

DYNEGY – CALIFORNIA PARTIES SETTLEMENT

This Binding Agreement in Principle (the “Agreement”) is entered into on April 26, 2004 by and among the parties listed in Section 1 (the “Parties”) with reference to the following facts:

Whereas the Parties are involved in complex regulatory proceedings before the Federal Energy Regulatory Commission (“FERC”) and related appellate proceedings regarding numerous issues arising from events in California energy markets in 2000-01; and

Whereas the Parties have determined that it is preferable to settle the disputes addressed herein rather than continue to litigate;

Now therefore, in consideration of the covenants and agreements contained herein, the Parties agree as follows:

1. PARTIES

The Parties to this settlement are:

1.1 Dynegy Inc., NRG Energy, Inc., and West Coast Power, LLC (collectively referred to as “Dynegy”);

1.2 Pacific Gas & Electric Company (“PG&E”); Southern California Edison Company (“SCE”); San Diego Gas and Electric Company (“SDG&E”); the People of the State of California, *ex rel.* Bill Lockyer, Attorney General (“California Attorney General”); the California Public Utilities Commission (“CPUC”);¹ the California Department of Water Resources acting through its Electric Power Fund, separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (hereinafter, “CERS”); and the California Electricity Oversight Board (“CEOB”) (collectively referred to as the “California Parties”);

1.3 FERC Office of Market Oversight and Investigations (“FERC Staff”).

2. CONSIDERATION

2.1 Dynegy’s Monetary Consideration

In consideration of the respective covenants herein, Dynegy shall provide and agree to the following monetary consideration, consisting of an assignment of specified Dynegy’s receivables and associated interest plus cash payments as set forth below.

2.1.1 As of the Settlement Effective Date, as defined below, Dynegy shall assign to the California Parties all of its outstanding ISO and PX receivables, without recourse, relating to all transactions during the period from January 1, 2000 through June 30, 2001 (“Dynegy’s Receivables”), including any adjustments to such receivable amounts that occur after the Parties’ designated representatives have each executed this Agreement and including all interest on the assigned receivables. As of February 29, 2004, Dynegy’s Receivables, without

¹ The CPUC is not a party to this Agreement. Pursuant to Section 7.1.1, the settlement is subject to the formal approval of the CPUC. CPUC Staff has authorized the Parties to represent that CPUC Staff will recommend approval by the CPUC of Definitive Agreements that substantially incorporate the terms of the settlement, and that the CPUC become a party to the Definitive Agreements.

interest, were estimated to total \$259 million,² but Dynegy represents that it has, since that date, received two (2) payments from the ISO in the approximate amount of \$3.6 million. The Parties agree that the \$259 million estimated value of Dynegy's Receivables as of February 29, 2004 reflects and incorporates a reduction to Dynegy's Receivables for Dynegy's 11-Day Contract (as referred to in EL00-95) with the ISO in the amount of \$52 million. The Parties further agree that the \$259 million estimated value of Dynegy's Receivables as of February 29, 2004 does not reflect or incorporate any changes to Dynegy's Receivables as a result of the preparatory rerun process in Docket ER03-746. Dynegy represents and warrants that it has not previously assigned, and as of the Settlement Effective Date shall not have assigned, to any third party, whether voluntarily or involuntarily or by way of setoff or offset, any of Dynegy's Receivables that are assigned to the California Parties pursuant to this Agreement. Dynegy further warrants and represents that, as of the date of its entry into this Agreement, it is not aware of (i) any material error or omission in the \$259 million estimate of Dynegy's Receivables as of February 29, 2004 or (ii) any issue or issues that is or are likely to arise in the preparatory rerun process in Docket No. ER03-746 that is or are unique to Dynegy, as opposed to issues that are likely to be common to market participants generally, and that are expected to have a material adverse effect on Dynegy's Receivables. The Definitive Agreements shall set forth an appropriate definition of materiality.

2.1.2 No later than ten (10) business days from the Settlement Effective Date, Dynegy shall make the following cash payments by wire transfer into an interest bearing escrow account designated as the "Dynegy Refund Escrow":

- (i) \$11.53 million; and
- (ii) an amount equal to the sum of all distributions after February 29, 2004 of Dynegy's Receivables (including any interest included in such distributions) that have been made to Dynegy by the ISO and/or PX as of the Settlement Effective Date, including interest thereon at the applicable FERC interest rate from and after the date of Dynegy's receipt of the distribution.

2.1.3 No later than ten (10) business days from the Settlement Effective Date, Dynegy also shall wire transfer to such account as FERC Trial Staff may designate \$3.01 million in settlement of claims in Docket EL03-153-000 (as provided in the settlement between Dynegy and FERC Trial Staff).

2.1.4 No later than ten (10) business days from the Settlement Effective Date, Dynegy shall also pay \$8 million to the California Parties by wire transfer of that amount to an interest bearing escrow account designated as the "California Parties Escrow." This amount

² The estimated \$259 million of Dynegy's Receivables reflects the totals of all accounts as of February 29, 2004 except with respect to \$2.7 million in payment obligations owed by Illinova Energy Partners, an affiliate of Dynegy Inc., to the ISO. The Parties agree that the ISO will be instructed not to net these payment obligations against Dynegy's Receivables, which would have the effect of reducing those receivables. Dynegy Inc. instead will be responsible for ensuring that Illinova Energy Partners satisfies such payment obligations through separate payment to the ISO.

shall thereafter be distributed to the California Parties pursuant to the agreement set forth in Section 3.3.9.

2.1.5 The establishment, costs of maintaining, and maintenance of the Dynegy Refund Escrow and California Parties Escrow shall be the responsibility of the California Parties.

2.2 *Dynegy's Non-Monetary Consideration*

2.2.1 Dynegy will agree to implement FERC's EL01-118 market rules.

2.2.2 Dynegy has provided the California Parties with its Code of Conduct and the California Parties agree that this Code of Conduct is consistent with the goal of promoting compliance with relevant legal requirements pertaining to Dynegy's future participation in California energy markets.

2.2.3 Dynegy will comply with applicable ISO tariff provisions concerning must-offer obligations, provided, however, that all Parties are free to advocate changes in those tariff provisions.

2.2.4 For a period of twenty-four months following the Settlement Effective Date, Dynegy shall, at its expense, retain an independent engineering company to perform semi-annual audits of outages at Dynegy's generating plants in California. The findings of each audit shall be provided directly by that company to FERC Staff and shall be provided simultaneously to Dynegy, without prior review by Dynegy. The purpose of such audits shall be to determine whether plant outages are for legitimate operating, maintenance or economic reasons under the circumstances relevant to each outage, and are of an appropriate duration under the circumstances relevant to each outage. The first such audit of a total of four shall be submitted to FERC's Office of Market Oversight and Investigation no later than eight months following the Settlement Effective Date.

2.3 *California Parties' Consideration*

2.3.1. In consideration of the respective covenants in this Agreement, each of the California Parties shall agree to the settlement and releases set forth in Section 4, and shall agree to the remaining terms and conditions of this Agreement.

3. *DISPOSITION OF SETTLEMENT PROCEEDS*

The payments made under Section 2 above shall be distributed and allocated between and among the California Parties, as well as between and among other market participants, in the manner set forth below.

3.1 *Transfer of Funds*

3.1.1 No later than five (5) business days from the Settlement Effective Date, the California Parties shall advise the ISO and the PX that the full amount of Dynegy's Receivables that have been assigned to the California Parties pursuant to Section 2.1.1, as well as the associated interest on such amount, shall be applied to the funding of the refunds provided for in this Agreement, including PG&E's and other market participant's Deemed Distributions, as provided for in Section 3.2.

3.1.2 Thereafter, but no later than ten (10) days from the Settlement Effective Date, a cash transfer representing the difference between (a) \$259 million plus associated interest thereon at the FERC interest rate, less the amount paid by Dynegy pursuant to Section 2.1.2(ii)

(“*Estimated Dynegy Receivables*”), and (b) an amount equal to the total of PG&E’s Deemed Distribution and the Deemed Distributions applicable to any other market participants pursuant to Section 3.2, including any associated interest on such Deemed Distributions at the FERC interest rate, shall be transferred from the PX Settlement Clearing Account to the Dynegy Refund Escrow. Such transfer shall also include the amounts owed by market participants with negative allocations shown on the Allocation Matrix developed in accordance with Section 5.2.

3.1.3 The California Parties shall pay any receivables shortfall from amounts allocated to them under the Agreement but, as further set forth below, in no event shall any California Party have responsibility for any receivables shortfall in excess of the amounts allocated to it under the Agreement. Consistent with the provisions of Section 2, Dynegy shall have no responsibility for any receivables shortfall. The Estimated Dynegy Receivables shall be divided between a “Pre-January 18, 2001 Receivable” and a “Post-January 17, 2001 Receivable” each of which shall include interest at the FERC interest rate. (“Receivable” amounts are positive if money is owed by the ISO/PX and negative if money is owed to the ISO/PX.) If the amount of Dynegy’s Receivables for the pre-January 18, 2001 period calculated by the CAISO and PX pursuant to the current rerun process, plus the interest determined to be payable on such amounts, is less than the Pre-January 18, 2001 Receivable, such shortfall shall be deemed to be a reversal of amounts allocated to PG&E, SCE, and SDG&E (“*California Utilities*”) and shall be paid to the CAISO and/or PX from the amounts allocated to the California Utilities, on a pro rata basis determined with reference to the total refund allocated to each member of the California Utilities under this settlement, within ten (10) business days after a FERC order from which the amount of Dynegy’s Receivables for the Pre-January 18, 2001 period may be ascertained. If the amount of Dynegy’s Receivables for the post-January 17, 2001 period calculated by the CAISO and PX pursuant to the current rerun process, plus the interest determined to be payable on such amounts, is less than the Post-January 17, 2001 Receivable, such shortfall shall be deemed to be a reversal of amounts allocated to CERS and shall be paid to the CAISO and/or PX from the amounts allocated to CERS within ten (10) business days after a FERC order from which the amount of the Dynegy Receivables for the post-January 17, 2001 period may be ascertained. If the amount of Dynegy’s Receivables for either the pre-January 18, 2001 period or the post-January 17, 2001 period calculated by the CAISO and PX pursuant to the current rerun process, plus the interest determined to be payable on such amounts, is greater than the corresponding value for the Pre-January 18, 2001 Receivable and the Post-January 17, 2001 Receivable, such surplus shall be paid by the CAISO and/or PX to the California Parties Escrow within ten (10) business days after the FERC order establishing the amount of Dynegy’s Receivables for the pre-January 18, 2001 and post-January 17, 2001 periods.

3.2 *Allocation of Settlement Proceeds*

3.2.1 The total of all amounts transferred into the Dynegy Refund Escrow, including those deposited directly by Dynegy pursuant to Section 2.1 and the amount transferred into the Dynegy Refund Escrow pursuant to Section 3.1.2, together with the amount of PG&E’s and other market participants’ Deemed Distributions, as provided for in this Section 3.2, represents a total estimated Dynegy refund of \$270.49 million, before any applicable interest and apart from the \$3.01 million paid by Dynegy pursuant to Section 2.1.3, of which \$216 million shall be allocated to the period October 2, 2000 through June 20, 2001 (the “*Refund Period*”), \$50.89 million shall be allocated to the period January 1, 2000 through October 1, 2000 (the “*Pre-Refund Period*”), and \$3.6 million shall be allocated separately to CERS in settlement of its

claims against Dynegy concerning whether prices paid by it to Dynegy relating to “OOM” purchases were just and reasonable.

3.2.2 All interest paid by the ISO or PX shall be credited to the Refund Period. The amounts allocated to the Pre-Refund Period and the separate allocation to CERS shall not bear any interest except for any pro rata share of interest that is earned on those amounts based on the interest that is earned in the Dynegy Refund Escrow itself.

3.2.3 The Parties agree that the amount allocated to the Refund Period incorporates an allowance of 50 percent of Dynegy’s “gas adder” claim for that period and an allowance of 100% of Dynegy’s “emissions adder” claim for that period. The Gas Allowance and Emissions Cost during the Refund Period shall be stipulated as noted in Attachment 1. Dynegy shall not seek any additional “gas adder” or “emissions adder” allowances as against the California Parties and any other party that accepts the benefits of this settlement. The “gas adder” and “emissions adder” allowances provided for herein shall, as to the total amounts applicable to the market as a whole, remain fixed as to the Parties and others who accept the benefits of this settlement. The proposed allocation of such allowances to individual market participants, which is currently based on gross load, shall be subject to adjustment and “true up” to comply with FERC’s final orders, after all appeals, if any, specifying the appropriate allocations. Because the allocations applicable to the “gas adder” and “emissions adder” allowances remain subject to adjustment, market participants accepting the terms of this settlement will not be required to pay any allocated “gas adder” and “emissions adder” allowances that exceed their allocable refund amounts until the date that FERC requires market participants to pay such allowances in the FERC Refund Proceeding.

3.3 *Payment of Refunds*

3.3.1 In the case of market participants who are owed net refunds after consideration of amounts that the particular participant may itself owe to the market in the form of refunds or accounts payable (such market participants being referred to herein as “Net Refund Recipients”), the participant’s allocable net share of the total refund shall be paid from the Dynegy Refund Escrow in the form of cash. The allocations to be used in the refund distribution shall be set forth in the Definitive Agreements, as defined below, but are currently expected to be generally consistent with those shown in Attachment 1.

3.3.2 PG&E shall not receive a cash refund but shall instead receive its share of refunds, as also reflected in the Definitive Agreements, through an offset of its outstanding payable to the PX. The Parties agree, and the order approving the settlement shall provide, that the escrow established by PG&E pursuant to its Plan of Reorganization for payment of its outstanding debts to the PX may be reduced in an amount equal to its Deemed Distributions under this Agreement. Other market participants who do not qualify as Net Refund Recipients shall also receive their allocable refunds in the form of an offset against their outstanding market obligations. Such offsets are referred to herein as “Deemed Distributions.”

3.3.3 Except as provided in Sections 3.3.4 and 3.3.5 below, refunds, either in the form of cash or through the offset of payables provided for in the case of PG&E and others, shall be effectuated both in the case of the California Parties, and as to any other party that “opts into” this settlement as provided for in Section 6.1 below (collectively, “Settling Parties”), no later than twenty (20) business days after the Settlement Effective Date, except that:

(i) From the amount of refunds that are otherwise due to CERS, an amount determined solely by CERS shall be withheld in the Dynegy Refund Escrow, or other escrow specified by CERS, until it is reasonably determined whether CERS has any obligations under Sections 3.1.3, 3.3.7, and 6.2; and

(ii) Interest on the refunds provided pursuant to this settlement shall be distributed within ten (10) business days after FERC issues an order concerning the determination of interest issues and shortfalls associated with the current CAISO and PX settlement reruns and refund calculations (“*FERC Interest Determination*”). The amount of interest to be paid to Settling Parties associated with the refunds provided pursuant to this settlement shall be determined in the FERC Interest Determination, provided that, to the extent amounts are held in the Dynegy Refund Escrow, Settling Parties shall be paid interest on such amounts at the interest rate earned by that escrow and shall be entitled to no additional interest for the period after such funds are deposited in the Dynegy Refund Escrow. Dynegy shall have no responsibility for paying, or otherwise ensuring the payment of, any interest amount. Funds held in the Dynegy Refund Escrow and the California Parties Escrow shall earn the rate of interest applicable to each such escrow account. To the extent that the Settling Parties are entitled to payment from the Dynegy Refund Escrow or the California Parties Escrow, each will be entitled to a proportionate share of interest at the escrow interest rate to the extent interest has been earned on such funds while in the escrow account.

3.3.4 The \$3.01 million paid by Dynegy pursuant to Section 2.1.3 shall be allocated and refunded as directed by FERC in Docket EL03-153-000 or as FERC may otherwise direct. Nothing herein shall preclude any Party from advocating any particular refund allocation or methodology with respect to the \$3.01 million, nor shall any Party be precluded from contesting FERC’s orders concerning the disposition of the \$3.01 million.

3.3.5 To the extent market participants entitled to refunds under this settlement contest this settlement or otherwise decline to accept its benefits, thirty (30) percent of the refund amounts shown for such market participants for the Pre-Refund Period on the Allocation Matrix developed pursuant to Section 5.2 shall be transferred from the Dynegy Refund Escrow to another account specified by FERC Staff contemporaneously with the payments set forth in Section 3.3.3. The Parties agree that such funds shall be allocated by FERC as part of its settlement of the anomalous bidding investigation in Docket No. IN03-10. Nothing herein shall preclude any Party from advocating any particular refund allocation or methodology with respect to this amount, nor shall any Party be precluded from contesting FERC’s orders concerning the disposition of this amount.

3.3.6 Market participants entitled to refunds that contest this settlement or otherwise decline to accept its benefits shall not receive any accelerated payment of refunds under this settlement and shall not be guaranteed any specific level of refunds.

3.3.7 If the total of the funds deposited into the Dynegy Refund Escrow pursuant to Sections 2.1 and 3.1.2, plus accrued interest on such deposited funds, is insufficient to fund all required cash refunds to market participants as contemplated by this Agreement, then the provisions of Section 6.2 shall apply.

3.3.8 If the total amount in the Dynegy Refund Escrow is greater than the amount that is ultimately necessary to fund all cash refunds to market participants as contemplated by this Agreement, then the remaining balance, including accrued interest, shall,

not later than ten (10) business days after it has been determined that such excess amount exists, be transferred to the California Parties Escrow and shall thereafter be distributed to the California Parties pursuant to an agreement among them that will be incorporated as part of the Definitive Agreements provided for in Section 5 below or that will be entered into by the California Parties concurrently therewith.

3.3.9 The California Parties shall provide for the allocation and distribution of amounts in the California Parties Escrow by an agreement among them that will be incorporated as part of the Definitive Agreements provided for in Section 5 below or that will be entered into by the California Parties concurrently therewith.

3.4 *ISO and PX Books and Records*

3.4.1 The PX and ISO shall each be directed in the FERC order approving this settlement to conform their books and records to reflect the distributions, offsets, transfers and status of accounts provided for in this Agreement. The FERC order approving this Agreement will grant all waivers as are necessary for the ISO and PX to implement this Agreement, and will resolve the Dynegy-ISO dispute concerning Dynegy's 11-Day contract as provided herein, with a \$52 million reduction in the receivable owed to Dynegy.

4. *SCOPE OF SETTLEMENT AND RELEASES*

4.1 *Settlement*

4.1.1 In return for the consideration specified elsewhere in this Agreement, and subject to obtaining any regulatory and court approvals required under this settlement, all claims against Dynegy for refunds, disgorgement of profits, or other monetary or non-monetary remedies in FERC Docket Nos. EL00-95, *et al.*, PA02-2, IN03-10, EL01-10, and FERC's physical withholding investigation, insofar as these proceedings concern Dynegy's sales to the ISO and PX from January 1, 2000 through June 20, 2001 and Dynegy OOM sales to CERS from January 1, 2000 through June 20, 2001, shall be deemed settled (collectively, "FERC Refund Proceedings"), provided that Docket Nos. EL00-95, *et al.* and EL01-10 shall not be deemed settled as to non-settling parties.

4.1.2 Dynegy and the California Parties agree that they will not contest the amount of refund liability and/or offsets attributable to Dynegy in FERC Dockets EL00-95, *et al.* Dynegy and the California Parties also agree that they will not dispute the outcome of PA02-2, IN03-10, EL01-10 and FERC's physical withholding investigation, as they relate to Dynegy, and as they are resolved by this settlement.

4.1.3 Dynegy and the California Parties shall abandon all outstanding challenges to the orders in the FERC Refund Proceedings with respect to Dynegy; provided that, Dynegy may continue to challenge any matter involving prospective mitigation for periods after June 20, 2001 and the California Parties may continue to assert their respective positions on the issue of prospective mitigation for periods after June 20, 2001.

4.1.4 Dynegy and the California Parties shall abandon any settlement disputes regarding the 11-Day Contract, meaning that all settlements regarding the 11-day period covered by that contract shall be resolved through the distributions, offsets and transfers provided for in Section 2.1, with no further adjustments.

4.1.5 Notwithstanding anything to the contrary in this Agreement, Dynegy shall be deemed to retain any and all claims and defenses it may have against non-settling parties to

this settlement that decline to accept the benefits of this settlement or that elect to contest its provisions.

4.2 *Waiver of ISO Disputes*

4.2.1 With respect to transactions related to sales of electricity and ancillary services by Dynegy, or transmission congestion charges applicable to the same, the Parties hereby waive any disputes regarding existing ISO settlements for the period from January 1, 2000 through June 20, 2001.

4.3 *FERC and Federal Power Act Releases*

4.3.1 Subject to Section 4.5 below, the California Parties, on the one hand, and Dynegy, on the other hand, shall, as of the Settlement Effective Date, be deemed to have released the other from all existing and future claims at FERC and/or under the Federal Power Act that:

- (i) Dynegy charged or collected unjust, unreasonable or otherwise unlawful rates, terms or conditions for energy, ancillary services, or transmission congestion in the western electric markets during the period from January 1, 2000 through June 20, 2001; or
- (ii) Dynegy manipulated the electric market in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final FERC Staff Report, or any other forms of market manipulation), or otherwise violated any applicable tariff, regulation, law, rule or order relating to the western electric markets during the period from January 1, 2000 through June 20, 2001.

4.3.2 The releases set forth in this Section 4.3 include any claims against Dynegy at FERC that are premised on factual and legal contentions forming the basis for the appeal currently pending before the United States Court of Appeals for the Ninth Circuit in *Lockyer v. FERC*, Case No. 02-73093.

4.3.3 The releases set forth in this Section 4.3 do not affect any of the Parties' rights and obligations in pending Reliability Must Run proceedings.

4.3.4 The releases set forth in this Section 4.3 do not affect any of the Parties' rights and obligations in the proceedings pertaining to Dynegy's market-based rate authority in FERC Docket No. ER98-1127 *et al.*, insofar as they may relate to transactions undertaken, or requests for relief concerning a period, outside the time period January 1, 2000 through June 20, 2001.

4.4 *Civil Claims Releases*

4.4.1 Subject to Section 4.5 below, the California Parties, on the one hand, and Dynegy, on the other hand shall, as of the Settlement Effective Date, be deemed to have forever released the other from all past, existing and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that:

- (i) Dynegy charged or collected unjust, unreasonable or otherwise unlawful rates, terms or conditions for energy, ancillary services, or transmission congestion in the western electric markets during the period from January 1, 2000 through June 20, 2001;

- (ii) Dynegy, during the period from January 1, 2000 through June 20, 2001, manipulated the electric market in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of market manipulation discussed in the Final Staff Report, or any other forms of market manipulation); or
- (iii) Dynegy was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule or order relating to transactions in the western electric markets during the period from January 1, 2000 through June 20, 2001.

4.4.2 The California Parties may, however, continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that, as of the Settlement Effective Date, the California Parties shall withdraw from and not prosecute any litigation, administrative proceedings and investigations with respect to Dynegy insofar as such prosecution would be inconsistent with the foregoing released claims.

4.5 *Limitations on Releases*

4.5.1 The releases set forth in Sections 4.3 and 4.4 do not include any release of claims in FERC Docket Nos. EL02-60 and EL02-62, including associated appeals, and do not include any release of any other claims, or judicial or administrative proceedings, relating to Dynegy's long-term contract with CDWR.

4.5.2 The releases set forth in Sections 4.3 and 4.4 do not include any release by the California Parties, or any of them, related to: (i) claims and disputes in connection with Dynegy invoices disputed by CERS in a December 24, 2002 letter to Dynegy; or (ii) claims and disputes arising out of any Reliability Must Run ("RMR") contract or the terms of the ISO Tariff relating to the dispatch or payment of RMR generation.

4.5.3 The releases set forth in Sections 4.3 and 4.4 do not encompass: (i) any potential criminal charges against Dynegy or any of its employees by the California Attorney General; (ii) any potential civil or equitable claims against Dynegy by the California Attorney General; (iii) the claims, demands, causes of action or defenses set forth by the Parties in *People of the State of California ex rel Lockyer v. Dynegy, et al*, United States Court of Appeal for the Ninth Circuit, Case No. 02-16619 (District Court Case No. CV-02-1854 VRW); or (iv) the claims, demands, causes of action or defenses embraced by the Tolling Agreements dated March 28, 2002 and April 9, 2002 between the Attorney General and Dynegy.

4.5.4 All Parties to this Agreement shall remain free to participate in any existing proceeding, or to initiate or participate in any future proceeding, addressing matters not settled in this Agreement, such as generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.

4.6 *Tolling*

4.6.1 Pending the approvals specified in Section 7 below, the Parties shall agree to toll any statutes of limitations or similar defenses based on the passage of time with respect to the matters released in this Section 4.

4.7 *No Assistance to Remaining Litigants*

4.7.1 Any Party that has released Dynegy regarding a claim or claims herein shall not subsidize or assist the litigation, discovery, investigation or analysis of any other party pertaining to the same claims against Dynegy. This does not, however, preclude any Party from continuing litigation on the same or similar grounds, or related investigatory activities, against suppliers other than Dynegy.

4.8 *Effectiveness of Releases*

4.8.1 It is the intention of the Parties that the releases granted pursuant to this Section 4 shall be effective as a bar to all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, hereinabove specified in this Section 4. In furtherance of this intention, Dynegy on the one hand and the California Parties and FERC Staff on the other hand, the Parties knowingly, voluntarily, intentionally and expressly waive, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and relinquishment, the Parties each acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they know or believe to be true and with respect to the subject matter of this Agreement, but that it is their intention hereby to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Section 4. This Agreement is intended to include in its effect, without limitation, all claims encompassed within the settlement and releases set forth in this Section 4, including those which the Parties may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims. The Releases set forth in this Section 4 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of the Actions. Notwithstanding the waiver of California Civil Code Section 1542, the Parties acknowledge that the releases provided for in this Agreement are specific to the matters set forth in this Section 4 and are not intended to create general releases as to all claims, or potential claims, between the California Parties or FERC Staff, or any of them, and Dynegy.

5. *SUBSEQUENT DEFINITIVE AGREEMENTS*

5.1 The terms of this settlement will be memorialized in one or more subsequent definitive agreements ("*Definitive Agreements*"), which the Parties, by accepting the terms of this Agreement, commit to cooperate in drafting, and which shall further document, in such additional detail as is reasonably necessary to effectuate the intent of the Parties, the settlement terms that are reflected in this Agreement.

5.2 The Definitive Agreements shall include an agreement of the California Parties setting forth an allocation among them of the consideration described in Section 2, as well as a

proposed allocation applicable to other market participants (the "Allocation Matrix"). Additionally, although this settlement covers transactions in the California PX and ISO markets for the period January 1, 2000 through June 20, 2001, it is contemplated that the Allocation Matrix will only provide for refunds with respect to transactions occurring during the period May 1, 2000 through June 20, 2001.

5.3 The Definitive Agreements and this Agreement shall be subject to California law (without regard to the law of conflicts).

5.4 The Definitive Agreements shall be completed by the Parties no later than thirty (30) days from the date of the Parties' acceptance of the terms set forth in this Agreement and executed as soon thereafter as is reasonably possible. Once executed, the Definitive Agreements will supersede the terms of this Agreement in their entirety and this Agreement shall thereupon become null and void.

6. *OTHER ENTITIES, SETTLING OR NON-SETTLING*

6.1 The Parties agree that they will propose a settlement to FERC that will present the opportunity to resolve the matters identified in Section 4.1 above for non-settling parties as well as for the Parties themselves. Under this approach, other market participants will have the opportunity to "opt into" the settlement under the terms set forth in the Definitive Agreements within the time period provided for comments on the settlement agreement at FERC. Such terms will include a provision whereby other market participants who "opt into" the settlement will be required to provide the releases set forth in Section 4 *et seq.* above subject to the limitations set forth in Section 4.5.

6.2 If any non-settling party asserts claims for refunds in the FERC Refund Proceedings, or seeks any other form of monetary relief at FERC in the FERC Refund Proceedings for any claims arising out of or relating to Dynegy sales to the ISO and PX from January 1, 2000 through June 20, 2001 and Dynegy OOM sales to CERS from January 17, 2001 through June 20, 2001, any additional funds needed to resolve such claims will be paid by the respective California Parties from the amounts allocated to them under this settlement. The California Utilities shall be responsible for payment of such additional amounts on a pro rata basis from the amounts allocated to them for the period January 1, 2000 through October 1, 2000 to the extent that the additional amounts owed to a non-settling party concern transactions in the ISO or PX markets during that same period. Likewise, the California Utilities shall be responsible for payment of such additional amounts on a pro rata basis from the amounts allocated to them for the period October 2, 2000 through January 17, 2001 to the extent that the additional amounts owed to a non-settling party concern transactions in the ISO or PX markets during that same period. CERS shall be responsible for payment of such additional amounts from the amounts allocated to it to the extent that the additional amounts owed to a non-settling party concern transactions in the ISO or PX markets for the period January 18, 2001 through June 20, 2001 and Dynegy OOM sales to CERS from January 17, 2001 through June 20, 2001.

6.3 Notwithstanding anything to the contrary in this Agreement, Dynegy will, at its expense, continue to pursue gas adder claims from market participants that are not a party to this settlement and who do not agree to accept the benefits of this settlement through the "opt into" procedure contemplated above. Any recovery of proceeds by Dynegy from such parties shall be retained by Dynegy and shall not be distributed to the California Parties or any other settling party as a part of this settlement. Further, the California Parties agree that they will not intervene

in such action or oppose Dynegy's defense of its gas cost recovery claim, will not seek discovery or other relief against Dynegy's claims and will not assist any other party's claim or defense against Dynegy. All other parties that opt into this settlement shall be required, as a condition of settlement, to agree to this provision. Nothing in this Section 6.3, however, shall restrict the ability of the California Parties to continue to participate in any existing proceeding, or to initiate or participate in any future proceeding, insofar as such proceeding concerns a gas adder or emissions adder claim made by a supplier other than Dynegy.

6.4 Notwithstanding anything else in this Agreement, the obligation of any of the California Parties to pay money (a) shall, as to non-settling parties, be limited to payment of claims in the FERC Refund Proceedings pursuant to Section 6.2 and shall not encompass payment of claims in any other proceeding, and (b) shall not, in any event, exceed the total amount of refunds and/or offsets allocated to that California Party pursuant to this Agreement. Without limiting the foregoing, nothing in this Agreement shall require the California Parties to bear any liability to any party relating to Dynegy sales outside of the ISO and PX for the period January 1, 2000 through June 20, 2001 other than Dynegy OOM sales to CERS from January 18, 2001 through June 20, 2001. Dynegy agrees that it shall not be a claimant for any of the funds to be allocated pursuant to the terms of this Settlement.

7. *REQUIRED APPROVALS; SETTLEMENT EFFECTIVE DATE*

7.1 *Approvals*

7.1.1 This settlement shall be subject to approval, without material change or condition unacceptable to any Party, by FERC and the CPUC. Such approval by FERC shall include a grant of authority to the ISO and PX to implement the terms of this settlement and, if necessary, waiver of any tariff provisions that may provide for contrary resolution of the matters covered by this settlement.

7.1.2 Any required applications or other appropriate submissions requesting the approvals referenced in Section 7.1.1 shall be submitted to the specified agencies within thirty (30) days of the completion and execution of the Definitive Agreements. The application or other submission to FERC shall be prepared jointly by the Parties.

7.1.3 It is presently contemplated that the CPUC's approval of the settlement, if granted, will be established through the CPUC's participation as a Party to and execution of the Definitive Agreements. Should it be determined, however, that the CPUC's approval must be obtained through a proceeding before the CPUC, then the California Utilities shall be responsible for preparing and submitting, either jointly or individually, such applications or other submissions to the CPUC as are determined to be necessary.

7.1.4 Within five (5) days after the Effective Date, Dynegy shall withdraw its claims against PG&E in the PG&E bankruptcy proceeding except that Dynegy reserves its right to file a Section 503(b) claim under the Bankruptcy Code.

7.2 *Settlement Effective Date*

7.2.1 After execution, the Definitive Agreements and the terms of this settlement shall be effective upon the "*Settlement Effective Date*", which is defined as the later of: (i) the date FERC issues an order approving the settlement in its entirety; (ii) the date the CPUC approves the settlement in its entirety, either by entering into the settlement as a Party or,

if required, by issuing an order approving the settlement in its entirety that has become final and is no longer subject to appeal.

8.0 *NO JOINT AND SEVERAL LIABILITY*

8.1 Nothing herein shall create any joint and several liability among the California Parties.

9.0 *CONFIDENTIALITY*

9.1 The Parties agree that this Agreement will remain confidential and subject to the Rule 602 settlement privilege, and will not be shared with any entity not a Party to this Agreement without prior consent of all Parties to this Agreement. The Parties agree, however, that they remain free to discuss the terms of this Agreement with non-Parties in a general manner.

10.0 *COUNTERPARTS*

10.1 This Agreement may be executed in counterparts.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the dates set forth under their respective signatures. This Agreement shall be deemed accepted by the Parties as of the date it has been executed by the last of the Parties (excluding the CPUC as explained in footnote 1) to sign. Signatures transmitted by facsimile shall be deemed the same as originals.

DYNEGY INC

Rick Bowen
Senior Vice President,
Dynergy Inc.

NRG ENERGY, INC.

Erschel Redd
Executive Vice President,
Commercial Operations and
Regional President, Western Region
NRG Energy, Inc.

WEST COAST POWER, LLC (on behalf of
itself and its subsidiary LLCs)

Keith S. Richards
President, West Coast Power LLC

Rick Bowen
Vice President, West Coast Power LLC

PACIFIC GAS & ELECTRIC
COMPANY

Name: _____
Title: _____

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PACIFIC GAS & ELECTRIC
COMPANY

Name: _____
Title: _____

SOUTHERN CALIFORNIA
EDISON COMPANY

Name: Stephen E. Pickett
Title: Senior VP & General Counsel

SAN DIEGO GAS AND ELECTRIC
COMPANY

Name: _____
Title: _____

PEOPLE OF THE STATE OF
CALIFORNIA, *EX REL.* BILL
LOCKYER, ATTORNEY
GENERAL

Name: _____
Title: _____

CALIFORNIA DEPARTMENT
OF WATER RESOURCES

Name: _____
Title: _____

CALIFORNIA ELECTRICITY
OVERSIGHT BOARD

Name: _____
Title: _____

SOUTHERN CALIFORNIA
EDISON COMPANY

Name: _____
Title: _____

SAN DIEGO GAS AND ELECTRIC
COMPANY

Name: James P. Avery
Title: Senior Vice President - Electric

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LOCKYER, ATTORNEY
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Name: Bill Lockyer
Title: Attorney General

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Title: _____

**OFFICE OF MARKET OVERSIGHT AND
INVESTIGATIONS,
FEDERAL ENERGY REGULATORY
COMMISSION**

**William F. Hederman
Director, Office of Market Oversight
and Investigations**

Attachment 1 - Confidential
Dynergy Refund Settlement Matrix

						(\$ millions)						(\$ millions)
D Y N E R G Y												
Category of Refunds/Claims	PG&E	SCE	SDG&E	CERS	Other	Market Amount	PG&E up to Jan 17	SCE up to Jan 17	SDG&E up to Jan 17	CERS post Jan 17	Other	California Parties Total
Post-October refunds - up to January 17, 2001 (FERC gas based MMCP)	58%	25%	12%	0%	5%	138.6	80.8	35.2	16.2	0.0	6.4	132.2
Post-October refunds - post January 17, 2001	0%	0%	0%	97%	3%	158.5	0.0	0.0	0.0	153.2	5.3	153.2
Emissions offset - up to January 17, 2001	41%	34%	7%	0%	18%	-2.9	-1.2	-1.0	-0.2	0.0	-0.5	-2.4
Emissions offset - post January 17, 2001	0%	0%	0%	90%	10%	-7.2	0.0	0.0	0.0	-6.5	-0.7	-6.5
Gas allowance (subtractor) - up to January 17, 2001	41%	34%	7%	0%	18%	-40.7	-16.6	-13.7	-2.9	0.0	-7.5	-33.2
Gas allowance (subtractor) - post January 17, 2001	0%	0%	0%	90%	10%	-30.3	0.0	0.0	0.0	-27.2	-3.1	-27.2
Refund period total						216.0	63.0	20.5	13.1	119.6	-0.3	216.3
CERS OOM	0%	0%	0%	100%	0%	3.6	0.0	0.0	0.0	3.6	0.0	3.6
Pre-October 'FERC' relief (allocation TBD by FERC):						3.0	0.0	0.0	0.0	0.0	0.0	0.0
Pre-October relief 'A' (uses gross load approach):	38%	35%	7%	0%	21%	15.0	5.7	5.2	1.0	0.0	3.1	11.9
Pre-October relief 'B' (uses gross load approach):	38%	35%	7%	0%	21%	35.9	13.6	12.4	2.4	0.0	7.4	28.4
Cash position before other claims						273.5	82.3	38.2	16.5	123.2	10.3	260.2
California Parties Escrow						8.0	2.0	2.0	0.5	0.15	3.35 *	8.0
Total Additional Consideration for Global Settlement						281.5	84.3	40.2	17.0	123.3	13.6	268.2

* OTHER parties under the 'Settling Claimants Escrow' are the California Attorney General, the CPUC and the CEOB.