imbalance cannot exceed plus or minus ten percent ($\pm 10\%$) of that day's metered usage for noncore or 24-hour forecast usage for core, except on OFO or EFO days. On OFO or EFO days the applicable OFO or EFO tolerance band and noncompliance charge will apply.
2. A Balancing Agent must also maintain an Accumulated Daily Imbalance less than, or equal to, plus or minus one percent ($\pm 1\%$) of the Pre-Determined Monthly Usage for that month.

The Pre-Determined Monthly Usage (PDMU) for noncore End-Use Customers will be equal to the Monthly Contract Quantity specified in the Exhibit B of their NGSAs. PG&E will provide the Self-Balancing CTA with a PDMU at least 5 days prior to the first of each month. The PDMU for CP Groups will be determined by PG&E as a function of the sum of the actual usage of the End-Use Customers within the CP Group in the same month of the prior year. Adjustments may be applied for missing usage information for the prior year, mid-month starts and stops of service by the Balancing Agent, and for weather effects.

SELF-BALANCING NONCOMPLIANCE CHARGES:

Self-Balancing Noncompliance charges will be calculated as the sum of the following:

1. **Daily Noncompliance Charge:** For each non-OFO or non-EFO day, a noncompliance charge equal to \$1.00 per decatherm for the portion of the daily imbalance that exceeds plus or minus ten percent ($\pm 10\%$) of the daily metered usage for noncore or 24-hour forecast usage for core per day. On OFO or EFO days the corresponding tolerance band and OFO or EFO charge will apply.
2. **Accumulated Daily Imbalance Noncompliance Charge:** For each day, including OFO and EFO days, a noncompliance charge equal to \$1.00 per decatherm per day for each day when the Accumulated Daily Imbalance exceeds plus or minus one percent ($\pm 1\%$) of the Pre-Determined Monthly Usage. (See gas Rule 14 for possible exemptions from noncompliance charges on OFO days.)

(N)

(N)

(L)

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

SELF-BALANCING
OPTION:
(Cont'd.)

ANNUAL SELF-BALANCING ELECTION PERIOD:

A Balancing Agent may elect the Self-Balancing option annually in February. The election is effective for a minimum term of one year that begins on April 1, and ending on the following March 31. Election requests for Self-Balancing will be accepted on a first-come, first-served basis. A Balancing Agent may not combine Self-Balancing and Monthly Balancing Customers in a single group.

(N)

CHANGES TO A BALANCING GROUP AFTER THE ELECTION PERIOD:

Circumstances may arise which would require the release of an End-Use Customer from a Self-Balancing Group during the year. PG&E will agree to changes that result from, but are not limited to, the following: failure of the business, change in core or noncore status, change of ownership, End-Use Customer changing Balancing Agents, and the termination of a Natural Gas Service Agreement, CTA Agreement, or NBAA. A Balancing Agent may not elect to move End-Use Customers from their Self-Balancing group to their Monthly Balancing group after the election period has ended nor may a Balancing Agent add a customer from their Monthly Balancing group to their Self-Balancing Group. End-Use Customers may be added to an Agent's Self-Balancing group if the End-Use Customer is not currently served by that same Agent under Monthly Balancing. All additions or deletions to a Self-Balancing group after the Election Period has ended must be agreed to by PG&E prior to the effective date of the change.

REQUIREMENT FOR DAILY USAGE RECORDING GAS METERS:

Noncore End-Use Customers must have a minimum of one daily usage recording meter prior to the Annual Self-Balancing Election period. The cost of adding daily usage recording devices and/or data access is the responsibility of the customer. Noncore End-Use Customers who add daily usage recording devices after the election period will be allowed to convert to Self-Balancing during the next election period, if capacity is available. (See Limitations on Self-Balancing.) Meters with a capacity less than 100 Dth per day at a customer premises with large hourly recording meters are exempted from the hourly recording requirement. The average daily usage of these meters will be included in the daily calculations.

(N)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

SELF-BALANCING
OPTION:
(Cont'd.)

OPERATING IMBALANCE FOR SELF-BALANCING CP GROUPS:

The Operating Imbalance for each CP Group that elects the Self-Balancing option shall be the difference between the sum of each day's 24-hour Core Load Forecast and the sum of each day's Daily Weighted Usage of the Core End-Use Customers included in that CP Group for that calendar month.

(N)

CASHOUT FOR SELF-BALANCING:

For those balancing groups subject to Self-Balancing, any gas imbalances remaining after the imbalance trading period that are in excess of plus or minus one percent ($\pm 1\%$) of the Pre-Determined Monthly Usage will be cashed out for both the commodity component and the transportation component. The commodity cashout is at the appropriate Tier II Cashout price as determined below. Any remaining gas imbalances within the tolerance band ($\pm 1\%$) will be included in Accumulated Daily Imbalance calculated for the first day of the month following trading period. The transportation cashout is at the appropriate price as determined below.

(L)
(L)

(N)

IMBALANCE
TRADING:

A Balancing Agent may trade its Cumulative or Operating Imbalances with another Balancing Agent that has a Cumulative or Operating Imbalance from the same statement period.

(L)

Executing an Imbalance trade consists of both parties to the trade completing an Imbalance Trading Form for Schedule G-BAL Service (Form No. 79-762), or electronic equivalent, and submitting the form to PG&E.

IMBALANCE TRADING CRITERIA:

(N)

Each Cumulative Imbalance trade must meet at least one of the following criteria:

1. The trade moves the trading party's Cumulative Imbalance towards zero; and/or
2. The trade results in a Cumulative Imbalance that is within the range of plus or minus three percent (3%) of usage past zero.

(T)
(T)

The following table sets forth the range of acceptable Cumulative Imbalance trades. Imbalances are described as a percentage of usage. Each trade will be deemed to have a Beginning Imbalance (the imbalance, positive or negative, existing immediately prior to the trade) and an Ending Imbalance (the imbalance, positive or negative, resulting from the trade).

If Beginning Imbalance is:

Ending Imbalance must be:

Greater than -3%
(in the negative direction)

Between the Beginning Imbalance
and +3%

Equal to or between -3% and +3%

Equal to or between -3% and +3%

Greater than +3%
(in the positive direction)

Between -3% and the Beginning
Imbalance

Each Operating Imbalance trade must move the CP Groups' Operating Imbalance Carryover toward zero.

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

IMBALANCE TRADING:
(Cont'd.)

IMBALANCE TRADING PERIOD:

PG&E will issue Cumulative Imbalance statements no later than the fifteenth (15) day of the first subsequent month following the month in which the Cumulative Imbalance occurred. PG&E will issue Operating Imbalance Statements no later than the fifteenth (15) day of the second subsequent month following the month in which the Cumulative Imbalance Statement for the same period was issued. Thereafter, Balancing Agents may trade all or a portion of their Cumulative and/or Operating Imbalance quantity by executing an imbalance trade by 5:00 p.m. Pacific Time on the closing date for New York Mercantile Exchange (NYMEX) Henry Hub Gas Futures contracts for the following month. If necessary, PG&E will extend the Cumulative and Operating Imbalance trading deadline beyond the NYMEX close date to ensure that the trading period lasts a minimum of five (5) business days.

(N) (L)

TRADING IMBALANCES USING STORAGE ACCOUNTS:

During the imbalance Trading Period, Balancing Agents may manage both Cumulative and Operating Imbalances by trading into or out of storage accounts at on-system storage facilities via the PG&E trading system or the electronic trading system provided by an authorized Third Party Service Provider (TPSP). Customer enters into a business relationship with a TPSP on a voluntary basis. The owner of the storage account is not required to purchase storage injection or storage withdrawal capacity from PG&E to effect an imbalance trade.

The owner of the storage account must have, at the time of the trade, the inventory capacity to accept a trade into storage or the gas in inventory to trade out of storage. A CTA that uses its core storage account for managing Cumulative or Operating Imbalances must adhere to the end-of-month inventory target levels, as specified in Schedule G-CT. Owners of a third-party storage account must provide documentation of their inventory capacity or gas in inventory. Subject to system load balancing and/or operational constraints, Balancing Agents may trade as much of their Cumulative and/or Operating Imbalance quantity as their storage inventory/capacity allows.

(L)

Storage trades performed via the TPSP system will be subject to the following:

(N)

1. If a trade exceeds the inventory capacity to accept a trade into storage or the gas in inventory to trade out of storage, the owner of the storage account shall be charged a Park or Lend Charge. This charge will be at the maximum rate allowed per Schedule G-PARK and G-LEND.
2. The storage holder must unpark or repay the imbalance amount within 30 days.
3. After 30 days, the imbalance amount will be cashed out at the maximum Commodity Cashout prices for the applicable Monthly or Self-Balancing Option. This is in addition to any Park or Lend charges.

(N)

For the purpose of accepting trades into or out of storage, PG&E will review its pipeline operations and will establish an Imbalance Trade Operating Band (OP BAND) prior to the Imbalance Trading Period. PG&E, prior to the beginning of the Imbalance Trading Period, will electronically post the OP BAND. PG&E will accept Cumulative and/or Operating Imbalance trades, using storage accounts, on a first-come, first-served basis, during the Imbalance Trading Period, within the OP BAND. Cumulative and/or Operating Imbalance trades not accepted because of the limit from the OP BAND will be retained and processed at a later time within the current Imbalance Trading Period, if trades from the Customers allow room in the OP BAND, unless the trade is canceled by the Customer or the Imbalance Trading Period closes.

(L)

(T)

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

IMBALANCE
TRADING:
(Cont'd.)

Usage Charges specified in Schedule G-FS, or any negotiated Usage Charges under Schedule G-NFS, will apply to trades into or out of a PG&E storage account.

(L)
(L)

MANAGING REMAINING IMBALANCES AFTER TRADING:

(N)

After the imbalance trading deadline, any remaining Cumulative Imbalance, within the Tolerance Band, and any Operating Imbalance Carryover, as specified below, will be considered the first transaction during the calendar month following the just-completed trading period. Any remaining Cumulative Imbalance in excess of the Tolerance Band will be automatically cashed out. Cashouts will include a Commodity Cashout component and a Transmission Cashout component.

(L)

After the imbalance trading deadline, any remaining Operating Imbalance will be managed as follows:

1. The Operating Imbalance remaining after trading will be added to the Operating Imbalance Carryover.
2. One-twelfth (1/12) of the Operating Imbalance Carryover will be considered part of the first transaction for the CP Group during the calendar month following the just completed trading period.
3. A CP Group may also make a monthly election to clear its entire Operating Imbalance Carryover if it is less than 5,000 Dth. This will be considered the first transaction during the calendar month following PG&E's receipt of written notification, and will set the Operating Imbalance Carryover to zero.

ANONYMOUS IMBALANCE TRADING:

(L)
(N)

Cumulative and Operating Imbalances may be traded anonymously via an electronic trading system. Anonymous trades will be subject to applicable terms, conditions, and charges designated by the authorized TPSP. The TPSP may charge a subscription fee for its entire services, including PG&E related trading services, but shall also allow Customers to subscribe to a PG&E-only trading service. The TPSP shall charge subscription and transaction fees for PG&E-only trading services subject to the following fee caps:

1. The transaction fee per entity shall not exceed \$0.02 per Dth per transaction.
2. The subscription fee for PG&E-only related trading services shall not exceed \$250 per month. These services include: Imbalance Trading, OFO Imbalance Rights Trading, and Capacity Assignment.

TPSP shall offer and price PG&E-only related trading services on a nondiscriminatory basis. PG&E will have no liability to any customer or any other party regarding acts or omissions of the TPSP or its terms and conditions. Trading limitations will include individual credit limits and gas system operating limitations. A written request to release credit limit information to the TPSP must be provided to PG&E ten (10) business days prior to use of TPSP trading services. The TPSP may provide additional credit at its discretion.

(N)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

CASHOUT PRICING:

COMMODITY CASHOUT PRICING:

Each commodity cashout price is based on a two-step calculation: First, a cashout index is determined based on an average of the published price data from Natural Gas Intelligence (NGI) and the BTU Daily Gas Wire for the PG&E interconnect points of Malin (Northern California Border) and Topock (Southern California Border). Second, that index is adjusted to arrive at the cashout price for that imbalance category.

Tier I Commodity Cashout – Imbalances greater than five percent (5%) and less than or equal to ten percent (10%) of usage:

1. Over-deliveries:

a. The Weighted Over Delivery (WOD) Index equals the lower of the Bid Week monthly index price or the average of the five (5) lowest average published daily prices, weighted by the supply mix of all gas received at Malin and Topock for on-system End-Use Customers during the month in which the imbalance occurred.

b. The cashout price equals seventy-five percent (75%) of the WOD Index.

2. Under-deliveries:

a. The Weighted Under Delivery (WUD) Index equals the higher of the Bid Week monthly index price or the average of the five highest average published daily prices, weighted by the supply mix of all gas received at Malin and Topock for on-system End-Use Customers during the month in which the imbalance occurred.

b. The cashout price equals one hundred twenty-five percent (125%) of the WUD Index.

Tier II Commodity Cashout – Imbalances greater than ten percent (10%) of usage:

1. Over-deliveries:

a. The Over Delivery (OD) Index equals the lowest average published daily price at either Malin or Topock.

b. The cashout price equals fifty percent (50%) of the OD Index.

2. Under-deliveries:

a. The Under-Delivery (UD) Index is defined as the highest average published daily price at either Malin or Topock.

b. The cashout price equals one hundred fifty percent (150%) of the UD Index.

(L)

(T)

(T)

(T)

(T)

(T)

(T)

(L)

(L)

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

CASHOUT
PRICING:
(Cont'd.)

If no published daily price is reported on a given day, the prior published daily price from that index service will continue to apply for that day. If an index service is no longer available, PG&E reserves the right to choose another nationally recognized index to replace it.

(L)

TRANSPORTATION CASHOUT PRICING:

The Transportation Cashout price for under-deliveries is based on the Usage Charge as specified in Schedule G-AA. Over-deliveries will receive a transmission credit based on the Modified Fixed Variable (MFV) Usage Charge as specified in Schedule G-AFT. The Transportation Cashout price or credit is determined by weighting the path specific rates by the supply mix percentages of all gas received by PG&E, for on-system End-Use Customers, during the month.

(N)

(T)

(T)

(T)

MARKET
CENTER
IMBALANCES:

A Customer may have a positive or negative balance when a Market Center account expires. This balance becomes a Market Center Imbalance after the end date specified on the Market Center Exhibit.

Negative Imbalances:

For a Customer with a negative imbalance ranging from 1 Dth to 1,000 Dth, after thirty (30) calendar days from the termination of the exhibit resulting from Customer's under-delivery of gas to the Market Center, automatic cashout will occur.

For a Customer with an imbalance greater than 1,000 Dth, the Customer shall have thirty (30) calendar days resulting from Customer's under-delivery of gas to the Market Center to clear the imbalance as follows:

1. Customer shall reach agreement with PG&E to make up such imbalance in-kind during a specified period and at a specific rate; or
2. Customer shall reimburse PG&E at the rate of one hundred fifty percent (150%) of the Under-Delivery Index, defined as the highest average published daily price at the same Market Center location specified in the Exhibit for the same time period.

(T)

If the Customer fails to establish the terms of resolving the Market Center Imbalance within the thirty (30) day period:

1. PG&E shall charge the Customer the maximum daily rate, as specified in Schedule G-LEND, for each day of the Market Center imbalance; and
2. Customer shall reimburse PG&E at the rate of one hundred fifty percent (150%) of the Under-Delivery Index, defined as the highest average published daily price at the same Market Center location specified in the Exhibit for the same time period.

(T)

Positive Imbalances:

If a Customer has a positive imbalance ranging from 1 Dth to 1,000 Dth, after thirty (30) calendar days from the termination of the exhibit resulting from Customer's over-delivery of gas to the Market Center automatic cashout will occur.

(L)

(Continued)

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SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

MARKET CENTER IMBALANCES:
(Cont'd.)

If a Customer has an imbalance greater than 1,000 Dth, the Customer shall have thirty (30) calendar days after the termination of the exhibit resulting from Customer's over-delivery of gas to the Market Center to clear the imbalance as follows:

- 1. Customer shall reach agreement with PG&E to use up such imbalance in-kind during a specified period and at a specific rate; or
- 2. Customer shall be reimbursed by PG&E at the rate of fifty percent (50%) of the lowest monthly Over-Delivery Index, at the same Market Center location specified in the Exhibit for the same time period.

(L)

(T)

If the Customer fails to establish the terms of resolving the Market Center Imbalance within the twenty (20) day period:

- 1. PG&E shall charge the Customer the maximum daily rate for each day of the Market Center imbalance specified in Schedule G-PARK; and
- 2. The Customer's imbalance shall be cashed out by PG&E at the rate of fifty percent (50%) of the lowest monthly Over-Delivery Index at the same Market Center location specified in the Exhibit for the same time period.

(T)

TRANSMISSION CUSTOMER IMBALANCE:

Transmission Customer Imbalance can occur for gas delivered to Off-System Delivery Points or On-System Storage Facilities, and is defined as the difference between the final scheduled volume on the day of flow at the PG&E system Receipt Point, and the quantity of gas which was actually delivered at the receipt point.

A Transmission Customer Imbalance may be made up in-kind at a later date as agreed upon between the Customer on whose contract the imbalance occurs and PG&E. If no agreement can be reached by the end of the month following the month in which PG&E sends notification of the imbalance to the Customer, then PG&E shall resolve the imbalance in the following manner:

- 1. For positive imbalances, PG&E shall cashout the entire positive imbalance quantity at the lowest daily commodity price at Malin or Topock, as published in Gas Daily, during the month in which the imbalance occurred.
- 2. For negative imbalances, PG&E shall account for the entire negative imbalance quantity as the first transaction during the second calendar month following the date of notification of the imbalance.

(L)

(Continued)

Advice Letter No. 2250-G
Decision No. 00-05-049

Issued by
DeAnn Hapner
Vice President
Regulatory Relations

Date Filed July 17, 2000
Effective October 1, 2000
Resolution No. _____

42370



SCHEDULE G-BAL—GAS BALANCING SERVICE FOR INTRASTATE TRANSPORTATION CUSTOMERS
(Continued)

ACCOUNTING ADJUSTMENTS:	<p>If subsequent accounting adjustments change a previous Cumulative or Operating Imbalance, then:</p> <ol style="list-style-type: none"> 1. If any portion of the adjusted quantity was previously subject to an imbalance cashout, the adjusted portion of the cashout will be reversed. 2. For noncore Cumulative Imbalances, any remaining adjustment quantity will be considered the first transaction during the calendar month following the date of notification of the adjustment, and reported on the Cumulative Imbalance Statement, unless otherwise agreed to by PG&E. 3. For Core Procurement Groups, adjustment quantities will be included in the Operating Imbalance Carryover. 	(L)
CURTAILMENT OF SERVICE:	<p>Service under this schedule may be curtailed. Details are provided in gas Rule 14.</p>	(T)
TERMINATION:	<p>Upon termination of a Customer's GTSA, NGSAs, NBAA, CTA Agreement, and/or CPBA, any remaining Cumulative Imbalance and/or Operating Imbalance Carryover must be traded, toward zero, during the first Imbalance Trading Period following notice of termination. Following the Trading Period, any remaining Cumulative Imbalance will be cashed out at the applicable Commodity and/or Transmission Cashout prices shown above, and any remaining Operating Imbalance Carryover will be cashed out at the Tier I Commodity Cashout price.</p>	(L)

(Continued)

Advice Letter No. 2250-G
Decision No. 00-05-049

Issued by
DeAnn Hapner
Vice President
Regulatory Relations

Date Filed July 17, 2000
Effective October 1, 2000
Resolution No. _____

42387

Exhibit 4

10/10/2004 10:01 AM SEMpra ENERGY TRADING
PAGE 12/20

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR**

AND

SEMPRA ENERGY TRADING CORP.

**PARTICIPATING GENERATOR
AGREEMENT**

PARTICIPATING GENERATOR AGREEMENT (PGA)

THIS AGREEMENT is dated this 1st day of June, 1999 and is entered into, by and between:

- (1) **Sempra Energy Trading Corp.** having its registered and principal place of business located at 58 Commerce Road, Stamford, Connecticut 06902 (the "Participating Generator");

and

- (2) **California Independent System Operator Corporation**, a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the ISO Governing Board may from time to time designate, initially 151 Blue Ravine Road, Folsom, California 95630 (the "ISO").

The Participating Generator and the ISO are hereinafter referred to as the "Parties".

Whereas:

- A. The ISO Tariff provides that the ISO shall not schedule Energy or Ancillary Services generated by any Generating Unit interconnected to the ISO Controlled Grid, or to the Distribution System of a Participating TO or of a UDC otherwise than through a Scheduling Coordinator.
- B. The ISO Tariff further provides that the ISO shall not be obliged to accept Schedules or Adjustment Bids or bids for Ancillary Services relating to Generation from any Generating Unit interconnected to the ISO Controlled Grid unless the relevant Generator undertakes in writing to the ISO to comply with all applicable provisions of the ISO Tariff.
- C. The Participating Generator wishes to be able to Schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator and, therefore, wishes to undertake to the ISO that it will comply with the applicable provisions of the ISO Tariff.
- D. The Parties are entering into this Agreement in order to establish the terms and conditions on which the ISO and the Participating Generator will discharge their respective duties and responsibilities under the ISO Tariff.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the ISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
- (a) if there is any inconsistency between this Agreement and the ISO Tariff, the ISO Tariff will prevail to the extent of the inconsistency;
 - (b) the singular shall include the plural and vice versa;
 - (c) the masculine shall include the feminine and neutral and vice versa;
 - (d) "includes" or "including" shall mean "including without limitation";
 - (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
 - (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
 - (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
 - (h) unless the context otherwise requires, any reference to a "person" includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
 - (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
 - (j) any reference to a day, week, month or year is to a calendar day, week, month or year; and
 - (k) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

ARTICLE II
ACKNOWLEDGEMENTS OF PARTICIPATING GENERATOR AND ISO

- 2.1 ISO Responsibility.** The Parties acknowledge that the ISO is responsible for the efficient use and reliable operation of the ISO Controlled Grid consistent with achievement of planning and operating reserve criteria no less stringent than those established by the Western Systems Coordinating Council and the North American Electric Reliability Council and further acknowledges that the ISO may not be able to satisfy fully these responsibilities if the Participating Generator fails to fully comply with all of its obligations under this Agreement and the ISO Tariff.
- 2.2 Scope of Application to Parties.** The Participating Generator and ISO acknowledge that all Generators, except those specified in Section 2.2.1 of this Agreement, wishing to schedule Energy and to submit Adjustment Bids, Supplemental Energy bids and bids for Ancillary Services to the ISO through a Scheduling Coordinator must sign this Agreement in accordance with Section 5 of the ISO Tariff.
- 2.2.1 Exemption for Certain Generators.** The Generator with an existing power purchase agreement with a UDC is not required to sign a Participating Generator Agreement if: (a) the Generator sells all of its Energy (excluding any Energy consumed by auxiliary load equipment electrically connected to that Generator at the same point) and Ancillary Services to the UDC; (b) the Generator sells any Energy through "over the fence" arrangements as authorized under Section 218(b) of the California Public Utilities Code; or (c) the Generator employs landfill gas technology for the generation of electricity as authorized under 218(c) of the California Public Utilities Code. With respect to subsections (a) and (b), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 20, 1995. With respect to subsection (c), an existing power purchase agreement shall mean an agreement which has been entered into and is effective as of December 31, 1996.

ARTICLE III
TERM AND TERMINATION

- 3.1 Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date accepted for filing and made effective by FERC, and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.
- 3.2 Termination**
- 3.2.1 Termination by ISO.** Subject to Section 5.2, the ISO may terminate this Agreement by giving written notice of termination in the event that the Participating Generator commits any material default under this Agreement and/or the ISO Tariff which, if capable of being remedied, is not remedied within thirty (30) days after the ISO has given, to the Participating Generator, written

notice of the default, unless excused by reason of Uncontrollable Forces in accordance with Article X of this Agreement. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within 30 days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination.

- 3.2.2 Termination by Participating Generator.** In the event that the Participating Generator no longer wishes to schedule Energy or provide Ancillary Services through a Scheduling Coordinator over the ISO Controlled Grid, it may terminate this Agreement, on giving the ISO ninety (90) days written notice, provided, however, that in accordance with Section 4.1.3, the Participating Generator may modify Schedule 1 to eliminate Generating Units which it no longer owns or no longer has contractual entitlement to and such modification shall be effective upon receipt by the ISO. With respect to any notice of termination given pursuant to this Section, the ISO must file a timely notice of termination with FERC. The filing of the notice of termination by the ISO will be considered timely if: (1) the request to file a notice of termination is made after the preconditions for termination have been met, and (2) the ISO files the notice of termination within 30 days of receipt of such request. This Agreement shall terminate upon acceptance by FERC of such a notice of termination.

ARTICLE IV GENERAL TERMS AND CONDITIONS

- 4.1 Generating Units**
- 4.1.1 Identification of Generating Units.** The Participating Generator has identified the Generating Units that it owns, operates or has a contractual entitlement to in Schedule 1, as required by Section 5.3 of the ISO Tariff.
- 4.1.2 Technical Characteristics.** The Participating Generator has provided to the ISO in Schedule 1 the required information regarding the capacity and operating characteristics of each of the Generating Units listed in that schedule. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in Schedule 1.
- 4.1.3 Notification of Changes.** Sixty (60) days prior to changing any technical information in Schedule 1, the Participating Generator shall notify the ISO of the proposed changes. Pursuant to Section 2.5.25 of the ISO Tariff, the ISO may verify, inspect and test the capacity and operating characteristics provided in the revised Schedule 1. The ISO shall post on the ISO Home Page a schedule showing, for at least one year in advance: (i) the proposed dates on which the ISO's Master File will be updated, which dates shall occur at least every three months; (ii) the dates on which the information contained in the revised Master

File will become effective; and (iii) the deadlines by which changed technical information must be submitted to the ISO in order to be tested and included in the next scheduled update of the ISO's Master File. Unless the Participating Generator fails to test at the values in the proposed change(s), the change will become effective upon the effective date for the next scheduled update of the Master File, provided the Participating Generator submits the changed information by the applicable deadline and is tested by the deadline. Subject to such notification this Agreement shall not apply to any generating unit identified in Schedule 1 which the Participating Generator no longer owns or no longer has contractual entitlement to.

4.2 Agreement Subject to ISO Tariff. The Parties will comply with all applicable provisions of the ISO Tariff, including Sections 2.3.2, 2.5.3.4 and 5. This Agreement shall be subject to the ISO Tariff which shall be deemed to be incorporated herein.

4.3 Obligations Relating to Ancillary Services

4.3.1 Submission of Bids. When the Scheduling Coordinator on behalf of the Participating Generator submits a bid for Ancillary Services, the Participating Generator will, by the operation of this Section 4.3.1, warrant to the ISO that it has the capability to provide that service in accordance with the ISO Tariff and that it will comply with ISO Dispatch instructions for the provision of the service in accordance with the ISO Tariff.

4.3.2 Certification. Except as provided in Section 4.3.3, the Participating Generator shall not use a Scheduling Coordinator to submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service unless the Scheduling Coordinator serving that Participating Generator is in possession of a current certificate pursuant to Sections 2.5.6 and 2.5.24 of the ISO Tariff.

4.3.3 Initial Exemption. Not later than November 1, 1998, the ISO shall fully implement its certification process in accordance with Sections 2.5.6 and 2.5.24 of the ISO Tariff. Until full implementation of the certification process and notification of the Participating Generator and its Scheduling Coordinator of the completion of such process, the non-certified Scheduling Coordinator on behalf of a Participating Generator may submit a bid for the provision of an Ancillary Service or submit a schedule for the self provision of an Ancillary Service. Upon timely notification by the ISO, the Participating Generator must complete the certification process prior to November 1, 1998 to continue its participation in accordance with Section 4.3.2 of this Agreement.

4.4 Obligations relating to Major Incidents

4.4.1 Major Incident Reports. The Participating Generator shall promptly provide such information as the ISO may reasonably request in relation to major incidents, in accordance with Section 5.8.3 of the ISO Tariff.

ARTICLE V PENALTIES AND SANCTIONS

- 5.1 **Penalties.** If the Participating Generator fails to comply with any provisions of this Agreement, the ISO shall be entitled to impose penalties and sanctions on the Participating Generator. No penalties or sanctions may be imposed under this Agreement unless a Schedule providing for such penalties or sanctions has first been filed with and made effective by FERC. Nothing in the Agreement, with the exception of the provisions relating to ADR, shall be construed as waiving the rights of the Participating Generator to oppose or protest any penalty proposed by the ISO to the FERC or the specific imposition by the ISO of any FERC-approved penalty on the Participating Generator.
- 5.2 **Corrective Measures.** If the Participating Generator fails to meet or maintain the requirements set forth in this Agreement and/or the ISO Tariff, the ISO shall be permitted to take any of the measures, contained or referenced in the ISO Tariff, which the ISO deems to be necessary to correct the situation.

ARTICLE VI COSTS

- 6.1 **Operating and Maintenance Costs.** The Participating Generator shall be responsible for all its costs incurred in connection with operating and maintaining the Generating Units identified in Schedule 1 for the purpose of meeting its obligations under this Agreement.

ARTICLE VII DISPUTE RESOLUTION

- 7.1 **Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the ISO ADR Procedures set forth in Section 13 of the ISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE VIII
REPRESENTATIONS AND WARRANTIES**

- 8.1 **Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 8.2 **Necessary Approvals.** The Participating Generator represents that all necessary leases, approvals, permits, licenses, easements, rights of way or access to install, own and/or operate its Generating Units have been or will be obtained by the Participating Generator prior to the effective date of this Agreement.

**ARTICLE IX
LIABILITY**

- 9.1 **Liability.** The provisions of Section 14 of the ISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the ISO Tariff to Market Participants shall be read as references to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE X
UNCONTROLLABLE FORCES**

- 10.1 **Uncontrollable Forces Tariff Provisions.** Section 15 of the ISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 15 of the ISO Tariff to Market Participants shall be read as a reference to the Participating Generator and references to the ISO Tariff shall be read as references to this Agreement.

**ARTICLE XI
MISCELLANEOUS**

- 11.1 **Assignments.** Either Party may assign or transfer any or all of its rights and/or obligations under this Agreement with the other Party's prior written consent in accordance with Section 17 of the ISO Tariff. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights and/or obligations under this Agreement as if said successor in interest was an original Party to this Agreement.

- 11.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 20.1 of the ISO Tariff. A Party must update the information in Schedule 3 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
- 11.3 Waivers.** Any waivers at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 11.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consents that any legal action or proceeding arising under or relating to this Agreement to which the ISO ADR Procedures do not apply, shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 11.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 20.8 of the ISO Tariff as if the references to the ISO Tariff were referring to this Agreement.
- 11.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereto and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 11.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person, entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.
- 11.8 Section Headings.** Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.



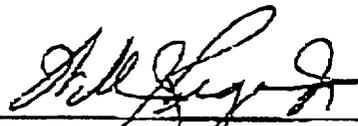
PARTICIPATING GENERATOR AGREEMENT

11.9 Amendments. This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. If the amendment does not require FERC approval, the amendment will be filed with FERC for information.

11.10 Counterparts. This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: 
Name: William J. Began, Jr.
Title: Chief Financial Officer and Treasurer
Date: June 12, 2000

Sempra Energy Trading Corp.

By: 
Name: CLIFFORD PAPISH
Title: VICE PRESIDENT
Date: 6/9/00

SCHEMATIC 1

Section 1: Technical Characteristics of Participating Generator Units
 Kempra Energy Trading Corp.

Name of Facility (Including Unit Number)	Name of Owner	Contract Name (Assignment Number)	ISO Resource ID	Type of Unit	Capacity (MW)	Maximum Operating Hours (MWH)	Normal Maximum Operating Hours (MWH)	Estimated Hours from Operating Hours (MWH)	Maximum Allowed Ramp Rate (MW/MIN)	Startup Time (Mins)	Shutdown Time (Mins)	Shutdown (Mins)
Thermal												
Hydroelectric												
Nuclear												
Energy Utility												
Dispatchable Renewal												
Synchronous Condensers												

REDACTED

1) Current effective values for purposes of scheduling energy and bidding to provide energy under Auxiliary Services in ISO markets as per ISO from those set forth in this Schematic 1, depending on the results of ISO performance testing pursuant to Sections 2.5.24 and 2.5.25 of the ISO Tariff and Section 9 of the ISO Ancillary Services Requirements Protocol.

2) These values are subject to verification by the ISO in accordance with Section 2.3.3 of the Participating Generator Agreement.

SCHEDULE 2

**ISO IMPOSED PENALTIES AND SANCTIONS
[Section 5.1]**

[TO BE INSERTED UPON FERC APPROVAL]

SCHEDULE 3**NOTICES
(Section 10.2)****Participating Generator****Name of the Primary**

Representative: Michelle Steen
Title: Day Ahead Scheduler
Address: 58 Commerce Road
City/State/Zip Code Stamford CT 06902
Email Address: msteen@sempratradng.com
Phone: (203) 355-5125
Fax No: (203) 355-5135

Name of Alternative

Representative: Tim Hanna
Title: Assistant Vice President
Address: 58 Commerce Road
City/State/Zip Code Stamford CT 06902
Email Address: thanna@sempratradng.com
Phone: (203) 355-5128
Fax No: (203) 355-5135

ISO

Name of the Primary

Representative: Don Fuller
Title: Director, Client Relations
Address: 151 Blue Ravine Road
City/State/Zip Code Folsom, CA 95630
Email Address: dfuller@caiso.com
Phone: (916) 351-4445
Fax No: (916) 351-2263

Name of Alternative

Representative: Deborah A. Le Vine
Title: Director of Contracts & Compliance
Address: 151 Blue Ravine Road
City/State/Zip Code Folsom, CA 95630
Email Address: dlevine@caiso.com
Phone: (916) 351-2144
Fax No: (916) 351-2487

CALIFORNIA POWER EXCHANGE CORPORATION

PX PARTICIPATION AGREEMENT

The PX Participation Agreement
contains the changes ordered by FERC
in its December 17th Order¹
plus an Addendum that has been filed with FERC on December 19, 1997 in
Docket Nos. EC96-19-0 08 and ER96-1663-009.

¹ Pacific Gas & Electric Company et. al., 81 FERC ¶61,320 (1997).

PX Participation Agreement

THIS AGREEMENT is made the 19th day of March, 1998 and is entered into, by and between:

(1) Semptra Energy Trading Corp. having a registered or principal executive office at One Greenwich Plaza, Greenwich, Connecticut 06830 (the "PX Participant")

and

(2) THE CALIFORNIA POWER EXCHANGE CORPORATION, a California nonprofit public benefit Corporation having a principal executive office located at such place in the State of California as the PX Governing Board may from time to time designate (the "PX").

WHEREAS:

- A. The PX Participant has been certified by the PX under the certification procedure referred to in Section 2.6 of the PX Tariff.**
- B. The PX Participant wishes to trade Energy through the PX Market under the terms and conditions set forth in the PX Tariff.**

NOW IT IS HEREBY AGREED as follows:

- I. Definitions**
 - A. Terms and expressions used in this Agreement shall have the same meanings as those contained in the Master Definitions Supplement to the PX Tariff.**
 - B. The "PX Tariff" shall mean the PX Operating Agreement and Tariff as amended from time to time, together with any Appendices or attachments therein.**
- II. Covenant of the PX Participant**

The PX Participant agrees that:

 - A. the PX Tariff governs all aspects of trading in and administration of the PX Market, including (without limitation), the financial and technical criteria for PX Participants, bidding, Settlement, information reporting requirements and confidentiality restrictions;**
 - B. it will abide by, and will perform all of the obligations under the PX Tariff in respect of all matters set forth therein including, without limitation, all matters relating to the trading of Energy by it through the PX Market, ongoing obligations in respect of bidding, Settlement, security requirements, billing and payments, confidentiality and dispute resolution; and**
 - C. its status as a PX Participant is at all times subject to the PX Tariff.**
- 3. Term and Termination**

This Agreement shall commence on the later of (a) March 19, 1998 or (b) the date the PX Participant is certified by the PX as a PX Participant and shall terminate upon acceptance by FERC of the Notice of Termination. The PX shall timely file a Notice of Termination.
- 4. Assignment**

Either party may assign its obligations under this Agreement with the other party's prior consent, not to be unreasonably withheld.

5. **Partial Invalidity**

If any provision of this Agreement, or the application of such provision to any persons, circumstance of transaction, shall be held invalid, the remainder of this Agreement, or the application of such provision to other persons or circumstances or transactions, shall not be affected thereby.

6. **Settlement Account**

The PX Participant shall at all times maintain an account with a bank in California to which credits or debits will be made in accordance with the billing and Settlement provisions of Section 6 of the PX Tariff. The details of such account shall be as set out in Section 7 hereof or as notified by the PX Participant to the PX from time to time by giving at least 5 Business Days written notice before the new account becomes operational.

7. **Notices**

Any notice demand or request made to or by either party regarding this Agreement shall be made in accordance with the PX Tariff and unless otherwise stated or agreed shall be made to the representative of the other party indicated below:

PX:

Name of primary representative: Legal Department

Name of alternative representative: Client Services Department

Address:

1000 S. Fremont, Building A-139-W, 5th Floor,
State: Alhambra, California Zip code: 91803-4737

E-mail Address: www.calpx.com

Phone no.: 626-537-3100

Fax no.: 626-537-3191

PX Participant:

Name of primary representative: Christine Mastro

Name of alternative representative: Energy Operations

Address: One Greenwich Plaza

State: Greenwich, CT Zip code: 06830

E-mail Address: www.sempratrading.com

Phone no.: 203-861-3600

Fax no.: 203-861-3827

Settlement Account:

Number:

Title:

Sort Code:

Bank:

REDACTED

8. **Incorporation of Tariff**

The PX Tariff is incorporated herein and made a part hereof. In the event of a conflict between the terms and conditions of this Agreement and any other terms and conditions set forth in the PX Tariff, the terms and conditions of the PX Tariff shall prevail.

9. **Electronic Contracting.**

All submitted applications, schedules, bids, confirmations, changes to information on file with the PX and other communications conducted via electronic transfer (e.g. direct computer link, FTP file transfer,

bulletin board, e-mail, facsimile or any other means established by the PX) shall have the same legal rights, responsibilities, obligations and other implications as set forth in the terms and conditions of the PX Tariff as if executed in written format.

10. Payment Obligations.

All obligations to pay amounts or perform obligations due with respect to the PX Tariff and any other charges, taxes or other expenses related to this Agreement (including, without limitation, expenses pursuant to the Meter Service Agreement) or the PX Participant's trading in the PX Market generally shall be the sole responsibility of the PX Participant.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized officials.

PX:

By:

Name

Title

Date

PX Participant: SEMPRA ENERGY TRADING CORP.

By:



Name

CEO

Title

3/19/98

Date

Steven Prince

ADDENDUM TO PARTICIPATION AGREEMENT

**entered into, by and between
Sempra Energy Trading Corp.
and
the California Power Exchange Corporation**

Partial Requirements Customer - Option 2 (Monthly Subscription)

1. Under the terms of the PX Tariff, Appendix E, Rate Schedule 1 Sempra Energy Trading Corp. (PX Participant) selects Subscription Charge Option 2 for Partial Requirements Customers. To initiate this service, the PX Participant must make one of the following elections:

Election A (Standing Order to PX):

PX Participant nominates an initial quantity of 0 (zero) MW as its Subscribed Demand or peak hourly usage level through the PX each calendar month, but no more than twelve calendar months, commencing April 1, 1998 and terminating on April 30, 1998.

It is further agreed that PX Participant may change its monthly Subscribed Demand for any month(s) of its standing order by providing notice to the PX at least five business days prior to the start of the month for which the quantity will change. The notice shall indicate the revised quantity and the number of months for which that revised quantity shall be effective. Thereafter, unless otherwise timely notified, PX Participant's Subscribed Demand for each successive month of the standing order will be assumed to be PX Participant's initial quantity.

Election B (Monthly Notice to PX):

PX Participant nominates 50 (fifty) MW as its Subscribed Demand or hourly peak usage level through the PX for the calendar month commencing April 1, 1998 and terminating on April 30, 1998.

To continue utilizing the Monthly Subscription Option, the PX Participant must provide notice to the PX of the quantity it wishes to purchase through the PX for any month at least five business days prior to the start of each month in which the PX Participant wishes to utilize the Monthly Subscription Option. PX Participant may notify the PX five days in advance of any month whether it will take specified Subscribed Demand quantity(ies) for specified months.

If timely notice is not provided under Election B, then PX Participant's Monthly Subscribed Demand quantity is assumed to be zero.

2. PX Participant may change its election upon notice to the PX at least five business days prior to the start of the month for which the change is desired.
3. Notice shall be provided to the PX in any method set forth for Electronic Contracting in Section 9 of the Participation Agreement entered into between the parties on March 19, 1998.
4. It is further agreed that the rate for such service, the Partial Requirements Monthly Subscription Charge, is set forth the PX Tariff, Appendix E, Rate Schedule 1, as revised from time to time. To the extent that a buyer exceeds its Subscribed Demand during any hour of the month, the Partial Requirements Volumetric Charge will apply to any MWhs exceeding the Subscribed Demand level, as set forth in Rate Schedule 1.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their respective authorized officials.

By: CALIFORNIA POWER EXCHANGE CORPORATION .

Name Title Date

By: SEMPRA ENERGY TRADING CORP.

 _____
Name Title Date
Steven Prince CEO 3/19/98

ADDENDUM TO PARTICIPATION AGREEMENT

**entered into, by and between
Sempra Energy Trading Corp.
and
the California Power Exchange Corporation**

Terminal Fee Election

Under the terms of the PX Tariff, Sempra Energy Trading Corp. (PX Participant) understands that to participate in the California Power Exchange Corporation (PX), PX Participant is required to utilize the PX trade application software.

It is understood that to utilize this software all PX Participants must pay Terminal Fees, as set forth in the PX Tariff, Appendix E, Rate Schedule 1, for each workstation on which the trade application software is utilized. It is further understood that PX Participant must also execute a Software Sublicensing Agreement with the PX in order to utilize the trade application software.

PX Participant agrees to subscribe to one (1) trade application(s).

PX Participant is permitted to change the total number of trade applications to which it will subscribe by providing notice to the PX at least five business days prior to the start of the month in which PX Participant requires a different number of trade applications. The full monthly assessment of Terminal Fees will be charged for each use of the trade application software during any part of a month.

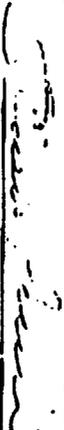
Notice shall be provided to the PX in any method set forth for Electronic Contracting in Section 9 of the Participation Agreement entered into between the parties on March 19, 1998.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be executed by their respective authorized officials.

BY: CALIFORNIA POWER EXCHANGE CORPORATION

Name	Title	Date
------	-------	------

BY: SEMPRRA ENERGY TRADING CORP.

	CEO	3/19/98
Name	Title	Date
Steven Prince		



Billing Supplementary Information

1. If your company has tax exempt status, what is your TAX EXEMPT CERTIFICATE NUMBER:

REDACTED

2. Is your Federal Tax ID also your social security number?

YES

NO

3. What is the DFI ID or Transit Number that should be used for routing purposes in the electronic funds transfer process:

REDACTED

4. Which Subscription Rate Option will your company subscribe to? Please be advised that any energy which exceeds subscribed demand levels in a given time period, now will be billed at the volumetric charge rate.

Monthly

Yearly

Volumetric (default)

5. With respect to the load and generation resources owned by your company, are all resources owned 100% by your company? N/A

Yes, my company has 100% ownership of all of its resources

No, my company does not have 100% ownership of all of its resources

Please contact the following person regarding the ownership percentages of jointly owned resources:

Contact Name : _____
Contact Address : _____
Contact Phone : _____
Contact Fax : _____
Contact Email : _____



PX PARTICIPANT APPLICATION

ISO Supplementary Information

The following agreements are required if the applicant is directly connected to the California Independent System Operator (ISO) Control Grid.

1. Every generator located within the State of California from which you purchase output for meeting energy or ancillary services must execute a "Participating Generator Agreement" with the ISO. As a represented Generator, the participant has signed a Participating Generator Agreement.

YES _____ Please give date signed.

NO _____ Please give date when planning to sign.

DOES NOT APPLY

1. As a represented UDC, the participant has signed UDC Operating Agreements and meter service agreements with the ISO.

YES _____ Please give date signed.

NO _____ Please give date when planning to sign.

DOES NOT APPLY

1. The PX Participant certifies that the end use customers, on whose behalf it submits schedules, will adhere to the metering standards set by their local regulatory authority or those set forth in the Metering Protocol. As a represented ISO Metered Entity, the participant has signed an ISO meter service agreements.

YES _____ Please give date signed.

NO _____ Please give date when planning to sign.

DOES NOT APPLY



PX PARTICIPANT APPLICATION

ISO Supplementary Information (continue)

The following agreements are required if the applicant is directly connected to the California Independent System Operator (ISO) Control Grid.

1. As a wholesale customer, the participant warrants to the PX that participant is eligible for wholesale transmission service pursuant to the provisions of the FPA Section 212 (h).

YES NO DOES NOT APPLY

2. As an End-Use customer which requests Direct Access service, the participant warrants to the PX that the participant is eligible for such service.

YES NO DOES NOT APPLY



PX PARTICIPANT APPLICATION

OPERATION CONTACT IDENTIFICATION

The operations contact will be responsible for receiving and executing dispatch and other operating instructions. He or she will also be responsible for providing updates regarding the status of their resources to the PX. In the temporary absence of the primary operations contact, a secondary contact may be used. A separate form is needed for each operations contact person. Please make additional copies as needed. *Please be advised that the PX Operations Desk will not release any information unless the caller can confirm his or her security information.*

Please identify emergency contacts for 24-hour availability, seven days a week.

ENTITY'S FULL LEGAL NAME: SEMPRA ENERGY TRADING CORP.

CONTACT'S FULL LEGAL NAME: CHRISTINE MASTRO

PRIMARY SECONDARY

SPECIFIC SITES: GREENWICH, CT 06830 ALL SITES

POSITION/TITLE: MANAGING DIRECTOR

OFFICE ADDRESS: ONE GREENWICH PLAZA, GREENWICH, CT 06830

OFFICE PHONE: 203-861-3600

FAX: 203-861-3827

HOME PHONE: 212-769-9974

FAX: N/A

CELLULAR: N/A _____ PAGER: N/A

E-MAIL: WWW.SEMPRATRADING.COM

SECURITY INFORMATION

THE SECURITY INFORMATION PROVIDED IS FOR IDENTIFICATION PURPOSES ONLY AND ACCURACY OF THE INFORMATION WILL NOT BE VERIFIED BY THE PX.

REFLECTED



PX PARTICIPANT APPLICATION

SECTION 5 - ENTITY (PX APPLICANT) CERTIFICATE AND AGREEMENT

The entity hereby certifies by its signature below that it is eligible to be accepted as a PX Participant.

The entity hereby certifies that the supplementary information provided in all sections this Application is accurate and complete to the best of the signatory's knowledge and belief.

The entity agrees to be wholly responsible for the acts of its employees within the scope of their employment and the acts of its authorized Traders and contacts [See Section 2 of this Application] as described in the PX Tariff and PX Protocols.

The entity agrees to be bound by the terms and conditions as set forth in the PX Tariff and PX Protocols.

MUST BE SIGNED BY AUTHORIZED OFFICER OF THE ENTITY:

PRINT FULL LEGAL NAME: STEVEN PRINCE
SIGNATURE: [Handwritten Signature]
TITLE: Chairman & CEO DATE: 3/19/98

STATE OF: Ca COUNTY OF: San Diego
On 3/19/98 before me, Stephanie E Hill
personally appeared Steven PRINCE

[] personally known to me - OR - [X] proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
[Handwritten Signature]
Signature of Notary Public

The PX requires 72 hours to process any change requests.
Please return this completed application to your principal contact or send it to: California Power Exchange Corporation, Attn: Market Services, 1000 S. Fremont, Building A9-West, 5th Floor, Alhambra, CA 91803-4737.

THIS AGREEMENT is dated this 19th day of March, 1998 (the "Agreement") and is entered into, by and between Sempra Energy Trading Corp. having its registered and principal place of business located in One Greenwich Plaza, Greenwich, Connecticut, 06830 (the "PX Participant") and the California Power Exchange Corporation, a California non-profit public benefit corporation having its principal place of business located in such place in the State of California as the PX Governing Board may from time to time designate, initially 1000 S. Fremont, Building A-139-W, 5th Floor, Alhambra, California, 91803-4737 (the "PX"). The PX Participant and the PX are hereinafter referred to as the "Parties".

WHEREAS:

- A. The PX (as successor-in-interest to the Power Exchanges Restructuring Trust) is party to a System Delivery and License Agreement with OM Technology AB ("OM") for the delivery and license of a proprietary software system for use in a power exchange and for related services, dated March 27, 1997 ("License Agreement").
- B. Under the License Agreement, the PX has the right to use the Software Product and associated Documentation and license the OMNet API software and Hand-EL/PX Trade Application to Users, subject to certain terms and conditions.
- C. Hand-El Skandinavisk AS ("HSAS") will cooperate with providing the Software Product to Users pursuant to this Agreement and will be a subcontractor of OM for this purpose.
- D. The Parties are entering into this Agreement in order to establish the terms and conditions upon which they will discharge their respective duties and responsibilities with respect to the Software Product.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, THE PARTIES AGREE as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATION**

- 1.1 Master Definitions Supplement. Unless defined in Section 1.2, all capitalized terms used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the PX Tariff.
- 1.2 Special Definitions. The following capitalized terms used in this Agreement shall have the meaning set forth below.

"Documentation" shall mean any and all manuals, specifications, literature, and other documents supplied by the PX to the PX Participant related to the Software Product.

"Hand-EL/PX Trade Application" shall mean the part of the Software Product developed by HSAS and more specifically described as follows:

"OMNet API Software" shall mean the part of the Software Product developed by OM for use by the PX Participant pursuant to this agreement.

"Software Product" shall mean the OMNet API Software and the Hand-EL/PX Trade Application to be provided by the PX in accordance with the terms of this Agreement.

"User" shall mean the participants trading on or otherwise connected to the PX for trading in the traded products, including the PX Participant.

ARTICLE II TERM AND TERMINATION

2.1 **Effective Date.** This Agreement shall be effective as of the date of execution of this Agreement and shall remain in full force and effect until terminated pursuant to Section 2.2 of this Agreement.

2.2 Termination

2.2.1 **Termination by PX.** The PX may terminate this Agreement by giving written notice of termination in the event that the PX Participant's certification under Section 2.6 of the PX Tariff is canceled by the PX, unless excused by reason of Uncontrollable Force in accordance with Section 11 of the PX Tariff, or in the event that the License Agreement is terminated.

2.2.2 **Termination by PX Participant.** In the event that the PX Participant wishes to terminate this Agreement, the PX Participant shall give the PX written notice of such intent to terminate and the date upon which termination is to be effective.

2.2.3 **Effects of Expiration or Termination.** Upon expiration or termination of this Agreement for any reason, the PX Participant shall (a) discontinue all use of the Software Product and Documentation, (b) deliver to the PX all physical copies of the Software Product and Documentation in its possession or under its control, (c) erase or destroy all copies of the Software Product and Documentation contained in any computer memory or data storage apparatus under its control and (d) provide PX with written notice within one (1) week of expiration or termination certifying that it has complied with the terms of this Section.

ARTICLE III GENERAL TERMS AND CONDITIONS

3.1 **Agreement Subject to PX Tariff.** This Agreement shall be subject to the provisions of the PX Tariff which shall be deemed incorporated herein, as the same may be changed or superseded from time to time. In the event of a conflict between the terms and conditions of this Agreement and any other terms and conditions set forth in the PX Tariff, the terms and conditions of the PX Tariff shall prevail to the extent of the inconsistency.

3.2 **OM as Third-Party Beneficiary.** OM shall be a third-party beneficiary to this Agreement. OM shall have access to any relevant information, records and facilities of the PX Participant as required by OM. The PX, OM and/or their representatives shall have the right to examine the facilities and the books, records and other relevant materials of the PX Participant to the extent necessary to verify compliance with the terms of this Agreement.

ARTICLE IV LICENSE TO SOFTWARE PRODUCT AND DOCUMENTATION

4.1 **License.** Subject to the terms and conditions of this Agreement, the PX hereby grants to the PX Participant and the PX Participant hereby accepts a non-exclusive, non-transferable license to use the Software Product in machine readable object code and the Documentation solely for the purpose of operation in connection with the trading activities of the PX on the following computer located at the following site(s): Greenwich, CT. The PX Participant may not change the location of the Software Product without the PX's prior consent. This license is for the version of the Software Product described in Article 1; any other versions, releases updates or upgrades of the Software Product shall be the subject of a separate agreement. The territory of this license is the United States, Canada and Mexico. The PX Participant shall not authorize or permit the Software Product or Documentation to be used or accessed by any third party other than consultants or contractors of the PX Participant who have a need to access the

Software Product to perform services for the PX Participant and who have signed a nondisclosure agreement with the PX Participant.

4.2 **Licensed Operating System.** The Software Product is licensed for execution on a Windows NT operating system only.

4.3 **Intellectual Property Rights.** The PX Participant acknowledges and agrees that the PX or its licensors will retain all right, title, interest and ownership in and to the Software Product and Documentation, including rights of copyright, trademark, trade secret, patent and other intellectual property rights. The PX Participant shall use reasonable efforts to maintain the Software Product and Documentation in confidence and shall not directly or indirectly, publish, communicate or disclose the Software Product and Documentation without the PX's prior written consent. The PX Participant shall reproduce (and shall not obliterate or obscure) the intellectual and property rights notices on or in the Software Product and Documentation. The provisions of this Section shall survive expiration or termination of this Agreement.

4.4 **No Transfer of Title.** The PX does not transfer to the PX Participant any title to or right of ownership in or to the Software Product or the Documentation pursuant to this Agreement or otherwise.

4.5 **Non-Exclusive.** The PX and its licensors expressly reserve the right to grant licenses to the Software Product or Documentation to other Users without restriction or limitation of any kind.

4.6 **No Right to Assign, Transfer, or License.** The PX Participant shall not sublicense, lease, encumber or otherwise transfer or assign this Agreement or the Software Product or Documentation to any third party or to use or permit the use of the Software Product or the Documentation outside the scope of this Agreement provided that the PX Participant may transfer and assign this Agreement and its right to use the Software Product and/or Documentation to any subsidiary or affiliate corporation of PX Participant or of any purchaser of all or substantially all of the assets comprising the business of PX Participant.

4.7 **Back-up Copies.** The PX Participant shall be entitled to make one (1) back-up copy of the Software Product as a back-ups for its own use only. The PX Participant shall not be entitled to make copies of the Documentation. Additional copies can be acquired from the PX for an additional fee.

4.8 **Non-Circumvent.** The PX Participant shall not decompile, reverse assemble or reverse engineer the Software Product for any reason.

4.9 **Installation and Conversion of Data.** The PX Participant shall be solely responsible for (a) installation of the Software Product, (b) interoperability of the Software Product with any other software and hardware of the PX Participant and (c) the conversion of any data required in connection with the PX Participant's use of the Software Product.

ARTICLE V SOFTWARE PRODUCT WARRANTIES

5.1 **Vendor Warranties.** The PX shall pass through to the PX Participant any warranties with respect to the Software Product offered by OM or HSAS. The PX shall have responsibility for enforcing the provisions of the warranties against OM or HSAS. Except as provided in this Article 5.1, the PX disclaims all warranties regarding the Software Product.

5.2 **Non-Infringement.** The PX warrants that the Software Product does not infringe any United States intellectual property right of third parties. The PX and/or its licensors shall, at their expense, defend any action brought against PX Participant to the extent that it is based on a claim that the Software Product and/or Documentation infringes any US Patent, copyright, license, trade secret, or other proprietary right, provided that the PX is promptly notified in writing of such a claim.

5.3 Disclaimer. Any warranties that may be applicable to the Software Product shall not apply to the extent that the PX Participant has made any modifications or changes to the Software Product, or if deficiencies or malfunctions of the Software Product are due to causes and products external to the Software Product or to operation of the Software Product in any manner other than as contemplated by the Documentation.

5.4 No Other Express or Implied Warranties. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES AS TO SUITABILITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.

ARTICLE VI DISPUTE RESOLUTION

6.1 Dispute Resolution. The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the PX ADR Procedures set forth in accordance with Section 7 of the PX Tariff, which is incorporated by reference, except that all reference to the PX Tariff in Section 7 of the PX Tariff shall be read as reference to this Agreement.

ARTICLE VII LIABILITY AND INDEMNIFICATION

7.1 Liability and Indemnification. The provisions of Section 9 of the PX Tariff will apply to liability arising under this Agreement, except that all references to the PX Tariff in Section 9 of the PX Tariff shall be read as references to this Agreement.

ARTICLE VIII UNCONTROLLABLE FORCES

8.1 Uncontrollable Forces Tariff Provisions. Section 11 of the PX Tariff shall be incorporated by reference into this Agreement except that all references to the PX Tariff shall be read as references to this Agreement.

ARTICLE IX MISCELLANEOUS

9.1 Governing Law and Forum. This Agreement shall be deemed to be a contract made under and for all purposes shall be governed by and construed in accordance with the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the PX ADR Procedures do not apply, shall be brought as appropriate, in any of the following forums: any court of the State of California, any federal court of the United States of America located in the State of California or, where subject to its primary or exclusive jurisdiction, before the Federal Energy Regulatory Commission. This Agreement shall incorporate by reference Section 15.6 of the PX Tariff.

9.2 Reservation of Rights. All rights not expressly granted in this Agreement are hereby reserved to the PX and its licensors.

9.3 Assignment. Except as stated in Paragraph 4.6, the FX Participant may not assign this Agreement, in whole or in part, or any of its rights or obligations under this Agreement without the prior written consent of the PX. Any attempted assignment in violation of this provision shall be void.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on behalf of each by and through their authorized representatives as of the date as set forth in the first paragraph of this Agreement.

CALIFORNIA POWER EXCHANGE CORPORATION

By: _____
Title: _____

SEMPRA ENERGY TRADING CORP.

By: *Steven P. ...*
Title: CEO

(Multicurrency—Cross Border)

ISDA[®]

International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of July 29, 1999

Sempra Energy Trading Corp. Pacific Gas & Electric Company
("Party A") and ("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) *General Conditions.*

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability. If:—*

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X.

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. *Representations*

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) *Basic Representations.*

- (i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) *Breach of Agreement.* Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross Default.* If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) *Illegality.* Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event.* Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) *Additional Termination Event.* If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality.* If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:—

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

~~8. Contractual Currency~~

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

"Affected Transactions" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"Affiliate" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under the common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"Applicable Rate" means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement.

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv).

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and *"lawful"* and *"unlawful"* will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non-defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of: —

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

.....
(Name of Party)

.....
(Name of Party)

By:
Name:
Title:
Date:

By:
Name:
Title:
Date:

SCHEDULE

to the

Master Agreement

(Multicurrency - Cross Border)

dated as of July 29 1999

between

Sempra Energy Trading Corp. and Pacific Gas & Electric Company
("Party A") ("Party B")

Part 1

Termination Provisions

In this Agreement:

(a) "Specified Entity" means in relation to Party A for the purpose of:

Section 5(a)(v),	Not Applicable
Section 5(a)(vi),	Not Applicable
Section 5(a)(vii),	Not Applicable
Section 5(b)(iv),	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v),	Not Applicable
Section 5(a)(vi),	Not Applicable
Section 5(a)(vii),	Not Applicable
Section 5(b)(iv),	Not Applicable

(b) "Specified Transaction" will have the meaning specified in Section 14 of this Agreement, except that such term is amended by adding on the eighth line after "currency option" the words ", agreement for the purchase, sale or transfer of any commodity or any other commodity trading transaction."

(c) The "Cross Default" provisions of Section 5(a)(vi), as amended, will apply to Party A and to Party B.

(1) Section 5(a)(vi) is amended by deleting in the seventh line thereof ", or becoming capable at such time of being declared,".

(2) "Specified Indebtedness" will have the meaning specified in Section 14 of this Agreement.

(3) "Threshold Amount" means

- (i) \$100,000,000 (or its equivalent in any other currencies) in relation to Party A, Party A's Credit Support Provider, and any Specified Entity of Party A; and
- (ii) \$100,000,000 (or its equivalent in any other currencies) in relation to Party B.

(d) The "Credit Event Upon Merger" provisions of Section 5(b)(iv), as amended herein, will apply to Party A and Party B:

Section 5(b)(iv) is deleted in its entirety and replaced with the following (italicized text reflects modifications from the ISDA Master Agreement):

Credit Event Upon Merger. If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X: *(1)(A) consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates, or reconstitutes into or as another entity or (B) enters into any agreement providing for any of the actions described in (A) and (2) such action described in (1)(A) or (1)(B) does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker as determined by commercially reasonable judgment under then current market conditions than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); provided, however, that the foregoing action or event shall not constitute a Termination Event so long as in connection with or after such action or event X or its successor or transferee provides (or causes to be provided) to the other party ("Y") within two (2) Local Business Days of Y's written demand therefor Eligible Credit Support in an amount satisfactory to Y in its sole discretion.*

(e) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:

- (1) Market Quotation will apply.
- (2) The Second Method will apply.

(f) "Termination Currency" means United States Dollars.

(g) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event:

If the rating classification assigned to any outstanding long-term unsecured, unsubordinated debt of Party A's Credit Support Provider, in the case of Party A, or of

Pacific Gas & Electric Company, in the case of Party B, is less than any of the following rating classifications, as determined by any of the following rating agencies:

<u>Rating Agency</u>	<u>Rating Classification</u>
Moody's Investor Service, Inc.	<i>Baa2</i>
Standard & Poor's Corporation	<i>BBB</i>
Duff & Phelps	<i>BBB</i>
Fitch IBCA	<i>BBB</i>
Dominion Bond Rating Service	<i>BBB</i>

then a "Ratings Event" shall be deemed to have occurred with respect to Party A (if such occurrence is with respect to the Credit Support Provider of Party A) or Party B (if such occurrence is with respect to Pacific Gas & Electric Company).

Notification. The party for which the Ratings Event is deemed to have occurred ("X") shall promptly notify the other party of the occurrence of such Ratings Event. A Ratings Event shall be deemed an Additional Termination Event for which all transactions under this Agreement shall be Affected Transactions. For the purposes of Section 6, X shall be the sole Affected Party.

- (h) The "Automatic Early Termination" provision of Section 6(a) will not apply to Party A or to Party B.
- (i) **Amendments.** The parties agree to the following changes to this Agreement:
 - (a) Section 5(a)(v)(2) is amended by deleting the words "(or such default continues or at least three Local Business Days if there is no applicable notice requirement or grace period)" in the seventh and eighth lines thereof.
 - (b) Section 5(a)(vii)(4) is amended by inserting ";" after the word "liquidation" in the seventh line thereof and deleting the remainder of Section 5(a)(vii)(4).
 - (c) The definition of "Set-off" in Section 14 is amended by inserting the word "recoupment" (preceded by a comma) between the words "retention" and "or withholding" in the first line of that definition.

Part 2

Tax Representations

- (a) **Representations of Party A.**
 - (1) **Payer Tax Representation.** For the purpose of Section 3(e) of this Agreement, Party A and Party B make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement;
- (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement;

provided, however, that it shall not be a breach of this representation where reliance is placed on clause (ii) above, and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (2) **Payee Tax Representation.** For the purposes of Section 3(f), Party A and Party B make the representations specified below:

The following representation will apply to Party A:

Party A is a corporation created or organized under the laws of the State of Delaware. Party A is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number is 13-3653551.

The following representation will apply to Party B:

Party B is a corporation created or organized under the laws of the State of California. Party B is a U.S. person within the meaning of Section 7701 of the Internal Revenue Code and its U.S. taxpayer identification number is 94-0742640.

Part 3

Documents to be delivered

For the purpose of Section 4(a):

- (i) Tax forms, documents, or certificates to be delivered: None

For the purpose of Section 4(a):

- (ii) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A	Certified copy of Certificate of Authority, Incumbency and Specimen Signatures and Resolutions adopted by the Board of Directors of any Credit Support Provider, authorizing the execution, delivery and performance of any Credit Support Document hereunder.	As of execution of this Agreement.	Yes
Party A and Party B	Certified copy of Certificate of Authority, Incumbency and Specimen Signatures and Resolutions adopted by the Board of Directors, or relevant committee of the Board of Directors, of Party A or Party B (as applicable), authorizing the execution, delivery and performance of this Agreement and the Transactions contemplated hereunder.	As of execution of this Agreement.	Yes
Party A and Party B	Audited annual consolidated financial statements of Party B and, in the case of Party A, any Credit Support Provider for Party A.	Promptly upon demand after becoming publicly available.	Yes
Party A and Party B	Unaudited quarterly consolidated financial statements of Party B and, in the case of Party A, any Credit Support Provider for Party A.	Within 30 days after becoming publicly available.	Yes

Part 4

Miscellaneous

- (a) **Addresses for Notices.** For the purposes of Section 12(a) of this Agreement:

Address for notices or communications to Party A for all purposes:

Address: Sempra Energy Trading Corp.
58 Commerce Road
Stamford, CT 06902
Attention: Energy Operations
Facsimile No.: 203-355-5630
Telephone No.: 203-355-5701

Address for notices or communications to Party B for all purposes:

Address: Pacific Gas & Electric Corporation
Spear Street Tower, Suite 400
One Market Street
San Francisco, CA 94105
Attention: Ms. Jamie Fenton
Facsimile No.: (415) 817-8175
Telephone No.: (415) 817-8180

and to:

Address: Pacific Gas and Electric Company
77 Beale Street, Room 727C
Mail Code B7A
San Francisco, CA 94105
Attention: Mr. Jeff Silva
Facsimile No.: 415-972-5445
Telephone No.: 415-973-1899

- (b) **Notices.** Subparagraph (ii) of Section 12(a) of this Agreement shall not apply. Section 12(a) is amended by adding the words “; provided, however, that such notice or other communication may be given by facsimile transmission if telex is unavailable, no telex number is supplied to the party providing notice, or if answer back confirmation is not received from the party to whom the telex is sent” in the third line thereof after the words “messaging system.”
- (c) **Process Agent.** For the purpose of section 13(c):
Party A appoints as its Process Agent: Not applicable.
Party B appoints as its Process Agent: Not applicable.

- (d) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (e) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement.

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.

- (f) **Calculation Agent.** The Calculation Agent is Party A, unless an Event of Default or Potential Event of Default has occurred and is continuing with respect to Party A or otherwise specified in a Confirmation in relation to the relevant Transaction, in which case Party B is the Calculation Agent. All determinations by the Calculation Agent are subject to agreement by Party A and Party B. The parties shall, in good faith, endeavor to resolve any disagreement over a calculation. If the parties are unable to agree on a particular calculation within two business days from the day on which the disagreement arose, the parties shall appoint another mutually acceptable Calculation Agent that is a dealer in the relevant market.

- (g) **Credit Support Document.** Credit Support Document shall mean, for Party A and Part B, the Credit Support Annex attached hereto; and,

Party A: A Guarantee issued by Sempra Energy, dated June 9, 1999, which shall be a Credit Support Document in relation to Party A.

- (h) **Credit Support Provider.**

Party A: Sempra Energy, a California corporation, or any successor(s) thereto.

Party B: Not applicable.

- (i) **Governing Law.** This Agreement will be governed by and construed in accordance with the internal laws of the State of New York without reference to choice of law doctrine. The U.N. Convention on Contracts for International Sale of Goods shall not in any way apply to or govern this Agreement.

- (j) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply except as modified. Only Transactions marked "CORE" will be netted together and Transactions marked "CGT" will be netted together. CORE Transactions and CGT Transactions will not be netted.

- (k) **"Affiliate"** shall mean Sempra Energy Trading Corp., or any successor corporation(s), with respect to Party A.

"Affiliate" shall mean "None" with respect to Party B.

Part 5

Other Provisions

(a) Modifications to the Agreement

- (i) The condition precedent in Section 2(a)(iii)(1) does not apply to a payment or delivery owing by a party if the other party shall have satisfied in full all its payment and delivery obligations under Section 2(a)(i) of this Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i).
- (ii) **Change of Account.** Section 2(b) of this Agreement is hereby amended by the addition of the following after the word "delivery" in the first line thereof:

"to another account in the United States"
- (iii) Section 3(c) is hereby amended with respect to Party A and Party B by limiting the definition of "Affiliate" to "None" with respect to Party B, and to Party A's Credit Support Provider (Sempra Energy) with respect to Party A. To the extent that the representation in Section 3(c) relates to each party, such representation, when made or deemed repeated, shall be of the latest date as of which audited financial statements for such party were issued.
- (iv) Section 4(c) is hereby amended by replacing the words "to which it may be subject" with the words "to which it is subject."
- (v) Section 5(a)(iii)(1) is hereby deemed to include the breach by the party or any Credit Support Provider of any representation, warranty or covenant set forth in any Credit Support Document.
- (vi) The introductory paragraph of Section 5(a)(viii) is hereby amended by adding the words "or reorganizes, reincorporates or reconstitutes into or as," in the third line thereof after the words "its assets to," and by adding the words ", reorganization, reincorporation, reconstitution" in the third line thereof after the word "merger."
- (vii) Section 5(b)(ii) is hereby deleted in its entirety and replaced with the following (italicized text reflects modifications from the ISDA Master Agreement):

Tax Event. Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from *the other party or a Credit Support Provider of such party from*

which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B)) or (C); and neither party shall have any right to invoke this Section 5(b)(ii) based on any payments made or required to be made by a Credit Support Provider of such party;

(viii) Section 5(b)(iii) is hereby amended by adding the words "or (C)" in the sixth line thereof after the words "Section 2(d)(i)(4)(A) or (B)" and by adding the words "or reorganizing, reincorporating, or reconstituting into or as." in the eighth line thereof after the words "its assets to."

(ix) Section 6(a) is hereby amended by adding the following after the last line thereof:

For a Fully Paid Transaction where one party has satisfied its payment obligations under Section 2(a)(i) of this Agreement and shall have no future payment obligations, whether absolute or contingent (the "Fully Paid Party"), then unless the other party is required to return to the Fully Paid Party upon its demand any portion of its payments, the occurrence of an event described in Section 5 of this Agreement with respect to the Fully Paid Party shall not constitute an Event of Default with respect to the Fully Paid Party.

The term "Fully Paid Transaction" means a cap transaction, floor transaction, collar transaction, or any other price protection transaction specified in a related Confirmation as to which a party has satisfied in full all of its payment obligations under Section 2(a)(i) of this Agreement and shall have no future payment obligations, whether absolute or contingent, under such section with respect to such Fully Paid Transaction.

(x) Section 7 is hereby amended by adding the following subsection (c):

(c) with respect to a Fully Paid Transaction, a Fully Paid Party may transfer its rights with respect to such Transaction in whole but not in part to any third party, provided that (i) such transfer will not violate the representations in Section 3 of this Agreement, and (ii) such transfer will not give rise to an Event of Default or Termination Event with respect to any assignee or party.

(xi) Section 9(b) of this Agreement is hereby amended by the addition of the following after the word "Agreement" in the first line thereof:

"or Credit Support Annex"

(xii) The definition of the term "Tax" in Section 14 is hereby amended by adding in the third line thereof after the word "Agreement" and before the word "other" the words "or any Credit Support Document."

- (xiii) The definition of the term "Indemnifiable Tax" in Section 14 is hereby amended by adding in the second line thereof after the word "Agreement" and before the word "but" the words "or any Credit Support Document."
- (b) **Additional Representations.** Section 3 of the Agreement is hereby amended by adding at the end thereof the following subsections (g), (h) and (i):
- (g) **Eligible Swap Participant.** It is an "eligible swap participant" within the meaning of 17 C.F.R. Section 35.1(b)(2).
- (h) — **Commodity Options.** With respect to Transactions involving commodity options, it is a producer, processor or commercial user of, or merchant handling, the commodity which is the subject of the commodity option Transaction, or the products or byproducts thereof, and that such producer, processor, commercial user or merchant enters into the commodity option Transaction solely for purposes related to its business as such.
- (i) **Non-Reliance.** In connection with this Agreement, any Credit Support Document to which it is a party, each Transaction, and any other documentation relating to this Agreement to which it is a party or that it is required by this Agreement to deliver:
- (i) it is not relying upon any representations (whether written or oral) of the other party other than the representations expressly set forth in this Agreement, such Credit Support Document and in any Confirmation;
 - (ii) it has consulted with its own legal, regulatory, tax, business, investment, financial and accounting advisors to the extent it has deemed necessary, and it has made its own investment, hedging and trading decisions (including decisions regarding the suitability of any Transaction pursuant to this Agreement) based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party;
 - (iii) it has a full understanding of all the terms, conditions and risks (economic and otherwise) of the Agreement and each Transaction and is capable of assuming and willing to assume (financially and otherwise) those risks;
 - (iv) it is entering into this Agreement, such Credit Support Documents, each Transaction and such other documentation as principal, and not as agent or in any other capacity, fiduciary or otherwise; and
 - (v) the other party is not acting as a fiduciary or financial, investment or commodity trading advisor for it.

- (j) **Regulatory Authority.** Party B has obtained authorization from the California Public Utilities Commission to enter into risk management transactions as contemplated under this Agreement.
- (c) **Set off.** Upon the designation of any Early Termination Date as a result of an Event of Default in addition to and not in limitation of any other right or remedy (including any right to setoff, counterclaim, or otherwise withhold payment) under applicable law:

The Non-defaulting Party, at its option and without prior notice to the Defaulting Party or any Credit Support Provider thereof, may set off all sums or obligations, whether matured or unmatured, owed by the Defaulting Party or any Credit Support Provider thereof to the Non-defaulting Party against any sum or obligation, whether matured or unmatured, (the "Original Obligation") owed by the Non-defaulting Party to the Defaulting Party or any Credit Support Provider thereof, and, for this purpose, may convert one currency into another.

Any such setoff shall automatically satisfy and discharge the Original Obligation to the Defaulting Party and its Credit Support Provider and, if the Original Obligation exceeds the sum or obligation to be set off against, the Original Obligation shall be novated and replaced by an obligation to pay the Defaulting Party and its Credit Support Provider only the excess of the Original Obligation over such sum or obligation. Any obligation of the Non-defaulting Party to make any payment to a Defaulting Party and any Credit Support Provider thereof hereunder shall in any event to be conditioned upon and shall arise only upon the date of the payment (by setoff, by cash payment or otherwise) in full by the Defaulting Party and its Credit Support Provider of all obligations then due and owing by the Defaulting Party and its Credit Support Provider to the Non-defaulting Party.

For purposes of the foregoing, the Non-defaulting party may (i) estimate in good faith any sum or obligation that is unascertained and set off in respect of that estimate, subject to accounting to the Defaulting Party when such sum or obligation is ascertained.

Nothing in this paragraph will have the effect of creating a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (d) **Confirmations.** For each Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation via facsimile transmission in substantially the form of the Exhibits to the 1991 ISDA Definitions (the "Swap Definitions") the 1998 supplement to the 1991 ISDA Definitions, and the 1993 ISDA Commodity Derivative Definitions (the "Commodity Definitions"), as published by the International Swaps and Derivatives Association, Inc. Party B agrees to respond by telephone to Party A's Confirmation within five (5) Business Days after receipt of Party A's Confirmation, to confirm the

accuracy of or request the correction of any of the provisions or terms contained in Party A's Confirmation. Party B's telephone response will be followed within a reasonable time by Party B's written response or acceptance of Party A's Confirmation.

- (e) **Interpretation.** Unless otherwise specified in a Confirmation, this Agreement, the Credit Support Documents, if any, each Confirmation and each Transaction are subject to the "Swap Definitions" and the "Commodity Definitions," as amended, supplemented, updated, and superseded from time to time, each as published by the International Swaps and Derivatives Association, Inc. (collectively, the "ISDA Definitions"). In the event of any inconsistency between the provisions of the Swap Definitions and the Commodity Definitions, the Commodity Definitions will prevail. In the event of any inconsistency between the provisions of this Agreement and the ISDA Definitions, this Agreement will prevail. In the event of any inconsistency between the provisions of the Credit Support Documents, if any, and the ISDA Definitions, the Credit Support Documents will prevail. Subject to Section 1(b), in the event of any inconsistency between the provisions of any Confirmation and this Agreement or the ISDA Definitions, the Confirmation will prevail for the purpose of the relevant Transaction, except for Sections 5 and 6, which may be amended only by a written amendment executed by the parties.
- (f) **Severability.** Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction in respect of any Transaction shall, as to such Transaction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision as to any other jurisdiction or Transaction unless such severance shall substantially impair the benefits of the remaining portions of this Agreement or changes the reciprocal obligations of the parties. The parties hereto shall endeavor in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.
- (g) **Consent to Recordings.** The parties hereto (i) agree that each may electronically monitor or record, at any time and from time to time, any and all communications between them, (ii) waive any further notice of such monitoring or recording, (iii) agree to notify its officers and employees of such monitoring or recording, and (iv) agree that any such monitoring or recording may be submitted into evidence in any suit, trial, hearing, arbitration, or other proceeding. Each party hereto has obtained any necessary consent of its employees to the monitoring or recording of its employees' telephone conversations without any further notice.
- (h) **Waiver of Jury Trial.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of any litigation directly or indirectly arising out of, under or in connection with this Agreement.
- (i) **LIMITATION OF LIABILITY. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES (WHETHER OR NOT ARISING FROM ITS NEGLIGENCE) TO ANY OTHER PARTY; PROVIDED, HOWEVER,**

THAT NOTHING IN THIS PROVISION SHALL AFFECT THE ENFORCEABILITY OF SECTION 6(e) OF THIS AGREEMENT. IF AND TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT IS DETERMINED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT IS INTENDED TO BE A REASONABLE APPROXIMATION OF THE AMOUNT OF SUCH DAMAGES AND NOT A PENALTY.

- (j) **Annual Financial Statements.** "Annual Financial Statements" means a copy of the annual report of the relevant person containing audited consolidated financial statements for such party's fiscal year certified by independent auditors and prepared in accordance with accounting principles that are generally accepted in the United States.

Part 6

Provisions for Commodity Derivative Transactions

- (a) The "Market Disruption Events" specified in Section 7.4(d)(i) of the Commodity Definitions shall apply, except as otherwise specifically provided in the Confirmation.
- (b) "Additional Market Disruption Events" shall apply if so specified in the Confirmation.
- (c) The following "Disruption Fallbacks" specified in Section 7.5(c) of the Commodity Definitions shall apply, in the following order, except as otherwise specifically provided in the Confirmation:
- (i) "Postponement"; provided that the Maximum Days of Disruption shall be three (3) Commodity Business Days;
 - (ii) "Average Daily Price Disruption"; provided that the Maximum Days of Disruption shall be three (3) Commodity Business Days;
 - (iii) "Fallback Reference Price";

- (iv) "Negotiated Fallback"; provided that references to the fifth Business Day shall be to the first Business Day; and
- (v) "No Fault Termination."

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

SEMPRA ENERGY TRADING CORP.

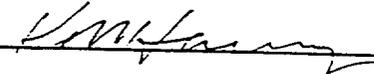
By: 

Name: Carl Peterson

Title: Vice President

Date: July 29, 1999

PACIFIC GAS & ELECTRIC COMPANY

By: 

Name: Kent M. Harvey

Title: Senior V.P. -Treasurer and C.F.O

Date: August 9, 1999

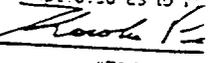
Approved as to Form

Kent M. Harvey

Exhibit A-1

BANK NAME AND ADDRESS
TELEPHONE NUMBER

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

PLACE AND DATE OF ISSUE:

DATE AND PLACE OF EXPIRY:

APPLICANT:
NAME
(EXACT NAME OF SUBSCRIBING COMPANY)
ADDRESS
CITY, STATE, ZIP CODE

ADVISING BANK:
NOT APPLICABLE

BENEFICIARY:
PACIFIC GAS & ELECTRIC CO.
77 SPEAR STREET - MAIL CODE B28L
SAN FRANCISCO, CALIFORNIA 94105
ATTN: JOHN FOLEY

AMOUNT: US\$ _____
_____ DOLLARS AND ___/100 US DOLLARS

To Whom It May Concern:

We hereby establish this irrevocable Letter of Credit in favor of the aforesaid addressee, PACIFIC GAS & ELECTRIC CO. ("Beneficiary") for drawings up to \$ [same as amount listed in heading of letter]. This Letter of Credit is issued, presentable, and payable by Bank Name when accompanied by the original of this Letter of Credit and by the following document(s):

1. A statement signed by an authorized representative of the Beneficiary stating that "Payment has not been received for the attached invoice issued by PACIFIC GAS & ELECTRIC COMPANY. We are the counterparty to SEMPRA ENERGY TRADING CORP. in a Transaction(s) under an ISDA Master Agreement dated as of [insert "as of date"]."
2. An invoice from Beneficiary for the net amount owing from all Transactions under an ISDA Master Agreement dated as of [insert "as of date"] between SEMPRA ENERGY TRADING CORP. and PACIFIC GAS & ELECTRIC COMPANY, and marked "Unpaid", which includes all amounts owed under the ISDA Master Agreement, including, but not limited to Settlement Amounts, Expenses, and Set-Off amounts.

We hereby undertake to promptly honor your sight draft(s) drawn upon us if presented on or before the expiry date or any extended expiry date at this office located at Bank address attn: Standby Letters Of Credit Section. Drafts must be marked: drawn under Bank Name Credit No. _____.

This Letter of Credit is subject to the following conditions:

- (1) Partial drawings on this Credit are permitted.
- (2) Invoices presented in excess of the amount of this Credit are acceptable. However, in no event will payment exceed the value of this Letter of Credit.

Exhibit A-1

This credit is subject to the laws of the State of New York (without reference to choice of law doctrine) and the Uniform Customs And Practice For Documentary Credits (1993 Revision) International Chamber Of Commerce, Publication 500 (1993 Revision), or any successor publication thereto ("Publication 500"). In the event of conflict between Publication 500 and the laws of the State of New York, the laws of the State of New York shall control. If this Credit expires during an interruption of business as described in Article 17 of Publication 500, the bank hereby specifically agrees to effect payment if this Credit is drawn against within thirty (30) days after the resumption of business.

AUTHORIZED SIGNATURE
BANK NAME

BANK NAME AND ADDRESS
TELEPHONE NUMBER

IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____

PLACE AND DATE OF ISSUE:

DATE AND PLACE OF EXPIRY:

APPLICANT:
PACIFIC GAS & ELECTRIC COMPANY
77 SPEAR STREET - MAIL CODE B28L
SAN FRANCISCO, CALIFORNIA 94105

ADVISING BANK:
NOT APPLICABLE

BENEFICIARY:
SEMPRA ENERGY TRADING CORP.
STREET ADDRESS
CITY, STATE
ATTN: CREDIT OFFICER

AMOUNT: US\$ _____
_____ DOLLARS AND ____/100 US DOLLARS

To Whom It May Concern:

We hereby establish this irrevocable Letter of Credit in favor of the aforesaid addressee, SEMPRA ENERGY TRADING CORP. ("Beneficiary") for drawings up to \$ [same as amount listed in heading of letter]. This Letter of Credit is issued, presentable, and payable by Bank Name when accompanied by the original of this Letter of Credit and by the following document(s):

1. A statement signed by an authorized representative of the Beneficiary stating that "Payment has not been received for the attached invoice issued by SEMPRA ENERGY TRADING CORP.. We are the counterparty to PACIFIC GAS & ELECTRIC COMPANY in a Transaction(s) under an ISDA Master Agreement dated as of [insert "as of date"]."
2. An invoice from Beneficiary for the net amount owing from all Transactions under an ISDA Master Agreement dated as of [insert "as of date"] between SEMPRA ENERGY TRADING CORP. and PACIFIC GAS & ELECTRIC COMPANY, and marked "Unpaid", which includes all amounts owed under the ISDA Master Agreement, including, but not limited to Settlement Amounts, Expenses, and Set-Off amounts.

We hereby undertake to promptly honor your sight draft(s) drawn upon us if presented on or before the expiry date or any extended expiry date at this office located at Bank address attn: Standby Letters Of Credit Section. Drafts must be marked: drawn under Bank Name Credit No. _____.

This Letter of Credit is subject to the following conditions:

- (1) Partial drawings on this Credit are permitted.
- (2) Invoices presented in excess of the amount of this Credit are acceptable. However, in no event will payment exceed the value of this Letter of Credit.

This credit is subject to the laws of the State of New York (without reference to choice of law doctrine) and the Uniform Customs And Practice For Documentary Credits (1993 Revision) International Chamber Of

Exhibit A-2

Commerce, Publication 500 (1993 Revision), or any successor publication thereto ("Publication 500"). In the event of conflict between Publication 500 and the laws of the State of New York, the laws of the State of New York shall control. If this Credit expires during an interruption of business as described in Article 17 of Publication 500, the bank hereby specifically agrees to effect payment if this Credit is drawn against within thirty (30) days after the resumption of business.

AUTHORIZED SIGNATURE
BANK NAME

CERTIFICATE

The Undersigned, as a duly authorized officer of Pacific Gas & Electric Company (the "Beneficiary"), hereby certifies as follows to _____ (the "Bank"), with reference to irrevocable Letter of Credit No. _____ (the "Letter of Credit") issued by the Bank.

1. Payment has not been received for the attached invoice issued by PACIFIC GAS & ELECTRIC COMPANY. We are the counterparty to _____ in (a) Transaction(s) under the ISDA Master Agreement dated as of [insert "as of date"].
2. The amount of the Draft accompanying this Certificate does not exceed the amount available to be drawn under the Letter of Credit with respect to the overdue amounts.
3. The Beneficiary requests that payment of the amount of the Draft be made to its Account No. _____ at _____, Ref.: _____, Attention: _____.

IN WITNESS WHEREOF, the Beneficiary has executed and delivered this Certificate as of the _____ day of _____, _____.

PACIFIC GAS & ELECTRIC COMPANY

By: _____

Title: _____

EXHIBIT B-1

AT SIGHT

PAY TO Pacific Gas & Electric Company U.S. \$ _____ United States
Dollars: Drawn under [Bank Name] Credit No. _____

PACIFIC GAS & ELECTRIC COMPANY

By: _____

Title: _____

[Name and Address of Bank]

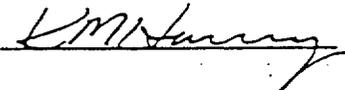
Attention: _____

PG&E CORPORATION
PACIFIC GAS AND ELECTRIC COMPANY

CERTIFICATE OF AUTHORITY, INCUMBENCY,
AND SPECIMEN SIGNATURE

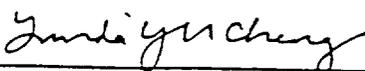
The undersigned, Linda Y.H. Cheng, the duly elected, qualified, and acting Senior Assistant Corporate Secretary of Pacific Gas and Electric Company, a California corporation (the "Company"), and a duly elected, qualified, and acting Assistant Corporate Secretary of PG&E Corporation, a California corporation, does hereby certify as follows:

1. The Company has been authorized to use derivatives to manage risk associated with interest rates, currencies, and energy commodity prices by (i) a resolution of the Board of Directors of PG&E Corporation, its parent corporation (the "Parent"), dated July 16, 1997, and (ii) other corporate action by the Parent.
2. The Board of Directors of the Company duly resolved on September 17, 1997, that each Senior Vice President of the Company is authorized to sign, on behalf of the Company, agreements and instruments of every kind and character.
3. Kent M. Harvey is, and has been at all times since July 1, 1997, the duly elected, qualified, and acting Senior Vice President – Treasurer and Chief Financial Officer of the Company, and the facsimile signature herein affixed is his genuine facsimile signature:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
Kent M. Harvey	Senior Vice President – Treasurer and Chief Financial Officer	

4. Kent M. Harvey has been duly authorized pursuant to the aforementioned resolutions and corporate action to execute ISDA Master Agreements and to enter into transactions thereunder on behalf of the Company.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the respective seals of the Company and the Parent this 30 day of July, 1999.



Linda Y.H. Cheng
Senior Assistant Corporate Secretary,
Pacific Gas and Electric Company
Assistant Corporate Secretary,
PG&E Corporation

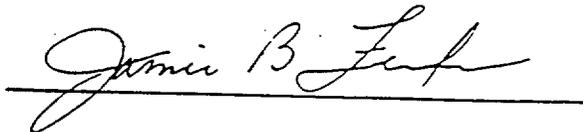
PG&E CORPORATION
PACIFIC GAS AND ELECTRIC COMPANY

CERTIFICATE OF AUTHORITY, INCUMBENCY,
AND SPECIMEN SIGNATURES

The undersigned, Wondy S. Lee, a duly elected, qualified, and acting Assistant Corporate Secretary of Pacific Gas and Electric Company, a California corporation (the "Company"), and a duly elected, qualified, and acting Assistant Corporate Secretary of PG&E Corporation, a California corporation, does hereby certify as follows:

Each of the following individuals is an employee of the Company or PG&E Corporation, its parent corporation (the "Parent"), and has been duly authorized pursuant to corporate action by the Company and/or the Parent to sign, on behalf of the Company, confirmation statements in connection with ISDA Master Agreements entered into by the Company; and the facsimile signature herein affixed opposite his or her name is his or her genuine facsimile signature.

Jamie B. Fenton
Manager, Risk Management Accounting
PG&E Corporation



Jeffrey Silva
Senior Analyst, Risk Management Accounting
Pacific Gas and Electric Company



Paulette Crawford
Accounting Analyst, Risk Management Accounting
Pacific Gas and Electric Company



Geraldine Sanchez-Ng
Accounting Analyst, Risk Management Accounting
Pacific Gas and Electric Company



(Bilateral Form)

(ISDA Agreements Subject to New York Law Only)

ISDA[®]

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEX

to the Schedule to the

ISDA Multicurrency-Cross Border Master Agreement

dated as of July 29, 1999

between

Sempra Energy Trading Corp. and Pacific Gas & Electric Company

("Party A")

("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:—

Paragraph 1. Interpretation

(a) *Definitions and Inconsistency.* Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) *Secured Party and Pledgor.* All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however,* that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) *Delivery Amount.* Subject to Paragraphs 4 and 5, upon a demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Delivery Amount*" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount

exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) *Return Amount.* Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds the Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "*Return Amount*" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party

exceeds

(ii) the Credit Support Amount.

"*Credit Support Amount*" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) *Conditions Precedent.* Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) *Transfer Timing.* Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) *Calculations.* All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) *Substitutions.*

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) *Care of Posted Collateral.* Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) *Eligibility to Hold Posted Collateral; Custodians.*

(i) *General.* Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) *Failure to Satisfy Conditions.* If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) *Liability.* The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) *Use of Posted Collateral.* Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor, and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) *Distributions and Interest Amount.*

(i) *Distributions.* Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) *Interest Amount.* Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) *Secured Party's Rights and Remedies.* If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) *Pledgor's Rights and Remedies.* If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) *Deficiencies and Excess Proceeds.* The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) *Final Returns.* When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

- (a) *General.* Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.
- (b) *Posted Credit Support.* The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).
- (c) *Liquidation/Application of Posted Credit Support.* All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

- (a) *Default Interest.* A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obligated to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.
- (b) *Further Assurances.* Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.
- (c) *Further Protection.* The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).
- (d) *Good Faith and Commercially Reasonable Manner.* Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.
- (e) *Demands and Notices.* All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.
- (f) *Specifications of Certain Matters.* Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:—

“*Cash*” means the lawful currency of the United States of America.

“*Credit Support Amount*” has the meaning specified in Paragraph 3.

“*Custodian*” has the meaning specified in Paragraphs 6(b)(i) and 13.

“*Delivery Amount*” has the meaning specified in Paragraph 3(a).

“*Disputing Party*” has the meaning specified in Paragraph 5.

“*Distributions*” means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“*Eligible Collateral*” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“*Eligible Credit Support*” means Eligible Collateral and Other Eligible Support.

“*Exposure*” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“*Independent Amount*” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“*Interest Amount*” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of that Cash on that day, multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“*Interest Period*” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“*Interest Rate*” means the rate specified in Paragraph 13.

“*Local Business Day*”, unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

- "Minimum Transfer Amount"* means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.
- "Notification Time"* has the meaning specified in Paragraph 13.
- "Obligations"* means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.
- "Other Eligible Support"* means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.
- "Other Posted Support"* means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.
- "Pledgor"* means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).
- "Posted Collateral"* means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.
- "Posted Credit Support"* means Posted Collateral and Other Posted Support.
- "Recalculation Date"* means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however,* that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.
- "Resolution Time"* has the meaning specified in Paragraph 13.
- "Return Amount"* has the meaning specified in Paragraph 3(b).
- "Secured Party"* means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.
- "Specified Condition"* means, with respect to a party, any event specified as such for that party in Paragraph 13.
- "Substitute Credit Support"* has the meaning specified in Paragraph 4(d)(i).
- "Substitution Date"* has the meaning specified in Paragraph 4(d)(ii).
- "Threshold"* means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.
- "Transfer"* means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:
- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
 - (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;
 - (iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and
 - (iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

"Valuation Agent" has the meaning specified in Paragraph 13.

"Valuation Date" means each date specified in or otherwise determined pursuant to Paragraph 13.

"Valuation Percentage" means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

"Valuation Time" has the meaning specified in Paragraph 13.

"Value" means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
 - (A) Cash, the amount thereof; and
 - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

PACIFIC GAS & ELECTRIC COMPANY ("Party B")
AND
SEMPRA ENERGY TRADING CORP. ("Party A")
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Paragraph 13. Elections and Variables

- (a) *Security Interest for "Obligations."* The term "*Obligations*" as used in this Annex includes the following additional obligations:

With respect to Party A: None

With respect to Party B: None

- (b) *Credit Support Obligations*

- (i) *Delivery Amount, Return Amount and Credit Support Amount*

(1) "*Delivery Amount*" has the meaning specified in Paragraph 3(a).

(2) "*Return Amount*" has the meaning specified in Paragraph 3(b).

(3) "*Credit Support Amount*" has the meaning specified in Paragraph 3.

- (ii) *Eligible Collateral.* The following items will qualify as "*Eligible Collateral*" for the Party specified:

	Party A	Party B	Valuation Percentage
(1) Cash (SUSD) -	[X]	[X]	[100]%
(2) negotiable debt obligations issued by the U.S. Treasury Department having an original maturity at issuance of not more than one year ("Treasury Bills")	[]	[]	[]%
(3) negotiable debt obligations issued by the U.S. Treasury Department having an original maturity at issuance of more than one year but not more than 10 years ("Treasury Notes")	[]	[]	[]%

- | | | | |
|---|-----|-----|------|
| (4) negotiable debt obligations issued by the U.S. Treasury Department having an original maturity at issuance of more than 10 years ("Treasury Bonds") | [] | [] | []% |
| (5) other: | [] | [] | []% |

(iii) *Other Eligible Support.*

For Party A: Irrevocable Letters of Credit in the form of Attached Exhibit A-1 (or in such other form approved by Party B, in its sole discretion, in writing), duly completed and issued, naming Party B as the beneficiary, with expiry date not earlier than 30 days after the date of Transfer of the Letter of Credit to Party B, the issuer of which is an "Eligible LC Bank" (as defined below) on the date of such Transfer.

For Party B: Irrevocable Letters of Credit in the form of attached Exhibit A-2 (or in such other form approved by Party A, in its sole discretion, in writing), duly completed and issued, naming Party A as the beneficiary, with expiry date not earlier than 30 days after the date of Transfer of the Letter of Credit to Party A, the issuer of which is an Eligible LC Bank on the date of such Transfer.

"Eligible LC Bank" at any time means a commercial bank, operating from an office in the continental United States, whose general long-term unsecured debt is at such time rated at least "A" by Standard & Poor's Rating Service, a division of McGraw-Hill Companies, Inc. ("S&P"), or an equivalent rating by its successor (if any) and at least "A2" by Moody's Investors Service, Inc. ("Moody's"), or an equivalent rating by its successor (if any); in the event such a commercial bank is rated by only one of SP or Moody's, eligibility will be based on the available rating.

(iv) *Thresholds*

(1) *"Independent Amount"* means with respect to both Party A and Party B: for each Transaction at any time, zero, unless otherwise specified in the Confirmation.

(2) *"Threshold"* means with respect to Party A the following:

If the credit rating of Party A's Credit Support Provider(s), from S&P/Moody's, is "A-"/"A3" or better, then the Threshold amount is \$10,000,000.

If the credit rating of Party A's Credit Support Provider(s), from S&P/Moody's, is "BBB+" or "BBB"/"Baa1" or "Baa2", then the Threshold amount is \$5,000,000.

If the credit rating of Party A's Credit Support Provider(s), from S&P/Moody's, is "BBB-"/"Baa3" or a lower rating, then the Threshold amount is \$0.

If more than one rated Credit Support Provider is specified for Party A, then the applicable Threshold amount shall be measured by the lowest of the credit ratings of the Credit Support Providers of Party A.

"Threshold" means with respect to Party B the following:

If the credit rating of Pacific Gas and Electric Company, from S&P/Moody's, is "A-"/"A3" or better, then the Threshold amount is \$10,000,000.

If the credit rating of Pacific Gas and Electric Company, from S&P/Moody's, is "BBB+" or "BBB"/"Baa1" or "Baa2", then the Threshold amount is \$5,000,000.

If the credit rating of Pacific Gas and Electric Company, from S&P/Moody's, is "BBB-"/"Baa3" or a lower rating, then the Threshold amount is \$0.

- (3) **"Minimum Transfer Amount"** means with respect to both Party A and Party B USD \$200,000 subject to the following: if the Party is a Defaulting Party at the time, its Minimum Transfer Amount will be zero.
- (4) **"Rounding"** means the Delivery Amount, if a positive number, will be rounded up to the nearest integral multiple of USD \$1,000, and the Return Amount, if a positive number, will be rounded down to the nearest integral multiple of USD \$1,000 or to zero, if the Return Amount is less than USD \$1,000.

(c) **Valuation and Timing**

- (i) **"Valuation Agent"** means for the purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3 and, for the purposes of Paragraph 6(d), the Secured Party receiving the Interest Amount; *provided, however*, if an Event of Default or Potential Event of Default has occurred and is continuing with respect to the party designated as the Valuation Agent, then for as long as the Event of Default or Potential Event of Default continues, the other party will be the Valuation Agent.
- (ii) **"Valuation Date"** means any Local Business Day of the month in the city of the Valuation Agent.

(iii) **"Valuation Time"** means the close of business in the city of the Valuation Agent on the Local Business Day in that city immediately preceding the Valuation Date or date of calculation, as applicable; provided, however, that the calculations of Value and Exposure will be made as of approximately the same time on the same date.

(iv) **"Notification Time"** means:

- (1) With respect to the Valuation Agent's calculations, the Notification Time will be 3:00 p.m., New York time, on a Local Business Day.
- (2) With respect to the demands for the transfer of Eligible Credit Support or Equivalent Credit Support, the Notification Time will be 3:00 p.m., New York time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party's Rights and Remedies.**

(i) The following Termination Events will be a "Specified Condition" for the party specified (that party being the Affected Party if the Termination Event occurs with respect to the party):

	Party A	Party B
Credit Event Upon Merger	[X]	[X]
Additional Termination Event as stated in the Schedule to this Agreement.	[X]	[X]

(ii) For the purposes of Paragraph 8(a) and Paragraph 8(b), each Termination Event will constitute a Specified Condition with respect to a Pledgor or a Secured Party respectively, if such party fails to pay when due any amount payable by it in connection with an Early Termination Date designated in connection with that Termination Event.

(e) **Substitution**

(i) **"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).

(ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d): Applicable.

(f) **Dispute Resolution**

- (i) **"Resolution Time"** means 4:00 p.m., New York time, on a Local Business Day for both Parties, following the date the Disputing Party gives notice of a dispute pursuant to Paragraph 5.
- (ii) **Modification.** If a dispute as to a Delivery Amount, Return Amount or Value arises, then (i) the disputing Party, as such term is defined in paragraph 5, shall notify the Valuation Agent of such disagreement by telephone no later than the close of business on the Local Business Day following the date the demand is made or the date of transfer, as applicable, (ii) during the pendency of any such disagreement, the Valuation Agent's calculation shall be controlling with respect to the undisputed amount, which shall be transferred as provided in paragraph (iii) below; and (iii) the parties shall confer in good faith with a view towards mutually agreeing upon the relevant amount. In the event the parties are unable to mutually agree within one New York Business Day of any such notification of disagreement, any component of such determination upon which the parties are unable to agree shall be determined based on the average of Market Quotations obtained from three mutually agreed Reference Market-makers (but if the parties cannot agree on the Reference Market-makers, each party shall select two Reference Market-makers for this purpose and the relevant amount shall be the average of the Market Quotations so determined).
- (iii) **Alternative.** Pending the resolution of a dispute, Transfer of the undisputed Value of Eligible Credit Support or Posted Credit Support involved in the relevant demand will be due, subject to Paragraph 4(a), no later than the close of business on the Local Business Day following the date of Transfer (if applicable) or the date on which the demand is made if the demand is made at or before the Notification Time, but will be due on the second Local Business Day after the demand if the demand is made after the Notification Time.

(g) **— Holding and Using Posted Collateral**

- (i) **Eligibility to Hold Posted Collateral; Custodians.** Party A or its Custodian will be entitled to hold Posted Collateral pursuant to a Paragraph 6(b); provided that the following conditions applicable to it are satisfied:
- (A) Party A, as the Secured Party, is not the Defaulting Party.
- (B) The Custodian is a Bank (as defined in the Federal Deposit Insurance Act) whose Rating (with respect to its long-term unsecured, unsubordinated indebtedness) is at least A- by S&P or A3 by Moody's.
- (C) All Posted Collateral may be held only in the following jurisdiction: U.S.A.

Initially, the Custodian for Party A is: Not Applicable

- (ii) Party B or its Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); provided that the following conditions applicable to it are satisfied:
 - (A) Party B, as the Secured Party, is not a Defaulting Party.
 - (B) The Custodian is a Bank (as defined in the Federal Deposit Insurance Act) whose Rating (with respect to its long-term unsecured, unsubordinated indebtedness) is at least A- by S&P or A3 by Moody's.
 - (C) All Posted Collateral may be held only in the following jurisdiction: U.S.A.

Initially, the Custodian for Party B is: Not Applicable

- (iii) *Failure to Satisfy Conditions.* If a Secured Party ceases to be eligible to hold Posted Collateral pursuant to Paragraph 6 (b) then, notwithstanding the provisions of Paragraph 6 (b) (ii), the Secured Party shall promptly return the Posted Collateral to the Pledgor, together with any accrued interest on Posted Collateral in the form of cash.

(iv) *Use of Posted Collateral*

- (A) The provisions of Paragraph 6(c) (i) shall not apply to Party A and Party B; *provided, however*, that Posted Collateral being held in the form of cash may be commingled, and used as such, on condition that it will be maintained in an account that contains a notation identifying the Pledgor's collateral as the property of the Pledgor.

(h) *Distributions and Interest Amount*

- (i) *Interest Rate.* The "*Interest Rate*" will be, for any day, the overnight London Interbank Offered Rate (LIBOR) rate reasonably determined by the Secured Party for the relevant day at approximately 11:00 a.m., London time, on that day, or, if that rate is unavailable, the overnight offered rate for deposits for value on that day quoted by a reference bank selected in good faith by the Secured Party required to pay the relevant Interest Amount from the major banks at the time participating in the London interbank market.
- (ii) The Transfer of the Interest Amount (to the extent due under Paragraph 6 (d) (ii)) will be made on the third New York Business Day following the end of each Interest Period and on termination pursuant to Section 6 of this Agreement. If each Party is obligated to pay an Interest Amount for any Interest Period, netting may be performed in accordance with the netting provisions, Part 5, Section (c) of the Schedule to the Agreement.

(iii) *Alternative to Interest Amount.* The provisions of Paragraph 6(d)(ii) will apply.

Failure by a Party to comply with any of its obligations under this provision will constitute an Event of Default with respect to that Party if the failure continues for five Local Business Days after notice of the failure is given to that Party.

(i) *Additional Representations.* None.

(j) *Other Eligible Support and Other Posted Support*

(i) *"Value"* with respect to Other Eligible Support and Other Posted Support means the stated amount (undrawn portion) of any Letter of Credit maintained by the Pledgor (or its Credit Support Provider) for the benefit of the Secured Party.

(ii) *"Transfer"* with respect to Other Eligible Support and Other Posted Support means:

(A) For purposes of Paragraph 3(a), delivery of the Letter of Credit conforming to the requirements of this Annex by the Pledgor or issuer of the Letter of Credit to the Secured Party at the address of the Secured Party specified in the Notices Section of this Agreement, or delivery of an executed amendment to such Letter of Credit (extending the term or increasing the amount available to the Secured Party thereunder) by the Pledgor or the issuer of the Letter of Credit to the Secured Party at the address of the Secured Party specified in the Notices Section of this Agreement; and,

(B) For the purposes of Paragraph 3(b), by the return of an outstanding Letter of Credit by the Secured Party to the Pledgor, at the address of the Pledgor specified in the Notices Section of this Agreement, or delivery of an executed amendment to the Letter of Credit in form and substance satisfactory to the Pledgor (reducing the amount available to the Secured Party thereunder) by the Pledgor or the issuer of the Letter of Credit to the Secured Party at the Secured Party's address specified in the Notices Section of this Agreement. If a Transfer is to be effectuated by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall not unreasonably withhold its consent to commensurate reduction in the amount of such Letter of Credit and shall take such action as is reasonably necessary to effectuate such reduction.

(iii) *"Letter of Credit Provisions"* Other Eligible Support and Other Posed Support provided in the form of a Letter of Credit shall be subject to the following provisions:

- (A) Unless otherwise agreed in writing by the parties, each Letter of Credit shall be provided in accordance with the provisions of this Annex, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledgor shall (i) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit; or (ii) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit at least twenty (20) Business Days prior to the expiration of the Letter of Credit; and (iii) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit provided for the benefit of the Secured Party by (x) a substitute Letter of Credit that is issued by an eligible LC bank acceptable to the Secured Party, other than the bank failing to honor the outstanding Letter of Credit, or (y) Eligible Collateral, in each case within one (1) Business Day after the Pledgor receives notice of such refusal, provided that, as a result of the Pledgor's failure to perform in accordance with (i), (ii) or (iii) above, the Delivery Amount applicable to the Pledgor equals or exceeds the Pledgor's Minimum Transfer Amount.
- (B) As one method of providing Eligible Credit Support, the Pledgor may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (C) Upon the occurrence of a Letter of Credit Default, the Pledgor agrees to deliver a substitute Letter of Credit or other Eligible Credit Support to the Secured Party in an amount at least equal to that of the Letter of Credit to be replaced, on or before the first Business Day after written demand by the Secured Party (or the third Business Day if only clause (i) under the definition of Letter of Credit Default applies).
- (D) Notwithstanding Paragraph 10, in all cases, the costs and expenses (including but not limited to reasonable costs, expenses and external attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, increasing and reducing the amount of one or more Letters of Credit shall be borne by the Pledgor.
- (E) *Failure to Transfer Other Eligible Support or Other Posted Support.*

Paragraph 7(i) of this Annex is hereby modified to apply to failures to Transfer Other Eligible Credit Support and Other Posted Support, as well as the items listed therein.

(F) *Drawings on Letters of Credit.*

The Secured Party shall have the right to draw on a Letter of Credit held by it as Other Eligible Support or Other Posted Support in the event that at the time of such draw there shall be satisfied one or more of the conditions specified in one of the versions of Paragraph 4 of the form of Drawing Certificate attached as Annex B to the form of Letter of Credit attached as Exhibit A-1 or Exhibit A-2, as the case may be (or, to the extent that the Letter of Credit is in a different form, in the event that any one or more of the conditions to drawing specified in such Letter of Credit are satisfied). If the Secured Party makes a draw on such a Letter of Credit, the Secured Party shall apply the proceeds of such draw as set forth in such Drawing Certificate (or, to the extent that the Letter of Credit is in a form other than that attached as Exhibit A-1 or Exhibit A-2, as the case may be, the Secured Party shall apply such proceeds consistent with the requirements, if any, set forth in the drawing documentation).

(iv) *"Certain Rights and Remedies"*

(A) *Secured Party's Rights and Remedies.* For the purposes of Paragraph 8(a)(ii), the Secured Party may draw on any outstanding Letter of Credit (Other Posted Support) in an amount equal to any amounts payable by the Pledgor with respect to any obligations.

(B) *Pledgor's Rights and Remedies.* For purposes of Paragraph 8(b)(ii): (i) the Secured Party will be obligated immediately to Transfer any Letter of Credit (Other Posted Support) to the Pledgor and (ii) the Pledgor may do any one or more of the following: (x) to the extent that the Letter of Credit (Other Posted Support) is not Transferred to the Pledgor as required pursuant to section (i) above, Set-off any amounts payable by the Secured Party and to the extent its rights to Set-off are not exercised, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral and the Value of any Letters of Credit (Other Posted Support) held by the Secured Party, until any such Posted Collateral and such Letter of Credit (Other Posted Support) is transferred to the Pledgor; and (y) exercise rights and remedies available to the Pledgor under the terms of the Letter of Credit.

(v) *"Additional Definitions"* As used in this Annex:

"Credit Rating" shall mean, with respect to a party or entity on any date of determination, the respective rating then assigned to its unsecured and senior, long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency provided that, for the purposes of determining the Credit Rating of a Party for which there is a

lower
Credit Support Provider, Credit Rating shall mean the ~~higher~~ of the Credit Rating of such Party and the Credit Rating of such Credit Support Provider.

"Letter of Credit" shall mean an irrevocable, transferable, standby Letter of Credit, in a form acceptable to the recipient, issued by an eligible LC bank.

"Letter of Credit Default" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least an A3 by Moody's and at least an A- by S&P; (ii) the issuer of the Letter of Credit shall fail to comply or perform its obligations under such Letter of Credit, if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of this Agreement; or (v) any event analogous to an event specified in Section 5(a)(vii) shall occur with respect to the issuer of such Letter of Credit, *provided, however*, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Pledgor in accordance with the terms of this Annex.

(k) *Demands and Notices.* All demands, specifications and notices under this Annex will be made pursuant to Part 4 of the Schedule to this Agreement.

(l) *Addresses for Transfers*

Party A: 58 Commerce Road, Stamford, CT 06902

..... Posted Collateral for Party A in the form of cash shall be delivered to _____
for the account of *_____, ABA No. _____, or such
REDACTED other commercial bank or custodial institution in New York City designated in a
written notice from Party A to PG&E.

*Semptra Energy Trading Corp. Acct :

With respect to Letter of Credit: As provided for notices under this Annex.

Posted Collateral for Party B in the form of cash shall be delivered to Mellon
Bank, for the account of PG&E Master Account No. 059994, ABA No. 011-001-
234, or such other commercial bank or custodial institution in the U.S.A.
designated in a written notice from Party B to Party A.

With respect to Letter of Credit: Pacific Gas & Electric Company
77 Beale Street
Mail Code B28L
San Francisco, CA 94105
Attention: CRMU/Team Lead

(m) *Other Provisions*

- (i) *Notice of Interest Amount.* A notice of the Interest Amount due Pledgor (or a statement that no such interest is due) shall be delivered to the Pledgor from the Secured Party on the Last Business Day of each calendar month that Posted Collateral in the form of Cash is being held by the Secured Party.
- (ii) *Taxes in Connection with Interest Amounts.* Notwithstanding anything to the contrary in this Agreement, neither Party makes any Payer Tax Representation referred to in Section 3(e) of this Agreement with respect to any Interest Amount it is required to Transfer under this Annex, and neither Party will be entitled to designate an Early Termination Date on the Ground of any Tax Event resulting from the Party's obligation to pay additional amounts in respect of Indemnifiable Taxes imposed with respect to any such Interest Amount.
- (iii) *Set off.* For purposes of Paragraphs 2 and 8(a)(iii) of this Annex, the reference to any amount payable under Section 6 of this Agreement in the definition of "Set-off" in this Agreement shall be deemed a reference to any amount payable with respect to any Obligation, as described in Paragraph 8(a)(iii) of this Annex.
- (iv) *Late payment fee (Return Amount).* If Transfer of a Return Amount is not timely made pursuant to the terms of Paragraph 3(b) of the Annex, the Pledgor shall be entitled to a late payment fee in an amount equal to the product of (A) the product of (x) the Default Rate and (y) the amount of such delinquent Return Amount and (B) the number of days such Return Amount is delinquent. A late payment fee shall not become due or owing during any delay in Transfer of a Return Amount, where the Party required to transfer the Return Amount contests, in good faith and by actions diligently prosecuted under the dispute resolution provisions of this Agreement, the Schedule or this Annex, the amount of the Return Amount to be transferred.
- (v) *Late payment fee (Interest Amount).* If Transfer of an Interest Amount is not timely made pursuant to the terms of Paragraph 13(h) of the Annex, the Pledgor shall be entitled to a late payment fee in an amount equal to the product of (A) the product of (x) the Default Rate and (y) the amount of such delinquent Interest Amount and (B) the number of days such Interest Amount is delinquent. A late payment fee shall not become due or owing during any delay in Transfer of an Interest Amount, where the Party required to transfer the Interest Amount contests, in good faith and by actions diligently prosecuted under the dispute

resolution provisions of this Agreement, the Schedule or this Annex, the amount of the Interest Amount to be transferred.

(vi) For purposes of 11 U.S.C.S., Section 556, all Posted Credit Support provided by a Pledgor shall constitute a margin payment with respect to the obligations of such Pledgor under this Agreement.

(vii) *Additional Event of Default.* Paragraph 7 of the Annex is amended to include the following Event of Default:

(iv) A failure of the Pledgor to adhere to the terms and conditions specified in a Letter of Credit established by the Pledgor for the benefit of the Secured Party shall be an Event of Default if the Pledgor does not cure that failure within two (2) Local Business Days. Additionally, any inability of the Secured Party to draw against the subject Letter of Credit for any reason other than failure of the Secured Party to comply with the conditions specified in the Letter of Credit shall create an Event of Default if said inability of the Secured Party to draw against the Letter of Credit continues for more than two (2) Local Business Days. If a dispute arises over whether the Secured Party has complied fully with the conditions specified in the Letter of Credit prior to drawing against it, a failure of the parties to resolve the dispute within two (2) Local Business Days will create an Event of Default.

PACIFIC GAS & ELECTRIC COMPANY

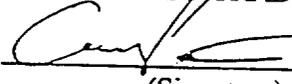
By: 
(Signature) KMP

Name: Kent M. Harvey

Title: Senior V.P. - Treasurer/C.F.O

Date: August 9, 1999

SEMPRA ENERGY TRADING CORP.

By:  PJP
(Signature)

Name: Carl Peterson

Title: Vice President

Date: July 29, 1999

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is Stroock & Stroock & Lavan LLP,
5 2029 Century Park East, Suite 1800, Los Angeles, California 90067-3086.

6 On June 12, 2001, I served the foregoing document described as **AMENDED
7 DECLARATION OF STEFANIE KATZ IN SUPPORT OF MOTION OF SEMPRA
8 ENERGY TRADING CORP. FOR RELIEF FROM STAY AND FOR ADEQUATE
9 PROTECTION OR ASSURANCE [11 U.S.C. § 362(d)(1), LOCAL BANKRUPTCY RULES
10 4000-1 AND 9013-1]** on the interested parties in this action by placing a true copy thereof
11 enclosed in sealed envelopes addressed as follows:

12 SEE ATTACHED SERVICE LIST

13 XX (BY MAIL) I am readily familiar with my employer's business practice for collection
14 and processing of correspondence for mailing with the United States Postal Service. On
15 June 12, 2001, I served a copy, with all exhibits (if any), of the above-referenced document
16 on the interested parties, as named above, by following ordinary business practice, placing
17 a true copy thereof enclosed in sealed envelopes, for collection and mailing with the United
18 States Postal Service where it would be deposited for first class delivery, postage fully
19 prepaid, in the United States Postal Service that same day in the ordinary course of
20 business.

21 FEDERAL

22 XX I declare under penalty of perjury that the above is true and correct (and that I am employed
23 in or by the office of a member of the bar of this Court at whose direction the service was
24 made). Executed on June 12, 2001, at Los Angeles, California.

25 _____
26 Regina Harcourt
27 [Type or Print Name]

28 _____

[Signature]

STROOCK & STROOCK & LAVAN LLP
ATTORNEYS AT LAW
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SPECIAL NOTICE LIST
[Case No. 01-30923 DM]

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California Independent System Operator
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|----|--|---|
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| 18 | Christopher Beard
Beard & Beard
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Attn: Caroline Pitre
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