

OHLONE COMMUNITY COLLEGE DISTRICT

MEMORANDUM

TO: Board of Trustees  
 FROM: Douglas Treadway  
 DATE: May 25, 2005  
 SUBJECT: Ratification of Electricity Contract Extension with Constellation New Energy (AES)

The District's current contract for electricity with Constellation NewEnergy (AES) expires June 30, 2005. For the past month, the Community College League and its consultants have been carefully monitoring pricing for electricity in anticipation of extending the contract for the balance of the calendar year (six months) or through the next fiscal year (12 months).

Because of the volatility of the energy marketplace, the Community College League recommended that the member districts of the Electricity Consortium take advantage of a buying opportunity May 12, 2005 to extend our current contracts.

Even though the Direct Access price is approximately 2-3% above the bundled service price, the League has recommended that the Districts remain on direct access for at least another 6 months before considering returning to PG &E's bundled service. The reasons provided by the League for staying on Direct Access at this time are:

1. For the past six years as a Direct Access customer, your district has had the flexibility to benefit from savings provided through the Electricity Consortium's purchasing program.
2. As a direct access customer, you would not even be eligible for bundled utility rates until 6 months after you gave your utility notice that you had decided to return to utility generation service. Instead, you would be forced to pay spot power prices plus associated charges, which together could be significantly higher than the amount you would pay as a Direct Access customer.
3. Because utility generation rates are expected to increase significantly over the next several years the League believes that direct access service will offer long-term savings, especially since the direct access surcharges you are obligated to pay begin declining, which is expected to be in 2006 or 2007.
4. Should you return to utility generation service you have to wait at least 3 years before you could return back to direct access service. If and when you returned to direct access service you would very likely be liable for a new set of exit fees similar to and in addition to those you are now paying.

The California Community College League has arranged for an extension to this interim contract to continue until December 31, 2005. To take advantage of the best pricing available, staff had less than one day to agree to and to sign the extension contract. The contract was signed on May 12, 2005.

The price locked in for electricity during this extension period is \$0.066896 per kilowatt hour (kWh) for the high voltage accounts and \$0.076154 per kWh for the low voltage accounts. This represents a 5.7962% increase in kWh charges over the last extension period for high voltage and a 12.1429% increase for low voltage accounts.

A copy of the extension contract has been provided for your review.

RECOMMENDATION:

The President/Superintendent recommends that the Board of Trustees ratify an extension to the Direct Access electricity contract with Constellation NewEnergy, Inc allowing our current contract to continue until December 31, 2005.

**AMENDMENT TO THE  
CONSTELLATION NEWENERGY ELECTRICITY SERVICE AGREEMENT**

Constellation NewEnergy Inc., formerly known as AES NewEnergy, Inc. ("NewEnergy") and the **Ohlone Community College District** ("Customer") hereby enter into this Extension Agreement ("Extension") to the AES NewEnergy Electricity Service Agreement dated August 22, 2002 ("Agreement"), as modified by Contract Amendment I dated May 29, 2003 and by Contract Amendment II dated November 15, 2004. The Extension is effective July 1, 2005.

WHEREAS, NewEnergy and Customer entered into an Electricity Service Agreement dated August 22, 2002, as modified by Contract Amendment I dated May 29, 2003, and by Contract Amendment II dated November 15, 2004 (the "Agreement") with respect to the sale of electricity supply.

WHEREAS, NewEnergy and Customer have an interest in extending this Agreement.

WHEREAS, pursuant to section T3.6 of the General Terms and Conditions incorporated in the Agreement the Parties hereto now desire to amend certain provisions of the Agreement as more particularly set forth herein. Unless otherwise indicated, all terms used herein shall have the same meaning as in the Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to modify the Agreement as follows:

1. **Extension Period:** The Term of the Agreement shall be extended to December 31, 2005. ("Extension Term").
2. **Extension Price:** For the Extension Term, for each Account number listed on Schedule A, the contract price shall be as follows:

**"High Voltage Rate Schedule Maximum TOU Pricing"** means that the Extension TOU Price for those Account(s) with a High Voltage Rate Schedule shall never be more than the following:

a.	TOU Price On-peak Summer (\$/kWh):	0.066896
b.	TOU Price Off-peak Summer (\$/kWh):	0.066896
c.	TOU Price On-peak Winter (\$/kWh):	0.066896
d.	TOU Price Off-peak Winter (\$/kWh):	0.066896
e.	TOU Price Start Date:	07/01/05
f.	TOU Price End Date:	12/31/05

**"Low Voltage Rate Schedule Maximum TOU Pricing"** means that the Extension TOU Price for those Account(s) with a Low Voltage Rate Schedule shall never be more than the following:

a.	TOU Price On-peak Summer (\$/kWh):	0.076154
b.	TOU Price Off-peak Summer (\$/kWh):	0.076154
c.	TOU Price On-peak Winter (\$/kWh):	0.076154
d.	TOU Price Off-peak Winter (\$/kWh):	0.076154
e.	TOU Price Start Date:	07/01/05
f.	TOU Price End Date:	12/31/05

**"Low Voltage Rate Schedules"** means the rate schedules for those Account(s) located within the following UDC areas (a) the PG&E rate schedules: A1, A6, A10, E19S, E20S, and LS1; or (b) SCE rate schedules: LS3, GS1, GS2, OL1, PA1, PA2, and TOU8S.

“High Voltage Rate Schedules” means the rate schedules for those Account(s) located within following UDC areas (a) PG&E rate schedule: E19P and E20P; or (b) SCE rate schedule TOU8P.

3. Section 6. Distribution Service/Exit Charges/Rate Assessments has been deleted in its entirety replaced with the following:

**6. DISTRIBUTION SERVICE/EXIT CHARGES/RATE ASSESSMENTS/OTHER COSTS.** Customer pay all charges, fees, assessments, adders, surcharges, or other such charges including any associated with any regulatory requirement which impose resource adequacy or renewable portfolio standards on NewEnergy, however styled or payable, imposed or authorized to be imposed on [ Access customers (regardless of whether any of the foregoing are also imposed or authorized to be imposed on other classes or types of customers) by a UDC, the CPUC, the California Department of Water Resources ("CDWR") or any other entity or body with direct or indirect jurisdiction over direct access service.

4. Except as specifically modified herein, the Agreement remains unmodified and in full force and effect.

IN WITNESS WHEREOF, this Amendment II has been duly executed as of the day and year first above written.

Constellation NewEnergy, Inc.

Customer: Ohlone Community College District

By: \_\_\_\_\_  
Aaron Thomas  
Vice President

By: Deanna Walston  
Deanna Walston  
(Please print or type name)

its: Vice President of Business Services,  
Deputy Superintendent  
(Please print or type title)