

## Confirmation Agreement No. 06-SNR-00945

## Resource Adequacy Capacity Product Confirmation Agreement

1. **Definition of the Transaction:** This Confirmation Agreement (Confirmation Agreement) confirms the transaction (Transaction) agreed to as of September 28, 2006, between Western Area Power Administration, Sierra Nevada Region (Western), and Pacific Gas and Electric Company (Seller), in which the Seller agrees to sell to Western the resource-adequacy product (RA Capacity) described below under the terms and conditions set forth herein. All provisions of contained in or incorporated by reference in the WSPM Master Agreement (September 2006 version) between Western and Seller will govern this Confirmation Agreement except as modified herein. The definitions and provisions contained in the tariffs and/or protocols of the California Independent System Operator Corporation (CAISO) as amended from time to time (Tariff) shall apply to this Confirmation Agreement and are incorporated herein by reference.
2. **Seller:** Pacific Gas and Electric Company
3. **Nature of the Confirmation Agreement:** Subject to the terms and conditions of this Confirmation Agreement, Seller agrees to sell to Western and Western agrees to purchase from Seller the Contract Quantity of RA Capacity as specified below.
4. **Definition of RA Capacity:** For purposes of this Transaction, "RA Capacity" means the qualified and deliverable capacity from the Specified Resource identified in Section 5 below and in the Contract Quantity specified in this Confirmation Agreement which can be counted toward meeting Western's resource-adequacy requirements (RAR) as established in the CAISO's Interim Reliability Requirements Program (IRRP), as defined in the Tariff, as those requirements may be amended from time to time; provided, however, Western and Seller hereby agree to the substitution rights for the RA Capacity from other qualified resources as described in Section 5 below. The purchase by Western of RA Capacity hereunder does not confer to Western any right to the Contract Quantity of Seller's Specified Resource other than the right to include such Contract Quantity for purposes of Western's RAR demonstrations (RAR Showings as defined in Section 11) as RA Capacity during the Delivery Period, and such purchase shall constitute a transfer of title to and a claim over such Contract Quantity of RA Capacity for purposes of Western's RAR demonstrations and entitle Western to all benefits relating to the Contract Quantity of RA Capacity. Specifically, unless otherwise agreed as between the Parties in writing, Western shall have no rights under this Confirmation Agreement to purchase energy and/or ancillary services associated with the Contract Quantity from the Specified Resource. Accordingly, Seller will be entitled to all compensation associated with the Specified Resource for energy and ancillary services committed to the CAISO from the Specified Resource and Western will not be required to compensate Seller or any other entity for any commitments to the CAISO for such

energy and ancillary services or, except in respect of RA Capacity as set forth in this Section 4, any other product or services relating to or from the Specified Resource nor shall Western have any liability in respect thereto.

5. Specified Resource:

	Unit	Status	Rating (MW)
January 2007	Morro Bay Unit 3	Active	337
February 2007	Morro Bay Unit 4	Active	336
March 2007	Morro Bay Unit 3	Active	337
April 2007	Morro Bay Unit 3	Active	337
October 2007	Morro Bay Unit 4	Active	336
November 2007	Morro Bay Unit 3	Active	337
December 2007	Morro Bay Unit 3	Active	337

Upon prior written notice to Western, Seller shall have the right to substitute RA Capacity from the foregoing Specified Resource with RA Capacity from other qualified resources owned or controlled by Seller so long as: (i) such substituted resource satisfies all requirements necessary to meet Western's RAR and all other terms and conditions relating to RA Capacity as set forth in this Confirmation Agreement, and (ii) any such substitution shall not result in any additional cost to Western but shall be the sole responsibility of Seller. If the foregoing conditions are satisfied, Seller acknowledges that all of Seller's obligations, representations, warranties and covenants hereunder shall also apply without modification in respect to any such substituted RA Capacity and such substituted resource shall be "Specified Resource" for all purposes under this Confirmation Agreement.

6. Delivery Period, Contract Price, and Contract Quantity:

Month	Contract Price (\$/MW-Month)	Contract Quantity (MW)
January 2007	\$710	16
February 2007	\$710	16
March 2007	\$710	16
April 2007	\$710	16
October 2007	\$1,350	16
November 2007	\$1,350	16
December 2007	\$1,350	16

7. Delivery Location(s): ZP26

8. Additional Covenants and Warranties of the Seller: Seller makes the following additional covenants, warranties and representations.
- a. Seller is duly licensed and certificated by all applicable jurisdictional regulatory agencies and bodies, and as such holds all necessary authorizations, to participate in the CAISO markets.
  - b. Seller satisfies the credit requirements established by CAISO from time to time necessary to participate in the CAISO market.
  - c. The Contract Quantity is owned or controlled by Seller for each Specified Resource specified above, and the commitment of, and the availability from, each such Specified Resource of the Contract Quantity for the purposes set forth hereunder are within Sellers powers and have been duly authorized by all necessary action.
  - d. The Specified Resource has been registered with, and certified by, the CAISO as deliverable to the Delivery Location(s). Seller warrants that the RA Capacity purchased by Western meets all of the requirements specified by the CAISO relating to the qualifying of the RA Capacity from the Specified Resource in an amount no less than the Contract Quantity for purposes of counting toward meeting Western's RAR.
  - e. The Contract Quantity of the RA Capacity sold under this Confirmation Agreement is unencumbered by any other sale, assignment, or transfer of such RA Capacity, or any rights conferred in respect thereof to any party other than Western.
  - f. For each Specified Resource, unless the Specified Resource is deemed by the CAISO to be unavailable as a result of a Forced Outage or is out for planned Maintenance Outage as approved by the CAISO or is affected by Force Majeure, Seller shall commit the Contract Quantity to the CAISO in compliance with established CAISO bidding and scheduling procedures, which may include one or more of the following:

- i. Make the Contract Quantity available, to the extent required by the CAISO, to the CAISO consistent with the terms of the Tariff for every hour of the Delivery Period, by self-scheduling the Contract Quantity of the Specified Resource or by bidding the Contract Quantity of the Specified Resource into the CAISO's day-ahead energy and ancillary services markets for every hour of the Delivery Period; *provided*, that if the CAISO denies Seller's request for a waiver of any commitment of the unit for the next operating day, Seller shall commit the Specified Resource during the next operating day and self-schedule or submit bids in an amount no less than the Contract Quantity into the CAISO's markets as required by the CAISO during that next operating day; and,
    - ii. If the Specified Resource is designated as "short-start" units by the CAISO, the Contract Quantity shall be self-scheduled or offered into the CAISO's hour-ahead market and real-time market, even if it is not scheduled in the day-ahead market, unless otherwise released from this obligation by the CAISO; and,
    - iii. Dispatch the Specified Resource in an amount not less than the Contract Quantity in the CAISO's market for energy and ancillary services pursuant to any schedules and/or instructions of the CAISO issued in accordance with the terms of the CAISO tariff.
  - g. If Seller schedules energy from the Specified Resource for export from the CAISO Control Area, or commits energy to another entity in a manner that could result in scheduling energy from the Specified Resource for export from the CAISO Control Area, it shall do so only as allowed by, and in accordance with, Applicable Laws and such exports may, if allowed by the Tariff, be curtailed by the CAISO.
  - h. Seller will maintain, or cause to be maintained, the Specified Resource in accordance with "Good Utility Practice" as defined in the CAISO tariff.
  - i. With respect of any portion of the Contract Quantity, Seller will comply with all Applicable Laws relating to Capacity resource performance obligations and penalties or otherwise. "Applicable Laws" shall mean any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any governmental authority having jurisdiction, which shall include without limitation, all FERC-approved CAISO tariff provisions.
9. **Additional Covenants and Warranties of Western:** Western makes the following additional covenants, warranties and representations.
- 1. Western holds the necessary authorizations to participate in the CAISO markets.
  - 2. Western satisfies the credit requirements necessary to participate in the CAISO markets.

10. **Federal Contracting Provisions:**

10.1 Covenant Against Contingent Fees: The Seller warrants that it has not

employed or retained any person or selling agency to solicit or secure the Confirmation Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by their respective organizations for the purpose of securing business. For breach or violation of this warranty, Western shall have the right to annul or terminate the Confirmation Agreement without liability or in its discretion to deduct from the price or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

10.2 Contingent upon Appropriations: Where activities provided for in this Confirmation Agreement extend beyond the current fiscal year, continued expenditures by the United States are contingent upon Congress making the necessary appropriations required for the continued performance of the United States obligations under the Confirmation Agreement. In case such appropriation is not made, the Seller hereby releases the United States from its obligations and from all liability due to the failure of Congress to make such appropriation.

10.3 Contract Project Work Hours and Safety Standards: The Confirmation Agreement, to the extent that it is of a character specified in Section 103 of the Contract Project Work Hours and Safety Standards Act, 40 U.S.C.A. § 329, is subject to the provisions of the Act, 40 U.S.C.A. §§ 327-333, and to regulations promulgated by the Secretary of Labor pursuant to the Act.

10.4 Equal Opportunity Employment Practices: Section 202 of Executive Order No. 11246, 30 Fed. Reg. 12319 (1965), as amended by E.O. No. 12086, 43 Fed. Reg. 46501 (1978), which provides, among other things, that the Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin, is incorporated by reference in the Confirmation Agreement.

10.5 Use of Convict Labor: The Seller agrees not to employ any person undergoing sentence of imprisonment in performing this Confirmation Agreement except as provided by 18 U.S.C. 4082 (c) (2) and Executive Order 11755, December 29, 1973.

11. RAR Showings: Seller shall, no later than the relevant deadlines for the applicable RAR Showings, identify to Western the Contract Quantity and Delivery Location of the Capacity sold to Western, which shall constitute delivery by Seller of the Capacity for purposes of this Transaction. Western shall make all applicable filings as required by the CAISO no later than the relevant deadlines as established by the CAISO for the

applicable RAR Showings to identify or confirm the Contract Quantity and Delivery Location of the Capacity purchased from Seller, which shall constitute receipt by Western of the Capacity for purposes of this Transaction.

**12. Western's Damages Associated with Seller's Failure to Perform:** If Seller fails to deliver the Contract Quantity to Western in accordance with Section 11 above or if all or a portion of the Contract Quantity fails at any time during the Delivery Period to qualify as Capacity for an applicable RAR Showing, and such failure is not due to Force Majeure or Western's failure to perform its obligations under this Transaction, then Seller shall pay to Western, on the date payment would otherwise be due to Seller hereunder, an amount equal to the product of (i) the portion of the Contract Quantity not qualified or delivered, and (ii) the positive difference, if any, obtained from subtracting the Contract Price from the price paid by Western to replace the RA Capacity.

**13. Indemnity Against Penalties:** Seller agrees to indemnify Western for any monetary penalties assessed by the CAISO against Western for Western's failure to meet the requirements of the CAISO related to Western's RAR obligations to the extent any such penalties were the direct result of Seller not fulfilling any of its obligations under this Confirmation Agreement,

**14. No Intended Third Party Beneficiary:** This Confirmation Agreement shall not impart any rights enforceable by any third-party or create any interest, beneficial or otherwise, in any such third party (other than a permitted successor or assignee bound by this Confirmation Agreement).

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

By Seller:

By: William Tom

Name: William Tom

Title: Manager, Short Term  
Electrical Supply

By Western:

By: [Signature]

Name: THOMAS R. BOYKO

Title: POWER MARKETING MANAGER