

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

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

Name ("_____ " or "Party A")

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

All Notices:

All Notices:

Street: _____

Street: [3501 Civic Center Drive, Room 308]

City: _____ Zip: _____

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

Attn: Contract Administration

Attn: Contract Administration

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Duns: _____

Duns: _____

Federal Tax ID Number: _____

Federal Tax ID Number: _____

Invoices:

Invoices:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Scheduling:

Scheduling:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Payments:

Payments:

Attn: _____

Attn: _____

Phone: _____

Phone: _____

Facsimile: _____

Facsimile: _____

Wire Transfer:

Wire Transfer:

BNK: _____

BNK: _____

ABA: _____

ABA: _____

ACCT: _____

ACCT: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

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

Attn: _____
Phone: _____
Facsimile: _____

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

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

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

Article Four

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

Article Five

Events of Default; Remedies

Cross Default for Party A:

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

Other Cross Default Amount \$ _____
Entity: _____

Cross Default for Party B:

Party B Cross Default Amount US\$500,000

Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

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

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

Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

Option A

Option B Specify: _____

Option C Specify: _____

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

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

Party B Independent Amount: \$ _____

Party B Rounding Amount: \$ _____

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

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

Other:

Specify: _____

(e) Guarantor for Party B: _____

Guarantee Amount: _____

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify:

Option C Specify: _____

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
- Applicable

If applicable, complete the following:

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

Party A Independent Amount: \$ _____

Party A Rounding Amount: \$ _____

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

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

- Other:
Specify: _____

(e) Guarantor for Party A:

Guarantee Amount: _____

Article 10

Confidentiality

- Confidentiality Applicable

If not checked, inapplicable.

Schedule M

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

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

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

Other Changes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

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

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

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

26) The following new Section shall be added as Section 10.14: No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

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

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Joint Power Agreement and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Joint Power Agreement and other applicable laws, (iii) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Joint Power Agreement or other relevant constitutional, organic or other governing documents and applicable law, (iv) Party B's obligations to make payments hereunder are, except as otherwise specifically set forth herein or in the account control agreement or any other agreement documenting the security of Party B to Party A, unsubordinated obligations which enjoy

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

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

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

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

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

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

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

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

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

Party A

Party B **Marin Energy Authority**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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