

**AMENDED AND RESTATED  
MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Amended and Restated Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of July 10, 2003, and shall become effective immediately upon the satisfaction of the Conditions Precedent set forth below ("Effective Date") and as of the Effective Date shall amend and restate in its entirety the *Master Power Purchase and Sale Agreement* between MSCGI and the Department dated as of February 14, 2001 (the "2001 Master"). The *Master Agreement*, together with the exhibits, schedules, annexes 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:** Morgan Stanley Capital Group Inc. ("Morgan Stanley", "MSCGI" or "Party A")

**Name:** Department of Water Resources of the State of California, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("Counterparty", "Department" or "Party B")

**All Notices:**

Commodities Department, 4th Floor  
Street: 1585 Broadway  
City: New York      Zip: 10036  
Attn: Deborah Hart  
Phone: 212-761-5920  
Facsimile: 212-761-0292  
Duns:  
Federal Tax ID Number:

**All Notices:**

California Department of Water Resources  
Street: 3310 El Camino Ave., Suite 120  
City: Sacramento, CA      Zip: 95821  
Attn: Executive Manager Power Systems—Viju Patel  
Phone: (916) 574-0339  
Facsimile: (916) 574-2512  
Duns:  
Federal Tax ID Number:

**Invoices:**

Attn: James McLellan  
Phone: 212-761-5871  
Facsimile: 212-761-3084

**Invoices:**

Attn: Settlements—Doreen Singh  
Phone: (916) 574-0309  
Facsimile: (916) 574-1239

**Scheduling:**

Attn: 24-hour Scheduling  
Phone: 212-761-8748  
Facsimile: 212-761-0292

**Scheduling:**

Attn: Contract Manager—Jim Spence  
Phone: (916) 574-2092  
Facsimile: (916) 574-2214

**Payments:**

Attn: James McLellan  
Phone: 212-761-5871  
Facsimile: 212-761-3084

**Payments:**

Attn: Cash Receipts Section  
Phone: (916) 653-6892  
Facsimile: (916) 654-9882

**Wire Transfer:**

BNK:  
ABA:  
ACCT:  
Confirmation:

**Wire Transfer:**

BNK:  
ABA: Routing #  
ACCT: #

**Credit and Collections:**

Attn: John LaMountain  
Phone: 212-762-5830  
Facsimile: 212-762-9183

**Credit and Collections:**

Attn: Deputy Controller—Jim Olson  
Phone: (916) 574-1297  
Facsimile: (916) 574-2512

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

Attn: Legal Department (Commodities)  
Phone: 212-762-6841 or 8322  
Facsimile: 212-762-8831 or 8896 or 9224

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

Attn: Deputy Controller—Jim Olson  
Phone: (916) 574-1297  
Facsimile: (916) 574-2512

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: FERC      Dated: 6/21/1994      Docket Number: ER94-1384-000  
Party B Tariff      Tariff: N/A      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**

Automatic Early Termination for Party A shall apply, and Section 5.2 is modified as set forth in Article 10 below.

\_\_\_ Automatic Early Termination for Party A shall not apply, and Section 5.2 is modified as set forth in Article 10 below.

Automatic Early Termination for Party B shall apply, and Section 5.2 is modified as set forth in Article 10 below.

\_\_\_ Automatic Early Termination for Party B shall not apply, and Section 5.2 is modified as set forth in Article 10 below.

Events of Default; Remedies

\_\_\_ Cross Default for Party A - Cross Default is modified as set forth in Article 10 below:

\_\_\_ Party A:      Cross Default Amount:

\_\_\_ Other Entity:      Cross Default Amount:  
n/a

\_\_\_ Cross Default for Party B - Cross Default is modified as set forth in Article 10 below:

\_\_\_ Party B:      Cross Default Amount  
n/a

\_\_\_ Other Entity:      Cross Default Amount  
n/a

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: The definition of "Affiliate" is amended as set forth in Article 10 below. Option B is amended as set forth in Article 10 below.
- Option C (No Setoff)
- Option D (Broad Setoff), as inserted in Article 10 below – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: The definition of "Affiliate" is amended as set forth in Article 10 below.

**Article 8**  
Credit and Collateral  
Requirements

8.1 Party A Credit Protection:

- (a) Financial Information:  
 Option A  
 Option B Specify: Financial statements for: \_\_\_\_\_  
 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: \$ \_\_\_\_\_

Party B Minimum Transfer Amount: \$ \_\_\_\_\_

- (d) Downgrade Event:  
 Not Applicable  
 Applicable

If Downgrade Event applicable, complete the following:

It shall be a Downgrade Event for Party B *only* in any one or more of the following circumstances:

Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: Financial statements for Morgan Stanley.

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: \$ \_\_\_\_\_

Party A Minimum Transfer Amount: \$ \_\_\_\_\_

(d) Downgrade Event:

Not Applicable

Applicable

If applicable, complete the following:

It shall be a Downgrade Event for Party A only if Morgan Stanley's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if the unsecured, senior long-term debt obligations of Morgan Stanley ceases to be rated by either S&P or Moody's.

Other:

Specify: \_\_\_\_\_

(e) Guarantor for Party A: \_\_\_\_\_

Guarantee Amount: \_\_\_\_\_

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**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 8.4. If not checked, inapplicable

Conditions Precedent: It shall be a condition precedent to the effectiveness of this Agreement and of the Amended 2003 Transaction that the Settlement Agreement shall have been executed by all the parties thereto and all of the conditions precedent specified in Paragraphs [3.1 through 3.6] of the Settlement Agreement shall have been satisfied or waived.

Reinstatement of 2001 Master: Upon the failure of the Settlement Agreement to become effective pursuant to one or more of the conditions set forth in the last sentence of each of Paragraphs [3.5, 3.6 or 3.7], respectively, of the Settlement Agreement, this Agreement and the Amended 2003 Transaction shall be ineffective, and the 2001 Master and 2001A Transaction shall remain effective on their original terms.

Other Changes: X Specify, if any: Yes, the following changes shall be applicable:

I. Modifications to General Terms and Conditions.

**A. General Definitions.**

1. Section 1.1 is amended by inserting at the end thereof the following:  
“; provided, however, that in the case of MSCGI, the term “Affiliate” shall not include Morgan Stanley Derivative Products Inc.”
2. Section 1.27 is amended by inserting the phrase “and in an amount” in the third line after the word “form” and before the word “acceptable”.
3. Section 1.3 is amended by (a) deleting in its entirety the definition of "Bankrupt" and (b) inserting in its place the following new definition:

1.3 "Bankrupt" means the Defaulting Party or any Credit Support Provider of such Party:

- (i) Is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (ii) Becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (iii) Makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (iv) Institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation;
- (v) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
- (vi) (A) 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, or (B) in the case of the Department, (1) there shall be appointed or designated with respect to it, an entity such as an organization, board, commission, authority, agency or body to monitor, review, over-see, recommend or declare a financial emergency or similar state of financial distress with respect to it or (2) there shall be declared or introduced or proposed for consideration by it or by any legislative or regulatory body with competent jurisdiction over

it, the existence of a state of financial emergency or similar state of financial distress in respect of it;

- (vii) Has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process is levied, enforced or sued on or against all or substantially all its assets;
- (viii) Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses one to seven inclusive; or
- (ix) Takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

4. Section 1.11 is amended by adding the following sentence at the end thereof:  
"The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."
5. Section 1.51 is amended by (a) inserting the phrase "for delivery" in the second line after the word "purchases" and before the phrase "at the Delivery Point", and (b) deleting the phrase "at Buyer's option" in the fifth line and inserting in their place the following: "absent a purchase".
6. Section 1.53 is amended by (a) deleting the phrase "at the Delivery Point" in the second line, and (b) deleting the phrase "at Seller's option" in the fifth line and inserting in their place the following: "absent a sale".
7. Section 1.60 is amended by (a) deleting in its entirety the definition of "Transaction" and (b) inserting in its place the following new definition:  
"Transaction" or "Transactions" means the 2003 Buy-Back Transaction, the 2001A Transaction and/or the Amended 2003A Transaction.
8. Article One is further amended by inserting at the end thereof the following new definitions as subsection 1.62 - 1.75:  
1.62 "Bond" means any bond, note or similar instrument issued by the Department the proceeds of which are deposited into the Fund.  
1.63 "Buyer Replacement Agreement" means any agreement identical to this Agreement (including the Transactions) between Party A and a Qualified Electric Corporation, excluding provisions relating to Party B's status as a governmental agency or to the original start date(s) of this Agreement, together with other changes as Party A and such Qualified Electric Corporation may agree.  
1.64 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.  
1.65 "2003 Buy-Back Transaction" means the transaction between the Parties entered into on July 1, 2003 regarding MSCGI's purchase of 10 MW hours of CAISO Firm Energy per hour from the Department.  
1.66 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if four (4) or more such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.

1.67 "Market Value" shall have the meaning set forth in Section 5.3.

1.68 "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.

1.69 "Qualified Electric Corporation" means an electrical corporation as defined by the Act, whose long-term unsecured senior debt on the effective date of any Buyer Replacement Agreement is rated BBB or better by S&P and Baa2 or better by Moody's and is not on negative outlook or Credit Watch from either rating agency, provided that with the exception of San Diego Gas and Electric Company, Southern California Edison Company and Pacific Gas and Electric Company, no electrical corporation shall be a Qualified Electric Corporation without the prior written agreement of Party A.

1.70 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by Standard & Poor's and Baa2 or better by Moody's Investor Services.

1.71 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

1.72 "Settlement Agreement" means that certain Settlement Agreement made and entered into as of July 10, 2003 by and among Party B; Party A; the Governor of the State of California, acting on behalf of all agencies, departments, boards, subdivisions, and commissions of the executive branch of the State of California; the California Electricity Oversight Board; the California Public Utilities Commission; and the People of the State of California, by and through the Attorney General of the State of California.

1.73 "2001A Transaction" means the transaction described in the Confirmation dated February 16, 2001 and attached hereto as Exhibit A, which, as of the Effective Date, shall be amended and restated by the Amended 2003A Transaction.

1.74 "Amended 2003A Transaction" means the transaction described in the Confirmation dated of even date herewith and attached hereto as Exhibit B, effective on and after the Effective Date of this Agreement, which as of such Effective Date shall amend and restate, in its entirety, the 2001A Transaction.

1.75 "Trust Estate" means all revenues under any obligation entered into, and rights to receive the same, and moneys on deposit in the Fund and income or revenue derived from the investment thereof.

## **B. Transaction Terms and Conditions.**

1. The Transactions shall be in writing, and this Master Agreement may not be orally amended or modified, including by a Recording pursuant to Section 2.5.
2. Section 2.2 is amended by inserting at the end thereof the following:  
"Notwithstanding the foregoing, the Transactions shall collectively be treated as stand-alone transactions and accordingly, (a) provisions in the Master Agreement referring to offsetting or netting multiple transactions shall not be applicable to any transactions entered into between the Parties other than the Transactions, and (b) an Event of Default or Potential Event of Default with respect to any other transaction shall not affect the Transactions. Except for the attached Confirmation of even date herewith and the 2003 Buy-Back Transaction Confirmation, no provision of any Confirmation entered into pursuant to Section 2.4 shall effect the Transactions."

### **C. Obligations and Deliveries**

1. Section 3.1 is amended by inserting at the end thereof the following:

In the event that the California Independent System Operator moves from the current zonal congestion management system to a locational marginal pricing congestion management system, then the Parties agree to negotiate in good faith the designation of a new, mutually agreed-upon Delivery Point that equitably shares between the Parties the economic benefits and burdens created by such changed market structure in a manner that most closely resembles the overall balance between the Parties of the economic benefits and burdens at the South Path 15 Delivery Point in the zonal congestion management system in existence as of the Effective Date of this Master Agreement.

### **D. Events of Default; Remedies.**

1. Section 5.1 (e) is deleted in its entirety.
2. Section 5.1 (f) is amended by inserting the phrase "(or, without limiting the foregoing, in the case of the Department, an entity such as an organization, board, commission, authority, agency or body succeeds to the principal functions of, or powers and duties granted to, the Department generally or with respect to the Fund)" between the words "another entity" and the word "and" in the second line thereof; Section 5.1 (f) is further amended by adding the phrase "or in the case of the Department, the Fund or other sources of payment for the obligations of the Department are no longer available for the satisfaction of such resulting, surviving, transferee or successor entity's obligations to the Seller;" at the end thereof.
3. Section 5.2 is deleted in its entirety and replaced with the following:

5.2A "Effect of Event of Default." If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty (20) days notice, designate a day not earlier than the day such notice is effective as a date (the "Early Termination Date") for the termination of this Agreement and in respect of all outstanding Transactions (each referred to as a "Terminated Transaction"). If, however, "Automatic Early Termination" is specified in the Cover Sheet as applying to the Defaulting Party, then an Early Termination Date in respect of all outstanding Transactions shall occur immediately upon the occurrence with respect to the Defaulting Party of an Event of Default specified in the following clauses of the definition of "Bankrupt": (i), (iii), (v), (vi) or, to the extent analogous thereto, clause (viii), 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 the Defaulting Party of an Event of Default specified in clause (iv) or, to the extent analogous thereto, clause (viii). If an Early Termination Date occurs as a result of such automatic early termination, the Defaulting Party shall fully indemnify, to the extent permitted by law, the Non-Defaulting Party on demand against all expense, loss, damage or liability that the Non-Defaulting Party may incur in respect of this Agreement and each Transaction as a consequence of movements in commodity, exchange or other relevant rates or prices or Costs between the Early Termination Date and the Business Day on which the Non-Defaulting Party first becomes aware that the Early Termination Date has occurred.
4. 5.2B "Termination Payment." Upon the occurrence or designation of an Early Termination Date the Non-Defaulting Party shall calculate, in a commercially reasonable manner, and be entitled to, a payment (the "Termination Payment") which

shall be the aggregate of the Market Values and Costs for each Terminated Transaction, calculated in accordance with Section 5.3. The Non-Defaulting Party shall determine the Termination Payment for each Terminated Transaction as of the relevant Early Termination Date, or if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. The Termination Payment shall be paid no later than one hundred eighty (180) days after receipt of written notice of the amount of the Termination Payment, provided that interest on the Termination Payment shall accrue at the Interest Rate from the Early Termination Date until the Termination Payment is finally and completely paid.

5. Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.
- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.
- (e) If the Defaulting Party disagrees with the calculation of the Termination Payment, then, pending resolution of the dispute, the Defaulting Party shall nevertheless pay the full amount (with interest, as set forth above) of the Termination Payment calculated by the Non-Defaulting Party no later than

one hundred eighty (180) days after receipt of written notice of an Early Termination Date.

**E. Credit and Collateral Requirements.**

1. Sections 8.1(b), 8.1(c), 8.1(d), 8.2(b), 8.2(c), and 8.2(d) are amended by deleting such sections and substituting therefor, "[Intentionally Omitted]".
2. Section 5.4 is amended by deleting the last sentence in its entirety.
3. Sections 5.5, 5.6, 6.7 and 6.8 are amended by deleting such sections and substituting therefor, "[Intentionally Omitted]."

**F. Miscellaneous.**

1. Section 10.1 amended by adding the following at the end thereof: "The Transactions shall terminate on the day following the last day of the relevant Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default, or unless expressly agreed to by the Parties in writing."
2. Section 10.2(viii) is hereby amended by adding at the end thereof: “; it is understood that information and explanations of the terms and conditions of a Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction; no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”
3. Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.
4. Section 10.4 is amended by inserting the phrase "to the extent permitted by law" at the beginning of the first two sentences thereof.
5. In Section 10.5, the phrase "either Party may, without the consent of the other Party (and without relieving itself from liability hereunder)" shall be replaced with "Party A (or, with respect to clause (i), (iv) or (v), Party B) may, without the consent of the other Party (and without relieving itself from liability hereunder" and add the following clauses (iv) and (v) in the first proviso in Section 10.5: " (iv) transfer and assign all of its right, title and interest to this Agreement and the Fund to another governmental entity created or designated by law to carry out the rights, powers, duties and obligations of the Department under the Act; or (v) transfer or assign this Agreement to any Qualified Electric Corporation, as defined in the Act, whose long-term unsecured senior debt is rated BBB or better by S&P, and Baa2 or better by Moody's."
6. Section 10.6 is amended by deleting "New York" and replacing it with "California."
7. The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.
8. Section 10.9 is amended by inserting the phrase “copies of” in the second line between the phrase “to examine” and the phrase “the records”.
9. New Section 10.12 is added:

"10.12. No Retail Services; No Agency. (a) Nothing contained in this Agreement shall grant any rights to or obligate Party A to provide any services hereunder directly to or for retail customers of any person. (b) In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

10. New Section 10.14 is added:

10.14 Binding Rates and Terms.

The Parties hereby stipulate and agree that this Agreement was entered into as a result of arms'-length negotiations between the Parties. Further, the Parties believe that the rates, terms and conditions of this Agreement are just and reasonable within the meaning of Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, and that the rates, terms and conditions of this Agreement will remain so over the life of the Agreement. The Parties waive all rights unilaterally to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire term thereof, including any rights under Sections 205 and 206 of the Federal Power Act to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree to make no unilateral filings at the FERC or with any other state or federal agency, board, court or tribunal challenging the rates, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest under the Federal Power Act. The Parties hereby further stipulate and agree that neither Party may bring any action, proceeding or complaint under Section 205 or 206 of the Federal Power Act, 16 U.S.C. 824d or 824e, seeking unilaterally to modify, cancel, suspend, or abrogate the rates, terms and conditions of this Agreement or any Transaction hereunder, or to prevent this Agreement or any Transaction hereunder from taking effect. It is further agreed that, in the event either of the Parties challenges this Agreement for any other reason, they will not dispute the applicability of the public interest standard as that term has been defined and interpreted under the Federal Power Act and the cases of *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and subsequent cases.

11. New Section 10.15 is added:

10.15 CAISO Imbalance.

Party A shall not intentionally use the CAISO uninstructed imbalance energy markets to deliver the Contract Quantity to Party B; provided, however, that in no event shall Party A be precluded from bidding or providing "regulation down" or similar services recognized by the CAISO. From time to time (but not more frequently than monthly) upon Party B's request, Party A shall provide Party B with scheduling information reasonably satisfactory to Party B in sufficient detail to enable Party B to verify compliance with this Agreement. An alleged violation of this provision by MSCG shall not be a Potential Event of Default or an Event of Default hereunder unless and until there has been a final, unappealable order of a court of competent jurisdiction that MSCG has violated this provision.

12. New Section 10.16 is added:

10.16 Novation.

Notwithstanding the foregoing limitations on assignment, the Seller shall, upon not

less than sixty (60) days advance written request of Department, enter into a Buyer Replacement Agreement as may be agreed to by a Qualified Electric Corporation. This Agreement shall terminate upon the effective date of such Buyer Replacement Agreement. The effectiveness of such Buyer Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement other than the obligation to make payments for amounts due for performance prior to termination. Such Buyer Replacement Agreement shall state that it is a Buyer Replacement Agreement within the meaning of this Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such Buyer Replacement Agreement shall be subject to the condition precedent that the California Public Utilities Commission shall have conducted a just and reasonable review under Section 451 of the Public Utilities Code with respect to such Buyer Replacement Agreement and shall have issued an order determining that the charges under such Buyer Replacement Agreement are just and reasonable, provided, however, that if the novation is subsequently found to be invalid, then the novation is void ab initio.

#### **Amendments to Schedule M.**

Schedule M is amended as follows:

1. In Section A, "Act" shall mean Division 27 (section 80000 *et seq.*) of the Water Code.
2. "Special Fund" shall mean the Fund.
3. In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" which shall have the following definition: "Governmental Entity" means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).
4. In Section C, add the following at the end thereof: (viii) the payments due to MSCGI hereunder shall be treated as "costs of electric power" as set forth in Section 80200(b)(1) of the State Water Code, and shall be payable from the Fund prior to payment of any other amounts for which payment is authorized by Section 80200(b)(2)-(4) of the State Water Code, including, but not limited to: (a) the pooled money investment rate on funds advanced for electric power purchases prior to the receipt of payment for those purchases by the purchasing entity; (b) payment of any bonds or other contractual obligations authorized by the Act; (c) repayment to the State General Fund of appropriations made to the Fund pursuant to the Act or made hereafter for purposes of the Act and (d) repayment to the State General Fund of moneys expended by the Department pursuant to the Governor's Emergency Proclamation dated January 17, 2001; and (ix) as of the Effective Date, Party B has not provided in any power purchase agreement for which power is payable from the Trust Estate for (a) collateral or other security or credit support with respect thereto, (b) a pledge, lien or assignment of the Trust Fund for the payment thereof, or (c) payment priority with respect thereto superior to that of Party A."
5. In Section D, delete Section 3.5 and replace it with the following:

Section 3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it

may have as a state agency against such lawsuits filed in state court.

6. In Section G, specify that the laws of the State of California will apply.

7. Add a new Section H, which shall read as follows:

"Section 3.8. Payments Under Agreement an Operating Expense. Payments under this Agreement shall constitute an operating expense of the Fund payable prior to all bonds, notes or other indebtedness secured by a pledge or assignment of the Trust Estate or payments to the general fund."

8. Add a new Section I, which shall read as follows:

"Section 3.9. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement."

9. Add a new Section J, which shall read as follows:

"Section 3.10. No More Favorable Terms. Party B shall not provide, in any power purchase agreement for which power is payable from the Trust Estate, for (i) collateral or other security or credit support with respect thereto, (ii) a pledge or assignment of the Trust Estate for the payment thereof, or (iii) payment priority with respect thereto superior to that of Party A, without in each case offering such arrangements to Party A."

10. Add a new Section K, which shall read as follows:

"Section 3.11. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

11. Add a new Section L, which shall read as follows:

"Section 3.12. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B

has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that such provisions and requirements are therefore not applicable to or incorporated in this Agreement."

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

Party A: MORGAN STANLEY CAPITAL  
GROUP INC.

Party B: DEPARTMENT OF WATER  
RESOURCES, STATE OF CALIFORNIA  
Separate and apart from its powers and  
responsibilities with respect to the State  
Water Resources Development System

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.**