

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

**COVER SHEET**

**PRODUCT D**

This *Amended and Restated Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Product D Master Agreement*") is made as of the following date: November 11, 2002 ("Effective Date"). The *Product D 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 *Product D Master Agreement* are the following:

Name: **Williams Energy Marketing & Trading Company** ("Williams" or "Party A")

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

All Notices:

All Notices: California Department of Water Resources/CERS

Street: One Williams Center

Street: 3310 El Camino Avenue, Suite 120

City: Tulsa, OK      Zip: 74172

City: Sacramento, California      Zip: 95821

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: 918-573-3059

Phone: (916) 574-0339

Facsimile: 918-573-1935

Facsimile: (916) 574-2152

Duns: 82-467-8478

Duns:

Federal Tax ID Number:

Federal Tax ID Number:

**Invoices:**

Attn: Power Accounting

Phone: 918-573-8337

Facsimile: 918-561-6893

**Invoices: DWR/CERS Settlements Unit**

Attn: Doreen Singh

Phone: (916) 574-0309

Facsimile: (916) 574-1239

**Scheduling:**

Attn: Cherry Smith

Phone: 918-573-4835

Facsimile: 918-573-1534

**Scheduling:**

Attn: Chief Water and Power Dispatcher

Phone: (916) 574-0161

Facsimile: (916) 574-2569

**Payments:**

Attn: Power Accounting

Phone: 918-573-8337

Facsimile: 918-561-6893

**Payments:**

Attn: Cash Receipts Section

Phone: (916) 653-6892

Facsimile: (916) 654-9882

**Wire Transfer:**

BNK: Bank One, N.A.  
ABA:  
ACCT:

**Wire Transfer:**

BNK: Bank of America (Sacramento main branch)  
for: Department of Water Resources  
ABA  
ACCT:

**Credit and Collections:**

Attn: Tim Neuman  
Phone: 918-573-4880  
Facsimile: 918-561-6987

**Credit and Collections:**

Attn: Deputy Controller  
Phone: (916) 653-6148  
Facsimile: (916) 653-8230

With additional Notices of an Event of Default to:

Attn: Contract Administration  
Phone: 918-573-3059  
Facsimile: 918-573-1935

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

Attn: Deputy Controller  
Phone: (916) 653-6148  
Facsimile: (916) 653-8230

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   n/a        Dated \_\_\_\_\_      Docket Number \_\_\_\_\_

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**

Events of Default; Remedies

Cross Default for Party A:

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

Other Entity: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

Cross Default for Party B:

Party B: \_\_\_\_\_ Cross Default Amount \$ \_\_\_\_\_

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  
\_\_\_\_\_

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: (1) Annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial conditions of the Fund.) (2) Under any Replacement Agreement (defined below), or if Party B is an entity other than the California Department of Water Resources, financial statements, audited if available, no less frequently than quarterly. Notwithstanding anything in this Agreement to the contrary, any non-public financial statements provided pursuant to this section shall be kept confidential.

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable
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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: Party A to provide annual 10k filings of its parent and financial statements of Party A, audited if available, together with an officer's certificate relating to same, no less frequently than quarterly. Notwithstanding anything in this Agreement to the contrary, non-public financial statements provided pursuant to this Section shall be kept confidential.

(b) Credit Assurances:

Not Applicable  
 Applicable

(c) Collateral Threshold:

Not 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 Rating falls below \_\_\_\_\_ from S&P or \_\_\_\_\_ from Moody's or if Party A is not rated by either S&P or Moody's

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

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

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**Article 10**

Confidentiality  Confidentiality Applicable If not checked, inapplicable.

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**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

**Other Changes**

Specify, if any: \_\_\_\_\_

**(a) Definitions.**

(1) Section 1.11 is amended by adding the following sentence at the end of the current definition: “The Non-defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs.”

(2) Section 1.23 is replaced in its entirety by the following:

1.23 “Force Majeure” means any cause beyond the control of the Party affected, including but not restricted to failure of or threat of failure of facilities, flood, drought, earthquake, storm, lightning, fire, epidemic, war, riot, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority and action or nonaction by or failure to obtain the necessary authorizations or approvals from any governmental agency or authority which by exercise of due diligence such Party could not reasonably have been expected to avoid, and which, by the exercise of due diligence, it has been unable to overcome.

(3) Section 1.51, “Replacement Price” is amended on the fifth line by deleting the phrase “at Buyer’s option” and inserting the following phrase: “absent a purchase.”

(4) Section 1.53, “Sales Price” is amended on the fifth line of by deleting the phrase “at Seller’s option” and inserting the following phrase: “absent a sale.”

(5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.46, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor “[Intentionally omitted.]”

(6) Section 1.59 is amended by changing “Section 5.3” to “Section 5.2.”

(7) Sections 1.62 through 1.76 are added to Article One as follows:

1.62 "AES Agreement" means that certain Capacity Sale and Tolling Agreement dated May 1, 1998, as amended May 15, 1998, by and among the AES Subsidiaries and Williams Energy Marketing & Trading Company (f/k/a Williams Energy Services Company) and their respective successors and assigns and any amendments or modifications thereto.

1.63 "AES Agreement Default" means the occurrence of an Event of Default described in Section 18.1 of the AES Agreement that materially and adversely affects Party B’s rights under the Product D Transaction or, if a cure period is provided for in Section 18.2(a) of the AES Agreement, the occurrence of such an Event of Default and the failure of a Defaulting Party (as defined in the AES Agreement) to cure such default within the applicable cure period.

1.64 "AES Subsidiaries" means any one or more of AES Alamitos, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, AES Huntington Beach, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware, and AES Redondo Beach, L.L.C., a limited liability company organized and existing under the laws of the State of Delaware.

1.65 "Bonds" means the bonds offered by the Department of Water Resources pursuant to AB 1X, codified at California Water Code Section 80100 et seq (the “Act”) with recourse only to the Trust Estate, and shall include any financing pursuant to Executive Order D-42-01 and a Credit and Security Agreement, dated as of June 26, 2001, by and among the Department of Water Resources, various lenders and Morgan Guaranty Trust Company of New York, as agent on behalf of such lenders.

- 1.66 “Fund” means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
- 1.67 “Market Quotation Average Price” means 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 at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
- 1.68 “Market Value” has the meaning set forth in Section 5.3.
- 1.69 “Per Unit Market Price” means the applicable price per kW-month determined in accordance with Section 5.3.
- 1.70 “Product D Transaction” means the Transaction described in the attached Confirmation dated November 11, 2002.
- 1.71 “Qualified Electric Corporation” means an electrical corporation as defined by the Act, whose long-term unsecured senior debt on the effective date of any 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 Electrical Corporation without the prior written agreement of Party A.
- 1.72 “Qualified Power Seller” means any entity (a) engaged in the selling of electricity whose long-term unsecured senior debt on the effective date of any Assignment and Assumption Agreement is rated BBB or better by Standard & Poor’s and Baa2 or better by Moody’s and is not on negative outlook or Credit Watch from either rating agency, and (b) approved by Party B, such approval not to be unreasonably withheld.
- 1.73 “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 Baa3 or better by Moody’s Investor Services.
- 1.74 “Replacement Agreement” means any agreement identical to this Agreement and the Product D Transaction between Party A and a Qualified Electrical Corporation, excluding provisions relating to Party B’s status as a governmental agency or to the original start date(s) of the Agreement (including the Product D Transaction), and together with such changes as Party A and such Qualified Electrical Corporation may agree.
- 1.75 “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.
- 1.76 “Trust Estate” means all revenues received by Party B 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) Transactions.** The Transaction shall be in writing and this Agreement may not be amended or modified except in writing signed by the Parties’ respective duly authorized representatives. For purposes of this requirement, a Recording pursuant to Section 2.5 shall not constitute a writing.

**(c) Governing Terms.** Section 2.2 is amended by adding the following sentence at the end of the current section:

“Notwithstanding the foregoing, the Product D Transaction shall be treated as a stand-alone Transaction and accordingly, (a) provisions in the Product D Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable to the Product D Transaction, and (b) an Event of Default or Potential Event of Default with respect to any Transaction other than the Product D Transaction shall not

affect the Product D Transaction. No provision of any other Confirmation entered into pursuant to Section 2.4 shall affect the Product D Transaction.”

**(d) Confirmation.** Section 2.3, Confirmation, the term “Seller” (and cognates) is deleted and is replaced with “Party A” in each place where it occurs; and the term “Buyer” (and cognates) is deleted and is replaced with “Party B” in each place where it occurs. And insert the words “or other electronic transmission,” after the word “facsimile.”

**(e) Recording.** Section 2.5, Recording, the phrase “of all telephone conversations between the Parties to this Product D Master Agreement” is deleted and replaced with the phrase “of all telephone conversations between the energy scheduling and/or trading personnel of the Parties to this Product D Master Agreement related to scheduling of energy to be delivered pursuant to this Agreement.”

**(f) Transmission and Scheduling.** Section 3.2 is amended by renaming it “Transmission, Scheduling and Imbalance Charges” and inserting the following sentences at the end thereof:

“In addition to the remedies provided under Article 4, Buyer shall assume all liability for and reimburse Seller within thirty (30) days of presentation of an invoice for any Penalties incurred as a result of Buyer’s failure to (i) notify Seller of a failure to Schedule or a change in a Schedule or (ii) comply with the Transmission Provider’s tariff and scheduling policies. Seller shall assume all liability for and reimburse Buyer within thirty (30) days of presentation of an invoice for any Penalties incurred as a result of Seller’s failure to (i) notify Buyer of a failure to Schedule or a change in a Schedule or (ii) comply with the Transmission Provider’s tariff and scheduling policies. The Parties shall notify each other as soon as possible of any imbalance that is occurring or has occurred and shall cooperate to eliminate imbalances and minimize Penalties. Penalties shall be defined as any fees, liabilities, assessments or similar charges assessed by a Transmission Provider.”

**(g) Force Majeure.** Section 3.3 is replaced in its entirety as follows:

Force Majeure. (a) No Party shall be considered to be in default in performance of any of its obligations under this Agreement, except to make payment as specified herein, to the extent such failure in performance shall be due to a Force Majeure. No Party shall, however, be relieved of liability for failure of performance to the extent such failure shall be due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Any Party rendered unable to fulfill any of its obligations under the Agreement by reason of a Force Majeure shall give prompt notice of such fact to the other Party and shall exercise due diligence to remove such inability within a reasonable time period.

(b) Notwithstanding anything to the contrary contained in this Agreement, except as may expressly be provided herein, the term Force Majeure shall not include or excuse the loss by Party A or its Affiliates of FERC-approved marketer status (if any), unless such loss is itself caused by a Force Majeure.

(c) Notwithstanding anything to the contrary in this Agreement, failure to achieve the Guaranteed Availability of any Unit or to deliver the Dependable Capacity, Net Electric Energy or Ancillary Services, as the case may be, from a Designated Unit shall not be excused due to a Force Majeure.

(d) Notwithstanding anything contained in this Article Three to the contrary, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest, it being understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having such dispute.

**(h) Events of Default.** Section 5.1 is replaced in its entirety by the following:

“(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default and other than the failure of a Designated Unit to Dispatch in accordance with Article VIII of the AES Agreement or the failure to achieve Guaranteed Availability

pursuant to Section 4.2 of the AES Agreement, if the Non-Defaulting Party is able to recover fully all amounts due it pursuant to Section 8(a) or (b) as a result of either such failure through the exercise of its right of or reduction of capacity payments provided for in Section 8(a) and its right of set off provided for in Section 8(b), in which case, notwithstanding any provision of this Article V, such right of capacity payment reduction and set-off shall be the Non-Defaulting Party's exclusive remedy; provided, however, nothing herein shall affect Party B's rights under Section 5.8 hereof if such failure is not remedied within thirty (30) Business Days after written notice;"

(2) Add a new subsection (i) as follows:

(i) for Party B, any amendment or repeal of the Water Code subsequent to the date hereof, that adversely affects the ability of Party B to perform its obligations under this Agreement or otherwise adversely affects the rights of Party A hereunder, in which event Party B shall be the Defaulting Party.

(3) Add a new subsection (j) as follows:

(j) With respect to Party A, the occurrence of an AES Agreement Default. Party A shall give Party B written notice of any AES Agreement Default one Business Day following the occurrence thereof.

**(i) Declaration of an Early Termination Date and Calculation of Termination Payment.**

(1) The last sentence of Section 5.2 is replaced in its entirety by the following: "Upon termination of this Agreement as the result of an Event of Default, the Non-Defaulting Party shall be entitled to a payment (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated as of the Early Termination Date in accordance with Section 5.3. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment, if any, due to the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Termination Payment to be made no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(2) The following shall be added to the end of Section 5.2 (as amended by clause (1) immediately above): "Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under the Agreement under the provisions of this Article 5 because the Defaulting Party or its Guarantor either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1."

(3) 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 not 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.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, the calculation issue shall be submitted to dispute resolution as provided in Section 10.12 of this Agreement. Pending resolution of the dispute, the Defaulting Party shall pay the full amount 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.”

- (4) Section 5.4 is replaced in its entirety by the following:

(l) Notwithstanding any other provision of this Agreement, Party A and Party B acknowledge and agree that if an order for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. sec. 101 et seq.), as the same may be amended from time to time (the “Bankruptcy Code”), is entered against Party A at any time during the term of this Agreement, then, if this Agreement has not been terminated, adequate assurances of future performance will not be provided to Party B by Party A within the meaning of section 365(b)(1) of the Bankruptcy Code unless Party A affirmatively establishes the following:

- i. Party A demonstrates that it has the financial resources necessary to maintain the AES Agreement; and
- ii. Party A demonstrates that it has the required financial or other resources necessary to operate and perform under this Agreement.

Party A and Party B further acknowledge and agree that if an order for relief under Chapter 11 of the Bankruptcy Code is at any time entered against Party A during the term hereof, then Party A must be able to cure (a) all non-monetary defaults hereunder within one hundred eighty (180) days of the date on which Party A proposes to assume this Agreement; and (b) all monetary defaults hereunder within one (1) year of the date on which Party A proposes to assume this Agreement.

- (5) Sections 5.5, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor “[Intentionally omitted.]”
- (6) Add a new Section 5.8 as follows:

“Notwithstanding anything to the contrary herein, any Force Majeure which interrupts Party A’s performance of its obligations under this Agreement, with respect to a Designated Unit, for a continuous period of more than twelve (12) months shall be considered an event upon which Buyer may terminate this Agreement with respect to such Designated Unit. In the event of early termination under this Section 5.8, neither Party shall be liable to the other for the payment of damages related to such early termination.

**(j) Timeliness of Payment.** Add the following to Section 6.2 before the first sentence in that section: “Party A shall provide invoice data, disaggregated by transaction components, in a template form as may be reasonably specified by Party B.”

**(k) Limitations.** Article Seven is amended as follows:

(1) Add a new Section 7.2, “The obligations hereunder of Party A shall be solely those of Party A and Guarantor, if any, and of no other person or entity.”

**(l) Grant of Security Interest/Remedies.** In Section 8.3 the phrase “or deemed occurrence” is deleted from the beginning of the second sentence.

**(m) Governmental Charges.** Add the following to Section 9.2 after the second sentence in that section: “Party A shall be entitled to pass through to Party B any liability, loss, cost, damage and expense, including gross-up, arising out of a tax or other imposition enacted by the California state legislature after the date of this Agreement that is not of general applicability and is instead directed at the assets or activities involved in the generation, sale, purchase, ownership and/or transmission of electric power, natural gas and/or other utility or energy goods and services, but only insofar as such liability, loss, cost, damage or expense relates to a Transaction hereunder and reflects an increase in Party A’s cost of service in connection therewith. Party B shall be entitled to the benefit or reduction of or credit with respect to any such tax or other imposition enacted by the California state legislature after the date of this Agreement, but only insofar as such benefit relates to a Transaction hereunder and results in a decrease in Party A’s cost of service for such Transaction.

Should the United States or any agency thereof, including FERC, impose a tax or other imposition that is not of general applicability and is instead directed at the generation, sale, purchase, ownership and/or transmission of electric power, Gas and/or other utility or energy goods and services (“Regulatory Change”) that adversely affects Party A’s costs of providing Capacity or Energy (or any other product or service hereunder) and the aggregate adverse effect on Party A’s cost (taking into account all such Regulatory Changes and all Designated Units) is in the aggregate at least \$2.5 million in any calendar year, then: (a) Party A shall provide notice to Party B of such occurrence together with a proposal to adjust the payments hereunder, and work papers that demonstrate that such adjustment is reasonably calculated to collect no more than the amount of such increased costs and shall request, by such notice, that Party B respond to such proposed adjustment within thirty (30) days; and (b) if after a period of seventy-five (75) days after delivery by Party A of the aforesaid notice, Party B and Party A have not reached agreement as to an adjustment to the amounts payable by Party B that is satisfactory to Party A, in its commercially reasonable discretion, Party A shall have the option to terminate the agreement upon ten (10) Business Days notice and neither Party shall have any further liability to the other, including with respect to a Termination Payment, other than such obligations as survive the termination of the Agreement with respect to obligations incurred prior to termination.”

**(n) Term of Product D Master Agreement.** Add the following sentence to Section 10.1: “The Product D Transaction shall terminate on the day following the last day of the Delivery Period, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default”.

**(o) Representations and Warranties.**

- (1) the phrase “... and is qualified to conduct its business in each jurisdiction in which it will perform a Transaction” is added to the end of Section 10.2(i);
- (2) the phrase “, except as would not have a material and adverse affect on the other Party” is added to the end of Section 10.2(iii);
- (3) the phrase “or any of its Affiliates” is deleted from Section 10.2(vi);
- (4) the phrase “, and are reasonable in all respects, including rates and allocation of risk” is added to the end of Section 10.2(xii);

(5) clauses (ix) and (xi) of Section 10.2 are amended by deleting the text in each of such sections and substituting therefor “[Intentionally omitted.]”, provided, that such clauses shall be included in any Replacement Agreement as defined herein.

(6) Add a new Section 10.2.1 as follows:

10.2.1 On the Effective Date and the date of entering into each Transaction, Party A represents and warrants to Party B that it has obtained from the AES Subsidiaries all consents necessary for the performance of its obligations under this Agreement.

**(p) Indemnity.** The phrase “To the extent permitted by law” is added at the beginning of the first two sentences of Section 10.4. Add the following to the end of Section 10.4: “To the extent Party A and Party B are named as defendants by a third party in any action arising with respect to delivery of Product and Party B receives any amount from a third party as indemnification or reimbursement with respect to such action, Party A and Party B agree to equitably divide such amount.”

**(q) Assignment.** In Section 10.5, the existing paragraph shall be replaced in its entirety with the following:

“(a) Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion.

(b) Notwithstanding the foregoing, Party A may, without the consent of Party B, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of Party A which affiliate’s creditworthiness is equal to or higher than that of Party A, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of Party A; provided, however, that in each such case, such assignee shall agree in writing to be bound by the terms and conditions hereof and, so long as Party A delivers such tax and enforceability assurances together with such assurances as to the sufficiency of creditworthiness of such assignee to perform its obligations hereunder, as Party B may reasonably request; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party A, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof unless and until the bond trustee or any successor or assign shall foreclose on such collateral in which case such bond trustee or its successor or assign shall be bound by each of the provisions hereof, including the immediately preceding proviso.

(c) Notwithstanding the foregoing, Party B, without the consent of Party A, may (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, or (ii) 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 solely to carry out the rights, powers, duties and obligations of the Department under the Act, provided, however, that in each such case, such assignee shall agree in writing to be bound by the terms and conditions hereof and, in each such case, so long as the transferring Party delivers such tax and enforceability assurances together with such assurances as to the sufficiency of creditworthiness of such assignee to perform its obligations hereunder, as the non-transferring Party may reasonably request; provided, further, however, that in the event this Agreement is pledged or assigned to a bond trustee pursuant to clause (i) as collateral for bonds issued by Party B, such bond trustee shall not be required to agree in writing to be bound by the terms and conditions hereof unless and until the bond trustee or any successor or assign shall foreclose on such collateral in which case such bond trustee or its successor or assign shall be bound by each of the provisions hereof, including the immediately preceding proviso.”

**(r) Governing Law.** In Section 10.6, “New York” shall be replaced with “California.”

**(s) General.**

(1) 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.

(2) In the ninth sentence of Section 10.8, insert “materially affected or” after the phrase “Any provision,” and insert “and materially affected by or” after the phrase “or regulatory agency.”

**(t) Additional Provisions.** New Sections 10.12 through 10.18 are added to Article 10 as follows:

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.

10.13 No Interference; No Adverse Actions.

Party B agrees to assist Party A in good faith to resolve acts or omissions (other than as otherwise required to be done by a public agency pursuant to the legal exercise of such public agency’s mandate) which Party A believes would have a significant effect on (a) Party A’s right or ability to (x) sell and deliver, or cause to be delivered, Product to Party B or (y) otherwise satisfy its obligations under this Agreement or (b) Party B’s right or ability to (x) purchase and receive, or cause to be received Product from Party A or (y) otherwise satisfy its obligations under this Agreement.

10.14 Dispute Resolution. (a) If a dispute shall arise between the Parties relating to the interpretation of this Agreement or to performance by a Party hereunder or under any Transaction, the Party desiring resolution of the dispute shall notify the other Party in writing. The notice shall set forth the matter in dispute in reasonable detail and a proposed solution.

(b) The Parties shall attempt to resolve any dispute within 15 calendar days after delivery of the written notice referred to above. Any disputes not so resolved shall be referred by each Party to an officer (or the officer's designee) for resolution. If the Parties fail to reach an agreement within 15 days after such referral, each Party shall have the right to pursue any and all remedies provided in this Agreement and as afforded by applicable law.

(c) The existence of any dispute or controversy under this Agreement or the pendency of the dispute settlement or resolution procedures set forth herein shall not in and of itself relieve or excuse either Party from its ongoing duties and obligations under this Agreement.

10.15 WAIVER OF JURY TRIAL. THE PARTIES HEREBY EXPRESSLY WAIVE ALL RIGHTS TO TRIAL BY JURY ON ANY CAUSE OF ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY INVOLVING OR RELATED TO THE TERMS, COVENANTS OR CONDITIONS OF THIS AGREEMENT OR ANY MATTERS WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH OR RELATED TO THIS AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENTS, AS APPLICABLE, BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. THE PROVISIONS OF THIS AGREEMENT RELATING TO WAIVER OF JURY TRIAL SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.

10.16 No Third Party Beneficiaries. The provisions of this Agreement are for the benefit of the Parties hereto, and as to any other person or entity, this Agreement shall not be construed as a third party beneficiary contract.

10.17 Fixed Rate Contract; Mobile-Sierra Clause. The Parties hereby stipulate and agree that, under the facts and circumstances known to them at this time, 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 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 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 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 any 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.

10.18 Novation. Notwithstanding the foregoing limitations on assignment, at any time after January 1, 2003, the Seller shall, upon the written request of Department, enter into one or more Replacement Agreements as may be agreed to by one or more Qualified Electric Corporations. This Agreement shall terminate upon effective date of a Replacement Agreement. The effectiveness of the Replacement Agreement shall constitute a novation that shall relieve Department of any liability or obligation arising after the date of termination of the Agreement. Such Replacement Agreement shall state that it is a Replacement Agreement within the meaning of the Agreement and that it constitutes a novation for which there is adequate consideration. The effectiveness of such 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 Replacement Agreement and shall have issued an order determining that the charges under such Replacement Agreement are just and reasonable.

**(u) Schedule M.** Schedule M shall be amended as follows:

- (1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122, 80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.
- (2) "Special Fund" will mean the Fund.
- (3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "'Governmental Entity' means the State of California, any State governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the State of California, the State of California Department of Water Resources, or any combination thereof"; 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 B, the sentence to be added to the end of the definition of “Force Majeure” in Article One shall be replaced with the following: “If the Claiming Party is a Governmental Entity, Force Majeure does not include any act or omission of a Governmental Entity (or any branch, subdivision, agency, officer or representative thereof) in its governmental capacity or any other act or omission of any Governmental Entity (including judicial action or inaction) and such act or omission shall be deemed to be an action of Party B.

(5) In Section C add the following representations and warranties:

- (i) “Party B represents and warrants that a Rate Agreement By and Between State of California Department of Water Resources and State of California Public Utilities Commission adopted by the California Public Utilities Commission on February 21, 2001 in Decision 02-02-051 (the "rate Agreement") is binding and in effect.”
- (ii) Party B represents and warrants that, unless determined otherwise by a court or body of appropriate jurisdiction, each of this Amended and Restated Master Power Purchase and Sale Agreement and the Product D Transaction is a “Priority Long-Term Power Contract” as that term is defined in the Rate Agreement.

(6) 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 California state court.”

(7) In Section G, specify that the laws of the State of California will apply.

(8) Add a new Section H, which shall read as follows:

Section 3.6. Payments Under Agreement an Operating Expense. To the extent that this Transaction shall constitute a “Priority Long Term Power Contract” as that term is defined in the Rate Agreement between Party B and State of California Public Utilities Commission (“CPUC”) adopted by the CPUC on February 21, 2001 in Decision 02-02-051, 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."

(9) Add a new Section I, which shall read as follows:

Section 3.7. Rate Covenant; No Impairment. 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. 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 Party A under this Agreement.

(10) Add a new Section J, which shall read as follows:

Section 3.8. 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 Special 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) Section 3.9. No More Favorable Terms. Party B shall not provide in any power purchase agreement 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; provided, however, that Party B shall not be deemed to be in violation of this Section 3.9, and Party B shall not be required to offer Party A payment priority equal to that of the Priority Long Term Power Contracts, to the extent that this Transaction shall not constitute a “Priority Long Term Power Contract” as that term is defined in the Rate Agreement.

(12) Add a new Section L, which shall read as follows:

“Section 3.10. 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.”

(13) Add a new Section M, which shall read as follows:

“Section 3.11. Deposit of Proceeds of Bonds. The proceeds of any bonds issued by Party B shall be deposited and applied in accordance with the resolution or indenture providing for the issuance thereof.”

(14) Add a new Section N, which shall read as follows:

“Section 3.12. Transfers of Power Charge Revenues and Bond Charge Revenues. The indenture providing for the issuance of any bonds or other indebtedness by Party B will provide for the application of Power Charge Revenues and Bond Charge Revenues in accordance with the document entitled “California Department of Water Resources Summary of Material Terms of Financing Documents (Submitted in connection with Section 7.10 of a proposed Rate Agreement between California Department of Water Resources and the California Public Utilities Commission)” under the captions “III. Flow of Funds – Power Charge Revenues; Bond Charge Revenues as modified and amended by the Amended and Restated Addendum to Summary of Material Terms of Financing Documents dated as of August 8, 2002, as further amended or supplemented, and according to Section 7.10 of the Rate Agreement as adopted by the California Public Utilities Commission in Decision No. 02-02-051”

**(w) Conditions Precedent.** The effectiveness of this Agreement (including the Product D Transaction) is subject to and conditioned upon:

- (1) delivery to Party A of a legal opinion from the General Counsel of the California Department of Water Resources in the form attached hereto as Exhibit A; and
- (2) delivery to Party A of a legal opinion from the Attorney General of the State of California in the form attached hereto as Exhibit B.
- (3) unless waived by Party A, receipt by Party A of consents and agreements from the AES Subsidiaries as Party A deems necessary or beneficial in its sole discretion, such consents and agreements to be received on or prior to December 31, 2002; and

- (4) unless waived by Party A, receipt by Party A of required consents and agreements from the California Independent System Operator Corporation, such consents and agreements to be received on or prior to December 31, 2002.

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Unless otherwise determined by a court or other body of appropriate jurisdiction, this Product D Master Agreement amends and supercedes that certain Master Power Purchase and Sale Agreement dated February 16, 2001 (the "Prior Agreement") by and between the Parties. As of the effective date of this Product D Master Agreement, the Prior Agreement, together with any transaction thereunder, shall be of no force or effect.

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

WILLIAMS ENERGY MARKETING &  
TRADING COMPANY

CALIFORNIA DEPARTMENT OF WATER  
RESOURCES 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.**

**Acknowledgments**

State of Oklahoma        )  
                                      ) SS  
County of Tulsa         )

BEFORE ME, the undersigned authority, a notary public, on this day personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of Williams Energy Marketing & Trading Company, a Delaware corporation, known to me  
that he executed this Master Power Purchase And Sale Agreement Cover Sheet for the purposes and consideration  
herein expressed, in the capacity therein set forth and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL of office, this the \_\_\_\_ day of November, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[ S E A L ]

State of California        )  
                                      ) SS  
County of \_\_\_\_\_     )

BEFORE ME, the undersigned authority, a notary public, on this day personally appeared \_\_\_\_\_,  
\_\_\_\_\_ of the California Department of Water Resources, a \_\_\_\_\_, known to  
me that he executed this Master Power Purchase And Sale Agreement Cover Sheet for the purposes and  
consideration therein expressed, in the capacity therein set forth and as the act and deed of said \_\_\_\_\_.

GIVEN UNDER MY HAND AND SEAL of office, this the \_\_\_\_ day of November, 2002.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

[ S E A L ]

**EXHIBIT A**

**LEGAL OPINION**

**EXHIBIT B**

**LEGAL OPINION**