

Board of Trustees Agenda Item

Board Meeting Date: May 3, 2010

Title of Item: District-wide Electricity Services

Background and Analysis:

Through the Community College League of California's Electricity Consortium Program, electricity rates for the 2010 / 2011 year have been obtained at a level that is 25% below our current rate. The new rate of \$56/megawatt hour will equate to an approximate savings for the next year (2010 / 2011) of \$250,000 as compared to the 2009 / 2010 rates.

In conjunction with the Electricity Consortium Program, agreement to lock in this very favorable rate was required on March 25, 2010. Therefore, Vice Chancellor Dunn signed the attached agreement with Constellation New Energy on March 25, 2010 in accordance with the delegation of authority provided to him by Board Resolution #2009-21G.

Board ratification of this action is requested.

Recommendation: Ratification of the attached Fixed Price Solutions Pricing Schedule with Constellation NewEnergy, Inc. for electricity services for the period July 8, 2010 – July 21, 2011.

Submitted by: Charles Allen

Additional contact names: Andy Dunn, Vice Chancellor, ext. 6201

Is backup provided? Yes



Agreement is Not
Valid Unless
Executed by
NewEnergy

Constellation NewEnergy, Inc.
Fixed Price Solutions Pricing Schedule

MRESA Reference. This Pricing Schedule is entered into pursuant to and in accordance with a Master Electricity Supply Agreement executed on June 17, 2008, by and between Constellation NewEnergy, Inc. ("NewEnergy") and Foothill-De Anza Community College Dist. ("Customer"), and is subject to all of the provisions, terms and conditions of such Master Electricity Supply Agreement. Notwithstanding anything to the contrary, any conflict between this Pricing Schedule and the Master Electricity Supply Agreement will be resolved in favor of this Pricing Schedule, but only with respect to the Account(s) listed on this Pricing Schedule. This Pricing Schedule supersedes all prior agreements and understandings with respect to the Account(s), and may not be contradicted by any prior or contemporaneous oral or written agreement. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Electricity Supply Agreement.

Price Terms. NewEnergy will supply, and Customer will purchase, on an exclusive basis, Customer's full requirements for electricity for the Account(s) listed on the Account Schedule below. The prices contained in the Account Schedule include all the costs listed below as "Fixed", meaning that they are "fixed" for the existing term of this Pricing Schedule and only subject to change as a result of a Change in Law as described in the Master Electricity Supply Agreement or a material change and described in Section PS 2.4 or Section 2.7 of this Pricing Schedule. Costs listed below as "Passed Through" means that charges for these costs will change during the existing term of this Pricing Schedule if and as the related charges assessed or charged to NewEnergy vary for any reason, including but not limited to the types of changes described in Section PS 2.7 hereof or in the Change in Law Section of the Master Electricity Supply Agreement. Customer is also responsible to pay (1) Taxes - which NewEnergy will pass through to Customer on Customer's bill either as a separate line item or reflected as part of the price of electricity, as required by Law, and (2) Utility Charges for delivery/distribution services if NewEnergy provides a single bill that includes Utility Charges. The Utility Charges (if any) and Taxes are charged to Customer as "Passed Through." At any time during the term of this Pricing Schedule, Customer may request the purchase of renewable energy certificates in an amount equal to a prescribed percentage of Customer's load volume by entering into one or more Retail Trade Transactions ("RTTs") between Customer and NewEnergy. If the Parties agree to the pricing and terms of the renewable energy certificates purchase, a separate RTT Confirmation signed by Customer and NewEnergy will document each such purchase.

Energy Costs	Fixed
Ancillary Services And Other ISO Costs	Passed Through
Capacity Costs	Passed Through
Line Loss Costs	Fixed
Basis Costs	Passed Through
Renewable Portfolio Standards Cost	Passed Through

GENERAL TERMS AND CONDITIONS

PS 1.1. General Definitions.

"Delivery Point" means existing and future points of interconnection between the ISO-controlled grid or a third party transmission system and/or distribution system, as applicable, and the Utility's transmission system and/or distribution system.

"Holdover Costs" means the sum of all costs and charges incurred by NewEnergy for the retail delivery of energy, including, without limitation and as applicable, the Federal Energy Regulatory Commission, renewable portfolio standards, and any similar charges that may be imposed on NewEnergy with respect to the Accounts (whether by the ISO or the Utility) from time to time. We will pass Holdover Costs through to Customer on Customer's invoice without mark-up as part of Customer's Holdover Rate.

"Holdover Rate" means a rate calculated by NewEnergy in its sole discretion for each billing cycle as $[(\text{Metered Usage}) \times (\text{Market Price} + \text{Holdover Costs} + \$0.00525/\text{kWh}) + \text{Taxes}]$.

"ISO" means CAISO, or other successor or replacement entity, public or private, administering transmission reliability and control of the electricity grid.

"Market Price" means the ISO-published Real Time Locational Based Marginal Price for the ISO zone identified in the Account Schedule, expressed in \$/kWh. Market Prices are published hourly or sub-hourly depending on ISO. If Customer's Account(s) are not equipped with meters that provide an hourly reading, we will use either the load profiles provided by the Utility for Customer's class or, in the absence of such load profiles provided by the Utility on a timely basis, an otherwise reasonable allocation method established by us, in order to apply Market Prices to Customer's monthly usage.

"Metered Usage" means Customer's kilowatt-hour usage at the Account(s) during the applicable billing period, as adjusted by the applicable line loss factor(s).

"NewEnergy Electricity Charges" means for purpose of this Pricing Schedule all Fixed cost components identified in the "Price Terms" section above at the prices identified in the Account Schedule below multiplied, as applicable, by Customer's usage, demand, number of accounts or other factor shown on the Account Schedule for such Fixed price during the applicable period.

"Notice Period" means, unless a longer period is required by applicable Law, the five day period following written notice from NewEnergy to Customer informing Customer of any amounts past due under this Agreement.

"Payment Date" means the date thirty one (31) days following the invoice date, by which Customer's payment to NewEnergy is due without offset or reduction of any kind.

"Utility Charges" means Delivery Charges to the extent provided by the Utility.

PS 1.2. Market Definitions.

"Ancillary Services And Other ISO Costs" means for any billing period the applicable charges regarding ancillary services as set forth in the applicable ISO Open Access Transmission Tariff ("OATT") and for other ISO costs not included in the definition of Basis Costs, Capacity Costs, Energy Costs, and Transmission Costs. NewEnergy will determine Customer's monthly Ancillary Services And Other ISO Costs based on Customer's \$/kWh share of NewEnergy's cost for Ancillary Services And Other ISO Costs incurred with respect to all of NewEnergy's customers within the applicable ISO service territory or in the form of an otherwise reasonable allocation method as NewEnergy may determine from time to time based on how Ancillary Services And Other ISO Costs are assessed by the ISO.

"Basis Costs" means the difference in Market Prices between the energy zone of the service account (sometimes referred to as the "Load Aggregation Point" or "LAP") and the supply hub (sometimes call the "EZ Gen Hub") associated with the service account energy zone. The market rules determine which hub is used to supply an energy zone. Currently the rules require that the PGE energy zone be supplied from the NP15 hub, the SCE energy zone be supplied from the SP15 hub, and the SDGE energy zone be supplied from the SP15 hub. The day ahead market price will be used to calculate Basis Costs except that where the contract specifies use of the real time market price as the energy index for settlement, the real time index price will be used for calculating Basis Costs.

"CAISO" means the California Independent System Operator.

"Capacity Costs" means a charge for fulfilling the capacity (Resource Adequacy) requirements for the Account(s) imposed by the Public Utilities Commission, ISO, or otherwise.

"Energy Costs" means a charge for the cost items included in the Locational Marginal Price for the ISO zone identified in the Account Schedule

"Line Loss Costs" means the distribution charges imposed by the Utility in connection with the supply of electricity by NewEnergy to Customer in accordance with this Agreement, which are calculated based on a percentage of Customer's kilowatt-hour consumption during the applicable period times.

"Non Time Of Use" or "NTOU" means all hours of each day.

"Renewable Portfolio Standards Cost" means Customer's pro rata share of NewEnergy's total cost of procuring renewable energy to comply with Renewable Portfolio Standards ("RPS") requirements for the State of California. NewEnergy will determine Customer's Renewable Portfolio Standards Cost based on the percentage that Customer's usage for a calendar year bears to all of NewEnergy's customers within the applicable ISO service territory or in the form of an otherwise reasonable allocation method as NewEnergy may determine from time to time based on how costs are incurred by NewEnergy to comply with its RPS requirements.

"TOU Price" means the NewEnergy Electricity Charges expressed in \$/MWh or \$/kWh.

PS 2.1. Initial Term. With respect to each Account set forth below, the term of this Pricing Schedule shall commence on the date set forth on the Account table below under "Start Date", through the date set forth on the Account table below under "End Date", unless extended on a holdover basis as described in this Agreement. Unless the Start Date and End Date specify a specific meter read date, such date shall be the first regularly scheduled meter read date for the stated month and calendar year, which meter read date may fall within the prior calendar month or in the subsequent calendar month (e.g., the meter read date for the month of March may in fact fall in February). Meter read dates are based on the information currently available from the Utility, actual meter read dates are determined by the Utility and may deviate from those shown on the Account Schedule. NewEnergy will use commercially reasonable efforts to begin service to the Account(s) on the Start Date(s) set forth below, but if NewEnergy is unable to enroll one or more of the Accounts by such date as a result of circumstances beyond NewEnergy's control (including (i) Customer's failure to timely provide NewEnergy with all information with respect to the Account(s) necessary in order to successfully enroll the Account(s) with the Utility or notify the Utility that it has selected NewEnergy as its supplier or (ii) any acts or omissions of the Utility), the Start Date(s) will commence on the next regularly scheduled Utility meter read date in the month and year following successful enrollment of such Account(s), but the End Date(s) will remain the same.

PS 2.2 Renewal Terms. Nothing in the Agreement (including this Pricing Schedule) shall be deemed to require or otherwise obligate NewEnergy to offer to extend the term of this Pricing Schedule.

PS 2.3 Invoicing and Payment. For amounts due under this Pricing Schedule and the Agreement, unless otherwise agreed to by the parties, Customer will receive two invoices, one from NewEnergy for all charges applicable to Customer's electricity usage, which consists of the NewEnergy Electricity Charge plus all charges identified as a Passed Through in the "Price Terms" section above, and one from the Utility for the Utility Charges.

Customer acknowledges that NewEnergy's ability to invoice Customer is dependent on the Utility's or ISO's ability to furnish NewEnergy with all necessary information. In the absence of such information, NewEnergy shall have the right to invoice Customer based on estimated meter readings or other estimated information. Customer's invoice will be adjusted the next billing cycle after which NewEnergy receives the actual consumption amount and other necessary information from the Utility or ISO, to reconcile any difference between estimated consumption and actual consumption or other matters. To the extent that dollar amounts included on an invoice are for the benefit of the Utility, Customer shall also comply with the standard terms and conditions of the Utility applicable to payments owed to it. Payments to NewEnergy are subject to adjustments in subsequent invoices if, on the basis of verified information provided by the ISO, the Utility or otherwise, the amount of electricity delivered to the Customer is adjusted. Customer shall have full responsibility for payment of any existing amounts owed to Utility.

PS 2.4 Change in Usage. Customer acknowledges that NewEnergy determined the TOU Price for electricity for the NewEnergy Electricity Charge calculation, in part, based on Customer's historical and/or anticipated usage for each Account by TOU period during the applicable supply Term under this Agreement. Customer agrees to provide NewEnergy with thirty (30) days prior written notice in the event that Customer reasonably anticipates, during the applicable Supply Term under this Agreement, a material change to Customer's electricity requirements that was not otherwise disclosed to NewEnergy prior to the execution of the applicable Pricing Schedule and associated supply Term, if such change is related to: (a) increased or decreased use of on-site generation; or (b) expansion or reduction of existing facilities. In the event that Customer's requirements are materially changed, as defined above, NewEnergy may amend the TOU Price if: (1) on more than one occasion an instance of such material change results in Customer's aggregate monthly usage either increasing or decreasing by more than 25% compared to Customer's aggregated usage during the same month in each of the two prior years, with each of those prior months' usages adjusted to account for any known sources of

sustained usage changes; and (2) if NewEnergy's average per MWh costs of serving Customer, excluding all pass-through charges, increase materially as a result of Customer's material change in usage. If Customer does not accept the amended TOU Price offered by NewEnergy or if one or more of Customer's facilities which are receiving electricity supply hereunder are closed, vacated, sold, consolidated or otherwise disposed of, then Customer may, to the extent permitted by applicable Law, terminate this Pricing Schedule with respect to the corresponding Account(s) upon thirty (30) days written notice to NewEnergy, in which event Customer may be liable to make an early termination payment to NewEnergy under the applicable section of the Master Agreement.

PS 2.5 Intentionally Omitted.

PS 2.6 Certain Customer Acknowledgements. Customer acknowledges and agrees that (a) NewEnergy is not acting as Customer's consultant or advisor for any purpose, and Customer will not construe or rely on any information provided or statements made by NewEnergy, including without limitation as to the advantages or disadvantages of any specific product or service, predictions about future energy prices, or any other statements or information, as advice or representations of any sort; and (b) Customer is making its own decisions based solely upon its own analysis and the advice of its own advisors, if any, and is not relying on NewEnergy in any way in making its decision to enter into this Pricing Schedule or in making any other decision or taking any other action under this Pricing Schedule.

PS 2.7 Material Changes. If the Utility changes the designated rate class, the locational deliverability area or the assigned transmission and capacity obligations for an Account, or if the ISO changes capacity compensation, NewEnergy reserves the right to adjust its prices, and any such adjustment will reasonably reflect the incremental cost to NewEnergy. Any such change and corresponding adjustment by NewEnergy shall not be considered a "Change in Law" subject to Section T2.5 of the Master Electricity Supply Agreement.

PS 2.8. NewEnergy and Utility Contact Information. Customer may contact NewEnergy regarding its invoice or other matters concerning this pricing Schedule at NewEnergy's Customer Service Department by toll-free telephone at 888-635-0827, or email at customer@constellation.com. **CUSTOMER AGREES TO CONTACT ITS UTILITY IN THE EVENT OF A POWER OUTAGE OR OTHER ELECTRICITY RELATED EMERGENCY AT THE FOLLOWING TELEPHONE NUMBERS:**

Utility Name	Utility Abbreviation	Contact Numbers
Pacific Gas & Electric	PGE	Emergency: 800-743-5002

PS 2.9 Certain Customer Representations and Warranties. (a) Customer warrants and represents that (1) the Accounts are eligible for direct access services, (2) its aggregate peak demand during any 12 month period is greater than 20 kilowatts and (3) the electricity supplied under this Agreement is not for residential use. (b) Customer agrees and acknowledges that NewEnergy utilizes MRW Consulting ("MRW") for on-going utility rate and California market analysis. NewEnergy will authorize MRW to make available to Customer and its representative, Community College League of California ("CCLC"), certain utility rate analysis conducted on behalf of NewEnergy. NewEnergy makes no representations or warranties as to the completeness or correctness of any information or analysis provided to Customer or CCLC by MRW and any use or reliance on MRW information or analysis is at Customer's own risk. Customer further acknowledges and affirms that Customer or any representative thereof will not share any MRW information or analysis with any third parties nor will they utilize any MRW information or analysis for the benefit of any third parties.

PS.2.10

Net Energy Metering. NewEnergy shall provide Net Energy Metering to any Account(s) with the necessary metering installed to measure both (a) electricity flowing from the grid to the Account(s) and (b) electrical energy flowing from the Account(s) to the grid. Where Accounts have Net Energy Metering, NewEnergy will use the Net Energy Metered Amount in any billing period to calculate its invoice to the Customer. If Utility metering is not in place to allow the calculation of Net Energy Metering, then NewEnergy shall have no obligation to perform such calculation. If the Net Energy Metered Amount is negative for any billing period (i.e., more kWhs are transmitted from the Account(s) to the grid than are transmitted from the grid to the Account(s)), NewEnergy will apply the Net Energy Metered Amount to the calculation of the next invoice. Notwithstanding, amounts existing at the end of the term set forth in this Pricing Schedule shall not survive past the term and under no circumstances will NewEnergy be obligated to apply a credit or pay Customer for any such amounts; provided however that if the Customer has a subsequent agreement with NewEnergy that ensures continuous, uninterrupted supply to the Customer by NewEnergy, in which case any such negative Net Energy Metered Amounts will be applied to the calculation of the next invoice. "Net Energy Metering" means the measurement and calculation of the Net Energy Metered Amount, provided that for billing purposes, such measurement and calculation shall depend on the specific metering configuration in place by the Utility. "Net Energy Metered Amount" means, for a given billing period, the sum of (a) and (b), where (a) equals the number of kWhs taken from the grid by Account(s), which amount is taken to be a positive value; and (b) equals the number of kWhs transmitted to the grid from Account(s), which amount is taken to be a negative value, and which kWh production is produced by a Customer's solar or wind turbine electrical generating facility or a solar-wind hybrid on its premises ("Self-Generation") which is interconnected and operated in parallel with the Utility's transmission and distribution system.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK.]

Each party has caused this Agreement to be executed by its authorized representative on the respective dates written below.

CONSTELLATION NEWENERGY, INC.

By: Victor Gonzalez
Name: Victor Gonzalez
Title:
Date: 3/29/10
Address: 1221 Lamar St. Suite 100
Houston, Texas 77010
Attention: Contracts Administration
Facsimile:
Telephone:

Customer: Foothill De Anza Community College Dist.

By: Andy Dunn 3-25-10
Name: Andy Dunn
Title: Vice Chancellor, Business Services
Date: March 25, 2010
Address: 12345 El Monte Road
Los Altos Hills, CA 94022
Attention:
Facsimile: (650) 948-5194
Telephone: (650) 949-6201
Email Address: dunnandy@fhda.edu

Meter Acknowledgment Form

Meters

You acknowledge that you must have an approved direct access meter ("Meter") installed for each Account as a condition precedent to our obligation to perform our responsibilities for Accounts(s) under this Agreement. You are responsible for loss, damage, theft or destruction of the meters as a result of any cause whatsoever and, in the event of such loss, damage, or destruction, you must immediately repair or replace any such meter. We will invoice and you must pay any Meter Costs.

Installation of Meter and Telecommunications Equipment

- If you do not have an approved Meter, our meter service provider ("MSP") will install such meter and you agree to install any necessary telecommunications equipment so the meter can be read remotely. The MSP will provide an estimate of costs and a schedule of standard rates for the work to be performed.
- You will allow us to share the use of your fax or voice phone number for meter data acquisition as required.
- You will provide additional information and access to property within 30 calendar days of our notification to you to facilitate the installation of the meter and any associated telecommunications equipment. Failure to provide additional information and/or access to property could result in monthly manual meter reading charges and could impair direct access meter compliance.
- The costs listed above plus any adjustments for non-standard installations will be billed and attached to a monthly invoice. Payment terms outlined in the Agreement shall apply.

Meter Maintenance Plan

- The prices fixed in this agreement include the costs of the Meter Maintenance Plan ("MMP").
- The MMP covers:
 - i. dispatching trouble calls; ii. repairing or replacing malfunctioned meters caused by hardware (modem, mass memory, etc.) failure; iii. meter testing as required up to one annual visit; iv. test and calibration of transformer rated meter with annual usage of greater than 2,000,000 kWh per year prior to the 12-month anniversary of the installation date; initial manual meter read required in the event of meter equipment failure or any change that prevents a remote meter reading; sample meter testing as required by the applicable state regulatory authority.
- The MMP does not cover:
 - i. phone wiring malfunction except for defects in work by the MSP; ii. dial tone malfunction; iii. removal of the meter; iv. field programming, re-programming, re-configuration requested by Customer outside of the initial and basic meter programming specifications; v. repair, replacement, re-programming, or re-configuration of meters due to Customer tampering with meters; vi. failure of external device such as AMR module, Datastar, Line Share Switch, Load Control Box, etc.; vii. troubleshooting not related to meter equipment failure; viii. trouble calls related to previous problems where the Customer has not rectified the problem.
- Costs for services or equipment not covered by the MMP will be billed and attached to a monthly invoice.
- Existing direct access meters that are out of compliance at the time of transfer of service to us shall be tested for an additional fee and thereafter the meter testing shall be covered by the MMP.
- The MMP applies to all accounts on this agreement and any subsequent direct access metered accounts. It is a required service under this agreement.

ACCOUNT SCHEDULE:
For: Foothill-De Anza Community College Dist.

NewEnergy shall have no obligation to enroll or supply electricity to any account(s) that are not identified on the Account Schedule below.
Please verify that your specific information is COMPLETE and ACCURATE.
Your review and acceptance of this information will help ensure accurate future invoices

Notes: Accounts listed in the Account(s) Schedule may be updated or replaced with a new account number issued by the Utility, ISO or other entity.

UDC	UDC Account Number	Service Address	Contract Start Date	Contract End Date	Energy Price Non TOU (\$/kWh)	Service Charge (\$/Invoice)
PGE	5345487035	1250 Stevens Creek Blvd, Cupertino, CA, 950145443	7/23/2010	7/21/2011	\$ 0.068	\$ 49
PGE	1512201005	12345 S El Monte Ave, Los Altos, CA, 940224504	7/8/2010	7/6/2011	\$ 0.068	\$ 49

• 056347

vmg

Payments to Certain Third-Parties: Customer acknowledges and understands that:

- NewEnergy is making a payment to the Community College League of California in connection with its efforts to facilitate NewEnergy entering into this Agreement; and
- Customer's price reflects the fee NewEnergy is paying to the Community College League of California
- the Community College League of California is acting on Customer's behalf as Customer's representative and is not a representative or agent of NewEnergy.
- Customer should direct any questions regarding such fee to the Community College League of California.

1- 444440845

Account Representative: E15872 | FORM: Siebel-1-439499726 | Page - 6 - of 6 | Printed: 3/24/2010 | E15872

©2009 Constellation Energy, Inc. All rights reserved. The offering herein is sold and contracted by Constellation NewEnergy, Inc., a subsidiary of Constellation Energy Group, Inc. Errors and omissions excepted. Non-Std ES (4b, 19d, 23a, 24a) Std. Pricing Schedule Rev. 1.3 Oct-19-2009