



## **Board of Directors Meeting**

Wednesday, January 17, 2018

6:00 pm

City of Hayward Council Chambers

777 B Street, Hayward, CA

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 736-4981 or [Scabrera@ebce.org](mailto:Scabrera@ebce.org).*

*If you have anything that you wish to be distributed to the Board please hand it to the clerk who will distribute the information to the Board members and other staff*

### **1. Welcome & Roll Call**

### **2. Pledge of Allegiance**

### **3. Public Comment**

*This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to three minutes per speaker.*

## **CLOSED SESSION**

### **A. Appointment of General Counsel**

**GENERAL COUNSEL: Report on action taken in Closed Session**

## **CONSENT AGENDA**

### **4. Approval of Minutes from December 6, 2017**

**5. Approval of Amendment to Legal Services Agreement with Richards, Watson & Gershon**

Approve six-month extension and increase of contract amount of the Agreement for Legal Services with Richards, Watson & Gershon to provide general/special counsel services to East Bay Community Energy until June 30, 2018

**6. Amended Employment Agreement with Chief Executive Officer**

Adopt a Resolution authorizing the Chair to execute an amended Employment Agreement for Chief Executive Officer (“CEO”) between EBCE and Nicolas Chaset to allow the CEO to remain on COBRA medical insurance until January 1, 2019.

**REGULAR AGENDA**

**7. CEO Report**

Accept CEO report on:

- A. Workflow Priorities
- B. Staff Additions; and
- C. Contracts entered into

**8. Approval of Contract with Weideman Group for Legislative Advocacy and Advisory Services**

Approve selection of Weideman Group to provide legislative advocacy and advisory services and delegate to Chief Executive Officer to negotiate and execute a one year contract not to exceed \$120,000.

**9. Designation of the CEO as Personnel Officer and Authorization to Approve and Adopt Employee Handbook**

Adopt a Resolution designating the Chief Executive Officer as Personnel Officer for EBCE and authorizing him to approve and adopt the EBCE Employee Handbook.

**10. Amend the Conflict of Interest Code**

Adopt a Resolution amending the EBCE Conflict of Interest Code to add the positions of Chief Operating Officer, Vice President of Marketing and Customer Accounts, Director of Power Resources, and Director of Regulatory and Legislative Affairs

**11. Approve EBCE Customer Confidentiality Policy**

Approve the EBCE Customer Confidentiality Policy: Notice for Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information.

**12. Approval of Administrative and Operational Policies**

Approve the following recommendations:

- A. Approve policies relating to: Customer Confidentiality and Process for Considering Policy or JPA Agreement Amendments;
- B. Discuss Policies relating to: Administrative Procurement Practices and Delinquent Accounts and Collections; and
- C. Adopt two Resolutions regarding: Delegation of Authority to the CEO for Regulatory and Legislative Matters, and Records Retention Policy

**13. EBCE Risk Policy and Risk Guidelines Update**

Receive update and provide feedback on EBCE Risk Policy and Risk Guidelines

**14. Power Supply Procurement and Hedging Options**

Receive update and provide feedback on EBCE Energy Supply and Hedging Options

**15. EBCE Rate Options**

Receive update and provide feedback on EBCE Rate Options

**16. Alameda County Local Clean Energy Projects Request for Proposals**

Receive update, provide feedback on EBCE's planned Local Clean Energy Project Request for Proposals

**17. Discussion of Brilliant 100 and Offering a Third Energy Product**

Receive update and provide feedback on *Brilliant 100* and potential third energy product.

**18. Standard Power Purchase Agreements and Confirms**

Receive update and provide feedback on Standard Power Purchase Agreements and Confirms

**19. Formation of EBCE Executive Committee**

Appoint an Executive Committee of the Board of Directors to provide in-depth review of certain operational and policy matters of the EBCE, as directed by the Board from time to time. The Executive Committee will be comprised of 5 Board members who can serve the anticipated term of at least one year.

**20. Board Member and Staff Announcements**

**21. Adjournment** – to Wednesday, February 7, 2018. Location: Castro Valley Library  
3600 Norbridge Ave.,  
Chabot Room  
Castro Valley CA



## **Board of Directors Meeting**

Wednesday, December 6, 2017

6:00 pm

City of Hayward Council Chambers

777 B Street, Hayward, CA

**DRAFT**

## **Summary Action Minutes**

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*If you have anything that you wish to be distributed to the Board please hand it to a member of EBCE staff who will distribute the information to the Board members and other staff.*

### **1. Welcome & Roll Call**

**Present:** Directors: Biddle (Dublin), Martinez (Emeryville), Bacon (Fremont), Mendall (Hayward), Spedowfski (Livermore), Thomas (San Leandro), Rames (Community Advisory Committee); Vice-Chair Kalb (Oakland) and Chair Haggerty (Alameda County)

**Excused:** Directors: Pilch (Albany), Arreguin (Berkeley), Ellis (Union City), and Rood (Piedmont)

### **2. Pledge of Allegiance**

### **3. Public Comment**

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## CONSENT AGENDA

### 4. Approval of Minutes from November 15, 2017

**Director Spedowski motioned to approve the November 15, 2017 Minutes. Director Biddle seconded the motion which carried 7/0; Excused: Directors: Arreguin, Ellis, Pilch, Rood and Vice-chair Kalb**

## REGULAR AGENDA

### 5. CEO Report

**Jessica Tovar** – Spoke regarding the Local Development Business plan, organizations that work with East Bay Clean Power Alliance and early procurement process.

**Barbara Stebbins** – Spoke regarding early procurement, union participation, adoption of an early roll out of Feed-in tariff projects to meet program goals and allow a local project to launch. Ms. Stebbins also spoke in support of completing the LDBP as soon as possible.

**Victor Uno** – Speaking on behalf of IBEW, Mr. Uno suggested the CEO clearly state the LDBP is the action guide for the program and in support of an early rollout.

### 6. Update on Marketing and Phase 1/Municipal and Commercial Outreach Strategy (Informational item)

Recommendation:

Receive update and provide feedback on Marketing and Phase 1 outreach strategy.

**Presented**

### 7. Update on Local Development Business Plan (Informational Item)

Receive informational update on Local Development Business Plan.

**Presented**

**Barbara Stebbins** – East Bay Clean Power Alliance (EBCPA) Thanked the CEO for the opportunity to review the LDBP task drafts. EBCPA is supportive of the programs that have been posted, would like to see more local projects and the completion of the LDBP.

**8. Overview of EBCE Policy Development (Discussion Item)**

Recommendation:

Receive policy overview presentation and provide feedback as necessary.

**Presented**

**The Board Discussed:**

- **Types of policies being reviewed**
- **Prioritization of Human Resource policies**
- **Reviewing other similar jurisdictions**

**Jennifer West** – Spoke regarding StopWaste.org technical advisory group and offered to share policy development practices with EBCE.

**9. Authorization to Submit California Public Utilities Commission Payment**

**(Action Item)**

**Recommendation:**

Authorize the Chief Executive Officer to issue payment to the California Public Utilities Commission (CPUC) in lieu of the performance bond, as mandated by the CPUC for launch of EBCE’s CCA program, in the amount of \$100,000.

**Vice-chair Kalb motioned to authorize the CEO to issue payment to the California Public Utilities Commission in lieu of the performance bond. Director Mendall seconded the motion which carried 8/0; Excused: Directors: Arreguin, Ellis, Pilch and Rood.**

**10. Authorize Execution of Wholesale Energy Agreement with Northern California Power Agency (Action Item)**

Recommendation:

Adopt a Resolution authorizing the Chief Executive Officer to execute a letter of intent and negotiate a final contract with the Northern California Power Agency (NCPA) for Wholesale Energy Services for a term of two years that includes a one year option for extension that EBCE has sole discretion to exercise. Among the key terms to be included in this contract is a competitive annual base price. Additionally, the Chief Executive Officer, Chief Operating Officer and Director of Power Resources will work with NCPA to develop a set of task orders within the base proposal cost, to support EBCE’s set up of its procurement desk in three core areas:

- **Task 1: Schedule Coordination Services.** NCPA working with EBCE will set up schedule coordination services for EBCE which will include all necessary CAISO and CPUC registrations to enable EBCE to procure all necessary power and renewable energy products.
- **Task 2: Portfolio & Risk Management Policies.** NCPA will work with EBCE in parallel to develop short-, mid- and long-term portfolio management strategies in accordance to defined risk management policies and regulations. After an EBCE

Energy Procurement Strategy and EBCE Risk Policy manual is developed, NCPA and EBCE will present to the board for final review.

- **Task 3: Enabling Agreements.** NCPA will support EBCE in executing enabling agreements (EElS) with creditworthy energy suppliers to procure all necessary power resources.

**Victor Uno** – Thanked the CEO for the process, selection of NCPA and spoke to the importance of local energy procurement/generation to create local jobs and workforce development.

**Director Mendall motioned to authorize the CEO to execute a letter of intent and negotiate a final contract with Norther California Power Agency. Vice-Chair Kalb seconded the motion which carried 8/0; Excused: Directors: Arreguin, Ellis, Pilch and Rood.**

#### **11. Board Member and Staff Announcements**

There were no announcements

#### **12. Adjourned** – to Wednesday, January 17, 2017



## Staff Report – Consent Item 5

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** Approval of Amendment to Legal Services Agreement with Richards, Watson & Gershon

**DATE:** January 17, 2018

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### **Recommendation**

Approve six-month extension and increase of contract amount of the Agreement for Legal Services with Richards, Watson & Gershon to provide general/special counsel services to East Bay Community Energy until June 30, 2018.

### **Background and Discussion**

Inder Khalsa of Richards, Watson & Gershon, with the assistance of Greg Stepanicich, Roy Clarke, and their associates have been providing general counsel services to EBCE staff and the Board of Directors, including drafting policies, contracts, and resolutions for consideration by the Board.

The EBCE approved an initial six month “Agreement for Interim General Counsel Services” with Richards, Watson & Gershon at its first meeting on January 30, 2017. This Agreement expired in June 2017, and the Board approved and adopted an amendment extending the Agreement until December 31, 2017. Once again, the Board could, at its sole discretion, opt to extend the Agreement for a second time.

Given that the Board is close to appointing a new General Counsel, this second amendment would transition Richards Watson & Gershon to “Special Counsel.” Furthermore, the proposed amendment extends the Agreement until June 30, 2018, identifies the additional attorneys providing legal services, and increases the not-to-exceed cap.

From June to December, Richards, Watson & Gershon billed the EBCE approximately \$170,000, under the contracted compensation, which was not to exceed \$175,000. This Amendment increases the not to exceed amount of the contract to a total of \$265,000, allowing for an additional \$90,000 from January through June. Depending on the amount of general or special counsel services required during this time, this should provide an ample cushion.



The Legal Services Agreement does not include energy contracts or regulatory matters before the CPUC that require specialized legal services in these areas of law.

**Attachment 5A**

**RESOLUTION EBCE R-2018-**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY  
APPROVING AN AMENDMENT TO THE AGREEMENT  
FOR LEGAL SERVICES BETWEEN THE EAST BAY  
COMMUNITY ENERGY AUTHORITY AND RICHARDS,  
WATSON & GERSHON**

**THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY  
AUTHORITY DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

Section 1. On January 30, 2017, the East Bay Community Energy Authority (“EBCEA”) approved an Agreement for Interim General Counsel Services with Richards, Watson & Gershon, a professional corporation practicing law in California (“Agreement”).

Section 2. On July 19, 2017 the term of the Agreement was extended by resolution. The term expired December 31, 2017, and the not-to-exceed amount was \$175,000.

Section 3. On January 17, 2018 EBCE will consider approving an agreement for a new General Counsel.

Section 4. The EBCE wishes to amend the Agreement to extend the term, transition Richards, Watson & Gershon from Interim General Counsel to Special Counsel, and update the list of those attorneys assigned as counsel.

Section 5. This Amendment to the Agreement for Legal Services expires on June 30, 2018, with an increased compensation amount not to exceed a total of \$265,000 for the life of the Agreement.

Section 6. The Chair of the Board is directed to execute the Amendment to the Agreement for Interim General Counsel Services, substantially in the form attached to the Agenda Report that accompanied this Resolution, on behalf of the EBCE, and is authorized to take all other actions necessary to implement the Agreement.

**ADOPTED AND APPROVED this \_\_\_\_ day of January, 2018.**

\_\_\_\_\_  
Scott Haggerty, Chair

**ATTEST:**

\_\_\_\_\_  
Stephanie Cabrera, Secretary

**AMENDMENT TO AGREEMENT BETWEEN THE EAST BAY COMMUNITY  
ENERGY AUTHORITY AND RICHARDS, WATSON & GERSHON, A PROFESSIONAL  
CORPORATION, EXTENDING LEGAL SERVICES**

This Amendment to Agreement for Legal Services, dated January 17, 2018, is by and between the East Bay Community Energy Authority (EBCE), and the law firm of Richards, Watson & Gershon, a professional corporation engaged in the practice of law in California, hereinafter referred to as "Special Counsel." EBCE and Special Counsel agree as follows:

1. All references to "General Counsel" in the Agreement Between the East Bay Community Energy Authority and Richards, Watson & Gershon, dated January 30, 2017 (the "Agreement for Legal Services"), are hereby amended to state "Special Counsel."
2. Section 2 of the Agreement for Legal Services, is amended as follows:

**"TERM:** The term of this Agreement shall begin on January 1, 2018 and shall expire on June 30, 2018 unless extended with the approval of the Board of Directors of EBCEA."

3. Section 3 of the Agreement for Legal Services is amended to increase the not to exceed amount of the contract to \$265,000.
4. Section F, "Rate of Compensation," of Exhibit B attached to the Agreement for Legal Services is hereby amended in its entirety to read:

"Richards Watson & Gershon shall bill the EBCEA for the following personnel at the following rates:

Greg Stepanicich	\$325 per hour
Inder Khalsa	\$300 per hour
Roy Clarke	\$300 per hour
Casey Strong	\$250 per hour
Elena Pacheco	\$250 per hour
Rebecca Green	\$250 per hour"

5. All other provisions of the Agreement for Legal Services shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to Agreement for Legal Services to be executed by their representatives as follows:

**EAST BAY COMMUNITY ENERGY**

**AUTHORITY**  
A Joint Powers Authority

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Haggerty,  
Chair, Board of Directors

**RICHARDS WATSON & GERSHON**  
A Professional Corporation

DATED: \_\_\_\_\_

By: \_\_\_\_\_  
Inder Khalsa,  
Special Counsel



## Staff Report - Consent Item 6

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Inder Khalsa, EBCE General Counsel  
**SUBJECT:** Amended Employment Agreement with Chief Executive Officer  
**DATE:** January 17, 2018

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### **Recommendation**

Adopt a Resolution authorizing the Chair to execute an amended Employment Agreement for Chief Executive Officer (“CEO”) between EBCE and Nicolas Chaset to allow the CEO to remain on COBRA medical insurance until January 1, 2019.

### **Background**

The East Bay Community Energy Authority and CEO Nicolas Chaset executed an Employment Agreement on June 21, 2017. The Employment Agreement includes a transition health benefit provision requiring Mr. Chaset to participate in EBCE’s medical insurance program once the program is established.

### **Analysis & Discussion**

The proposed Amended Employment Agreement modifies the transition health benefit provision to allow Mr. Chaset to elect to retain COBRA medical insurance coverage until the sooner of January 1, 2019, or the date he elects to participate in the EBCE medical insurance program.

### **Attachment:**

- A. Resolution Authorizing the Chair of the Board to execute an amended Employment Agreement
- B. Amended Employment Agreement

**Attachment 6A**

**RESOLUTION EBCE R-2018 -**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY  
COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHAIR OF THE  
BOARD TO EXECUTE AN AMENDED EMPLOYMENT AGREEMENT FOR  
CHIEF EXECUTIVE OFFICER**

THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. On June 21, 2017, the Board of Directors of the East Bay Community Energy Authority (“EBCE”) adopted Resolution EBCE R-2017-8 to appoint Nicolas Chaset as the Chief Executive Officer and direct the Chair of the Board to execute an employment agreement.

Section 2. On June 21, 2017, the EBCE and Nicolas Chaset entered into an Employment Agreement for Chief Executive Officer.

Section 3. The parties desire to amend the Employment Agreement to modify the transition health benefit provision.

Section 4. The Chair of the Board is directed to execute the Amended Employment Agreement for Chief Executive Officer, in substantially the form attached to the Agenda Report that accompanied this Resolution, on behalf of the EBCE, and is authorized to take all other actions necessary to implement the Amended Employment Agreement.

**ADOPTED AND APPROVED this 17th day of January, 2018.**

\_\_\_\_\_  
Scott Haggerty, Chair

**ATTEST:**

\_\_\_\_\_  
Stephanie Cabrera, Clerk of the Board

**AMENDMENT TO EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER, MODIFYING TRANSITION HEALTH BENEFIT**

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (“Agreement”), dated January 17, 2018, is entered into by and between the East Bay Community Energy Authority (“EBCE”) and Nicolas Chaset, an individual (“EMPLOYEE”). EBCE and EMPLOYEE are collectively referred to herein as the “PARTIES.” The Parties agree as follows:

1. Section 7.a. of the Agreement is amended as follows:

“EBCE will reimburse EMPLOYEE for the full COBRA premiums EMPLOYEE pays to maintain group health coverage for himself and eligible family members until EMPLOYEE elects to participate in EBCE’s own medical insurance program. This transition health benefit will end the sooner of January 1, 2019 or the date on which EMPLOYEE elects to participate in EBCE’s own medical insurance program.”

2. All other provisions of the Agreement shall remain in effect.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Amendment to Agreement.

\_\_\_\_\_  
Scott Haggerty, Chair  
East Bay Community Energy Authority

\_\_\_\_\_  
Nicolas Chaset

DATE: \_\_\_\_\_, 2018

DATE: \_\_\_\_\_, 2018

APPROVED AS TO FORM:

\_\_\_\_\_  
Inder Khalsa, Interim General Counsel

ATTEST:

\_\_\_\_\_  
Stephanie Cabrera, Clerk of the Board





### Staff Report Item 7

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Nick Chaset, Chief Executive Officer  
**SUBJECT:** CEO Report - Informational Item  
**DATE:** January 17, 2018

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#### **Recommendation**

Accept CEO report on update items below.

#### **Discussion & Analysis**

##### **A. Workflow Priorities**

With EBCE starting to staff up, there are many priorities to accomplish to stay on track with the target launch in June. Each of the below topic areas is addressed in the PowerPoint presentation attached to this agenda item.

- **SMUD Data & Billing Management:**
- **NCPA Wholesale Energy Services:**
- **Marketing Campaign:**
- **Banking and Credit services:**
- **Local Development Business Plan:**

##### **B. Staff Additions**

###### **Dan Lieberman:**

Dan provides oversight for customer account management. Dan has almost twenty years of renewable energy sector experience in California, including stints in local government, non-profit, private start-ups, and large corporate settings. Dan comes to EBCE from Peninsula Clean Energy, the CCA serving San Mateo County, where he led marketing, public affairs, and customer care from pre-launch through full enrollment. Dan received a BA in History from

Macalester College, and MBA and Master of Public Affairs degrees from The University of Texas at Austin. Dan was an early adopter of solar, installing panels on his Albany home in 2001. He is on the Board of the Northern California Solar Energy Association.

**Taj Ait-Laoussine:**

Taj Ait-Laoussine has over 20 years' experience designing, implementing and evaluating energy efficiency and energy management solutions for global utilities. Most recently, Taj was a Senior Director at Oracle Utilities, where he managed the implementation of meter data analytics solutions for electric, water and gas utilities. During his tenure at Oracle and before that at DataRaker, Taj helped utilities deploy software solutions to harness the value and promise of advanced metering infrastructures, with a particular emphasis on customer service and energy efficiency. Prior to Oracle, Taj held numerous position at energy management technology companies such as EnerNOC, Aclara and Itron. Taj holds a B.A. in Physics and an M.S. in Energy and Resources, both from the University of California at Berkeley. Today is his birthday.

**C. Contracts Entered Into**

At EBCE's August 3rd, 2017 Board meeting, the CEO was given delegated authority to enter into contracts up to \$100,000 without prior Board of Directors authorization. At this meeting, the Board of Directors additionally requested that the CEO report monthly updates on any contracts that were entered into under this authority at the next Board meeting.

Review of EBCE Contracts entered into since October/November 2017:

1. **Contract with Nixon Peabody for Legal Services related to Barclays credit facility**  
Retained Chuck Wolf at Nixon Peabody to support EBCE negotiations of a credit facility with Barclays. Contract is hourly with a not to exceed of \$40,000
2. **Extension of Contract with Taj Ait-Laoussine**  
Extended Taj Ait-Laoussine's technical consulting contract through the end of 2017 and increased the not to exceed contract quantity by \$5,000
3. **Contract with Weideman Group**  
Entered into a 1 month short term contract with Weideman Group to allow EBCE and Weideman Group to start working on Legislative advocacy at the beginning of the 2018 Legislative Session. Contract is a flat monthly rate of \$10,000.
4. **Contract with Troutman and Sanders for Legal Services related to negotiation of EEI energy supply agreements**  
Retained Steve Hall at Troutman Sanders to support EBCE negotiations of EEI energy supply agreements. Contract is hourly with a not to exceed of \$50,000

**Attachment(s):**

- A. EBCE Workflow Priorities Overview Presentation
- B. Dan Lieberman Resume
- C. Taj Ait-Laoussine Resume

# Data Management Update

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## General

- Customer eligibility criteria and phasing have been established

## PG&E Data Transactions

- Initial PG&E data sets processed and loaded
- All training and forms completed
- Share My Data Registration in Progress

## SMUD Data Management Services

- Master Service Agreement and Task Order Negotiations Finalized
- Approval to be expected at SMUD Board Meeting 1/18
- Data Management Services Development and Testing under way

## Interim CRM

- Interim CRM setup for internal queries and analysis
- Data Refresh to be requested from PG&E in late January for 2017

# Data Management - Key Upcoming Activities

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## General

- Systems set to be ready for first customer notifications and interaction April 2

## PG&E Data Transactions

- Weekly 4013 File transactions set to begin February 1
- Data Refresh for 2017 data expected in early February
- Ongoing weekly meetings with EBCE, SMUD and PG&E

## SMUD Data Management Services

- User Acceptance Testing begins mid-march
- CRM, Web Forms, Call Center Telephony set for soft go-live April 2
- Billing System set for go-live June 1

## Interim CRM System

- Refresh data upon receipt of new PG&E Data Set for 2017
- Expand capabilities as needed for pre-launch marketing activities

# Customer Eligibility and Phasing

Total Addressable Load (2016 Figures)

7,994,434 MWh

Direct Access Load + BART

1,233,242 MWh

Other Ineligible Load (LS1 or marked by PG&E as ineligible)

26,455

MWh

**Target Load**

**6, 734,937 MWh**

## Phase 1: Non-Residential

June 2018

E= 3,947,883 MWh

N= 58,740

### Selection Criteria:

All Non-Residential Classes  
[Exclude E1, E1L, E1M, E1ML, E1MX, E1MXL, E1S, E1SL, E1T, E1TL, EVA, EVB]

Delay Special Rate Classes to Phase 3

## Phase 2: Residential Q4 2018

E= 2,134,127 MWh

N= 466,535

### Selection Criteria:

All Residential Classes

Delay Special Rate Classes to Phase 3

## Phase 3: Complex Rates Staggered Starting October 2018

E= 652,926 MWh

N= 41,809

### Selection Criteria:

Standby Customers

[E=276,034 , N=31]\*

NEM Customers

[E=

224,487, N=17,741]\*

Budget Billing Customers

[E= 103,977, N=17,829]\*

Closed Rates

[E=

59,660, N=11,565]\*

RESBCTB Customers

[E=

9,592, N=35]\*

21

Other (Solar, 3rd Party DR.) No Data available  
\* Totals do not align due to overlap between

# EBCCE Wholesale Energy Services

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- EBCCE and NCPA are in the process of negotiating final contract.
- More detail on wholesale energy services provided in subsequent board items

# EBCE Marketing Updates

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## Web

- Updated site with product offerings, local pictures, new content

## Collateral

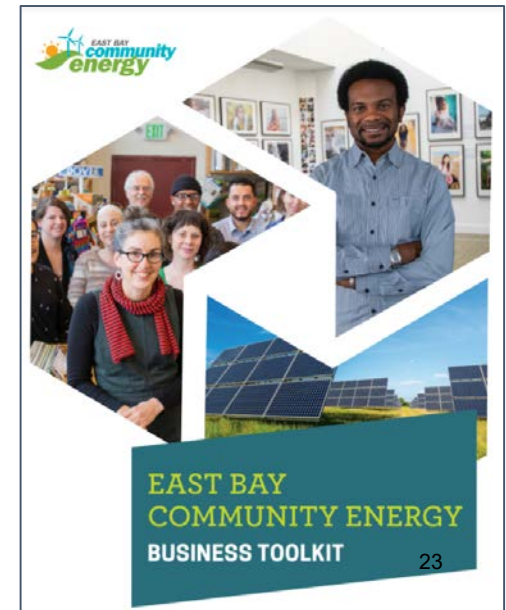
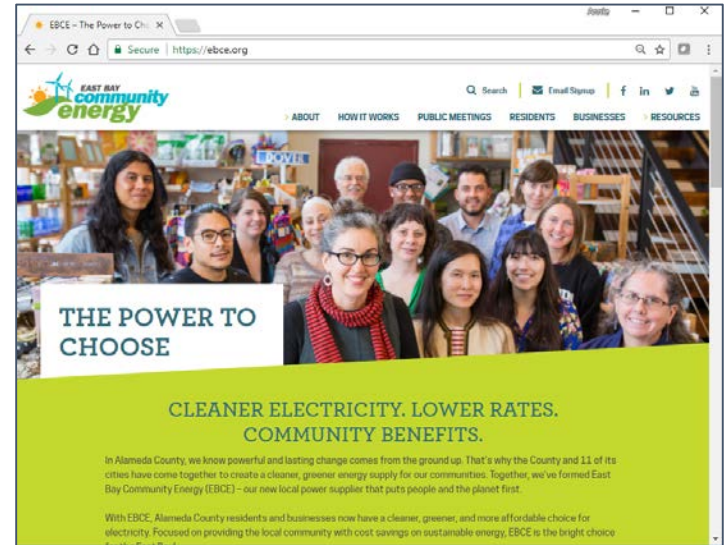
- Business Toolkit, Brochure and Presentation

## Outreach

- E-blast to top accounts
- New hire for account services
- Alameda Certified Green Business Program
- Engagement with Technical Advisory Group
- City Council and Chamber of Commerce Meetings
- Survey requesting Community stories

## General

- Director Dianne Martinez acting as Board marketing liaison
- Working with Circlepoint on a Brand Roadmap



# Key Marketing and Outreach Dates

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- Customer Notices
  - Present Notices to Board on **2/21**
  - First Notice delivered first week of **April**
- Phase 1 Advertising Campaign
  - Begins early **March**, runs through **June**
  - Includes digital, print, and social media advertising
- Phase 1 Account Outreach
  - Begins in **January** with more robust efforts in **February** once there is a better sense of the rates and power mix for products
  - Engagement with municipalities already **in progress**
- February Board Meetings
  - **2/07**: Phase 1 Outreach Update, Brand Roadmap, Review of city proposal to default customers to Brilliant 100
  - **2/21**: Notices, Terms and Conditions, NEM Enrollment



# Power Choice Indifferent Amount (PCIA)

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- Current CPUC Rulemaking 17-06-026 is examining alternatives to the PCIA, which is a fee levied on departed load including EBCE's customers based on the administratively-determined over-market costs of the utility's energy portfolio
  - The PCIA amount has been increasing in recent years
  - It is determined on a forecast basis, and highly variable/hard to predict
- EBCE is working actively with CalCCA and others to develop and build consensus around a viable alternative, the market-oriented allocation mechanism, or "MAM"
  - Gives CCAs the opportunity to "beat the PCIA"
  - Allows CCAs to use term markets to maximize value of resources
  - Reallocates supply from utility control to other CCAs/market
  - Maintains equity and prevents cost-shifting
- 1/3 - EBCE was granted party status in the proceeding
- 1/16-1/17 - EBCE participated in a PCIA workshop with utilities and other CCAs
- 3/12 - EBCE to file opening testimony

# Draft Resolution E-4907

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- On 12/8/17, CPUC issued a draft Resolution addressing CCA formation and Resource Adequacy(RA)
  - Stated intent is to prevent a utility-claimed “cost shift” to bundled customers due to year-ahead RA procurement obligation time frames
  - Would require new (or expanding) CCAs to file their implementation plans by Jan 1 in order to serve load the following year
  - EBCE is grandfathered in
  - CCAs have suggested a proposed “fix”: if a CCA misses the window for its year-ahead RA filing, then in its first year of operation the CCA would procure RA directly from the utility from which it departed at utility’s actual cost
    - Limited only to first year of operations
    - Prevents utility stranded costs
    - Would not unnecessarily delay future CCA implementation/expansion
- Dec/Jan- CCA conversations with CPUC staff and Commissioners’ advisors
- 1/11 - Comments on draft Resolution were filed
- 1/18 - Reply comments on draft Resolution due
- 2/8 - Resolution could be voted on at CPUC meeting

# Integrated Resources Plan (IRP)

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- Current CPUC Rulemaking 16-02-007 is an “umbrella” planning proceeding to consider all of the CPUC’s electric procurement policies and programs and implement Senate Bill (SB) 350 requirements, ensuring that load serving entities meet targets to contribute to California’s GHG emission reduction goals.
- On 12/28, Commission Randolph issued a Proposed Decision (PD) setting requirements for load-serving entities (LSEs) including EBCE:
  - All LSEs required to file biennial IRPs; CPUC will aggregate, approve/modify individual LSE plans, then adopt a Reference System Plan consisting of the optimal portfolio, an electric sector GHG target, and GHG planning price
  - CPUC asserts authority over CCA planning and some aspects of CCA procurement
  - Adopts 42 MMT GHG emissions scenario, represents somewhere between 53-57% renewables by 2030
  - CPUC adopts a method for apportioning GHG emissions to each LSE based on how it relies on unspecified power - Category 2 RECs would no longer qualify as GHG-free resources
- 1/17 - Parties filed comments on the PD
  - EBCE is not yet a party to the proceeding, but participates as a member of CalCCA
- 1/22 - Reply comments due
- 2/8 - Proposed Decision could be voted on at CPUC meeting
- 6/1 - EBCE’s IRP due, including any actual and planned procurement

# Banking and Credit Services Update

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## Barclays

- Facility Overview:
  - up to \$60 million for EBCE operations and energy procurement
  - 3 year term with two on year options
  - collateralized and uncollateralized options
- Status:
  - negotiating key covenants related to reserve requirements, debt coverage ratios and overhead and energy procurement draw requirements
  - plan to meet with Alameda County late January to discuss implications of facility on debt owed to County
  - target Feb 7 Board Meeting for approval of Credit Facility

## River City Bank

- Status
  - finalizing banking documents to set up EBCE lock box and operational accounts
  - coordinating with PG&E, NCPA and SMUD to ensure RiverCity is integrated into all facets of EBCE operations
  - expect to finalize RiverCity contract by early February

# Local Development Business Plan

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- First Round of Draft Deliverables were issued for public comment in November. Nine individuals and organizations submitted comments.
  - Workforce Policies
  - Feed-in Tariff Design
  - Agency of Developer
  - Levelized Cost of Energy
  - Wind Assessment
  - Solar Siting Survey
- Second Round of Draft Deliverables were posted for public comment on January 10, 2018 with public comments due by February 7, 2018.
  - Net Metering
  - Energy Storage Contracting Strategy
  - Energy Efficiency Assessment
  - Demand Response Assessment
  - Capacity Building Recommendation
  - Local Benefit Factors Analysis
- The LDBP team continues to refine their work product and has started their modeling efforts and additional work products are expected in the coming weeks. We are planning a more full presentation on the status of the LDBP at the February 7th 2018 Board Meeting

## PROFILE

Widely networked renewable energy industry veteran.  
Extensive experience in B2C and B2B marketing, marketing strategy, product management, public affairs, and client services.  
Data-savvy, well-organized, and a creative thinker.  
A pragmatic advocate for cleantech.

## PROFESSIONAL EXPERIENCE

**Director of Marketing & Public Affairs**  
Peninsula Clean Energy  
Sept 2016 - present

- Head of marketing, customer care, and public affairs for start-up \$250 million public agency
- Led largest on-boarding of accounts in California CCA history (>220,000)
- Serve as Chair of the Marketing Committee of our industry trade group, CalCCA

**Senior Marketing Manager**  
SunEdison  
Dec 2014 - May 2016

- Planned, developed, and implemented commercial product marketing strategies
- Developed go-to-market strategies for community solar products and REIT segment
- Wrote blogs, microsheets, direct mail, slide decks, email, website, and video copy

**Senior Utility Partnership Manager**  
3Degrees Inc.  
Aug 2007 - Nov 2014

- Developed and implemented turnkey green power programs for electric utilities
- Created and executed ROI-based, utility-branded, marketing and retention plans
- Clients included Tennessee Valley Authority and several California municipal utilities

**Director of Clean Energy Policy**  
Center for Resource Solutions  
Nov 2000 - Jul 2007

- Directed the national Green-e Renewable Energy Certification Program
- Convened and facilitated regional stakeholder groups and national advisory board
- Supervised six program staff and oversaw business line budget of ~\$1 million

**Energy Product Manager**  
Utility.com  
Jan 2000 - Nov 2000

- Managed retail renewable electricity product (recurring customer base of 40,000)
- Led licensure and regulatory processes to sell electricity in five states
- Served as company liaison to utilities and regulatory agencies

**Energy Efficiency Project Coordinator**  
City of San Jose Env Services Dept  
May 1998 - Dec 1999

- Served as Project Manager for U.S. DOE/Urban Consortium Energy Task Force grant
- Developed \$425,000 Public Goods Charge-funded "TEEM-UP" project

## EXPERTISE

- Marketing Strategy
- Brand Management
- Product Development
- Social Media
- Public Relations
- Customer Care

## TOOLS

- Productivity (Trello, Microsoft Office, Google Suite)
- Layout (Adobe Creative Cloud)
- Website management (WordPress, Squarespace, Wix)
- Social media (Hootsuite, Twitter, Facebook, YouTube)
- Marketing automation (HubSpot, MailChimp)
- CRM (Salesforce, Microsoft Dynamics)

## CIVICS

**Member of Board of Directors**  
Northern California Solar Energy Association  
(2013 - present)

**Appointee**  
City of Albany (CA) Sustainability Committee (2007 - 2014)

## EDUCATION

1998 **Master of Business Administration (MBA) and Master of Public Affairs**  
The University of Texas at Austin

1989 **Bachelor of Arts, Major in History**  
Macalester College, St. Paul, MN

# Taj Ait-Laoussine

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## CAREER HIGHLIGHTS

- Expert leader in the design, marketing and deployment of energy analytics and energy management solutions.
- Successful team manager, with a proven track record assembling and motivating highly achieving teams.
- Excellent communication and public speaking skills, with extensive international business experience.

## EXPERIENCE

**Oracle, San Francisco** 2012-2017  
***Senior Director, Utility Cloud Analytics***

- Led the Cloud Analytics implementation team consisting of data scientists, project managers, and implementation engineers.
- Delivered and maintained successful cloud solutions for electric, water and gas utilities in the areas of smart meter deployment, meter-to-bill analytics, revenue protection and energy efficiency, covering over 25 million meters.
- Coordinated strategy with sales and product development leadership, as well as the greater Oracle Utility Global Business Unit.
- Responsible for securing the ongoing renewal of large SaaS Cloud engagements, as well as supporting all net new sales.

**DataRaker, San Francisco** 2009-2012  
***Vice-President, Analytics and Data Science***

- Starting as employee No. 4, built a team of over 12 employees with diverse backgrounds in analytics, project management and data science.
- Established and enforced processes to ensure the successful delivery of our SaaS solution to Tier 1 utilities, with very limited resources and support.
- Managed the comprehensive redesign of meter-to-bill exceptions for a large Midwest utility, resulting in significant operational improvements.
- Secured tangible customer trust and success stories instrumental to the ultimate acquisition of the company by Oracle.

**EnerNOC, San Francisco** 2007-2009  
***Senior Marketing Manager***

- Responsible for the overall marketing strategy of EnerNOC's Demand Response Portfolio for all of California, subsequently expanded to cover marketing strategy for all Energy Efficiency and Energy Procurement products.

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*References Available Upon Request*

## Taj Ait-Laoussine

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- Secured multi-million dollar contracts with Pacific Gas and Electric and Southern California Edison for Monitoring Based Commissioning (MBCx) through the 2009-2012 3<sup>rd</sup> Party Energy Efficiency Program Portfolio in California.

**Nexus Energy Software (now Aclara), San Francisco** 2003-2007  
**Senior Product Manager**

- Led the product team in developing a complex software application that supports advanced metering technologies, energy management and demand response activities.
- Launched the software solution that supports one of the first full-scale hourly Meter Data Management solution for nearly 1.4 million customers.
- Secured over \$1.5 million in new revenue through the successful implementation of pilot engagements.

**Silicon Energy (now Itron), Alameda, CA** 1999-2002  
**Manager, Strategic Services**

- Identified over \$10 million in annual energy savings and new revenue opportunities for key prospective clients in the private sector, including the paper, food processing and cogeneration industries.
- Led a team of 5 sales consultants responsible for generating over \$15 million in international bookings in one year alone.
- Helped secure over \$5 million in engagements with Pacific Gas and Electric, Southern California Edison and Puget Sound Energy to implement load management technologies.
- Nominated to President's Club 2 years in a row.

**Hagler Bailly Inc. (now PA Consulting), San Francisco** 1994-1997  
**Associate**

- Managed several national and international public sector energy efficiency projects under a multi-million dollar contract with the U.S. Agency for International Development.
- Evaluated the market penetration, cost-effectiveness and technical impact of new products and services for both domestic and international utilities.
- Participated in the impact and process evaluation of energy management programs at over 20 utilities.

## EDUCATION

**University of California at Berkeley, Berkeley, California**

**M.S., Energy and Resources Group** 1999  
Masters Project: "The Strategic Value Of Load Management In Competitive Energy Markets" □

**University of California at Berkeley, Berkeley, California**

**B.A., Physics, *Highest Honors*** 1993

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*References Available Upon Request*





## Staff Report Item 8

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** **Approval of Contract with Weideman Group for Legislative Advocacy and Advisory Services**

**DATE:** January 17, 2018

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### **Recommendation**

Approve selection of Weideman Group to provide legislative advocacy and advisory services and delegate to Chief Executive Officer to negotiate and execute a one year contract not to exceed \$120,000.

### **Background**

On October 31, 2017, EBCE issued Request for Proposal (RFP) No. 17-4, seeking proposals for legislative advocacy and advisory services. The following eight firms responded by November 6 with conforming proposals: 1) MVM Strategy Group & Sen. Don Perata, 2) Weideman Group, 3) Gualco Group, 4) Law Offices of Alberto Torrico, 5) Kidane & Associates, 6) Stone/BBC, 7) Aaron Read & Associates, and 8) Smith, Watts & Hartmann. After reviewing proposals, EBCE staff met separately with each firm on November 20-21 to discuss the firm's background, qualifications, experience, abilities, and proposed approach. Bids were evaluated and scored based on the following criteria:

Evaluation Criteria		Points
1.	<b>Understanding of the scope of work required by EBCE</b> <ul style="list-style-type: none"> <li>Quality, clarity and responsiveness of the proposal</li> <li>Proposed approach in providing services</li> </ul>	25
2.	<b>Contractor's capabilities</b> <ul style="list-style-type: none"> <li>Ability to provide required services</li> <li>Reliability and quality of client service</li> <li></li> <li>Commitment to EBCE's mission, goals and positive legislative outcomes</li> </ul>	25
3.	<b>Management, personnel, and experience</b> <ul style="list-style-type: none"> <li>Demonstrated competence and professional qualifications necessary for successfully performing the work required by EBCE</li> <li>Recent experience in successfully performing similar services</li> <li>Background and related experience of the specific individuals to be assigned to this account</li> <li>Information provided by Contractor's References</li> </ul>	25
4.	<b>Cost</b> <ul style="list-style-type: none"> <li>Cost of proposed services</li> <li>Terms to defer payment until summer 2018</li> </ul>	25
<b>TOTAL</b>		<b>100</b>

### **Analysis & Discussion**

Staff selected Weideman Group as the successful bidder in the RFP and recommends Board approval of a one-year contract for legislative advocacy and advisory services. Weideman Group rose to the top of the selection pool based on the quality of its personnel, demonstrated competence and successes, existing partnerships and relationships, strategic and tactical insights and capabilities, and ability to tailor its strategy and approach to the needs, mission, and goals of EBCE. Weideman Group has over 30 years of experience representing entities seeking to navigate California's complex policymaking landscape. Mark Weideman, Principal and Founder, would serve as EBCE's chief lobbyist and strategist. Weideman Group professionals have represented both public and private entities in energy and utility matters before the California Legislature, the Governor's Office, the California Energy Commission, the California Public Utilities Commission, the California Environmental Protection Agency, and the California Air Resources Board, among others. Weideman Group also has strong relationships with elected officials, especially the Bay Area delegation.

Weideman Group professionals were directly responsible for successfully extending and expanding a net energy metering tariff that was critical for distributed generation fuel cells, while overcoming active opposition from several powerful stakeholders, including investor-owned utilities and IBEW. The firm also successfully enacted a procurement mandate for the biomass industry, which is designed to address the state's tree mortality crisis. On behalf of another client, Weideman Group played a key role in the passage of the high-profile SB 350 (De Leon) which doubled building energy efficiency standards and set the state's Renewable Portfolio Standard at 50% by 2030. These successes, coupled with Weideman Group's clear understanding of EBCE's mission and values, and strategic insights, provide EBCE staff with confidence that Weideman Group is the best choice for providing EBCE with legislative advocacy and advisory services in 2018.

### **Attachment:**

A. Weideman Group RFP Response



**Weideman Group Response to East Bay Community Energy  
Authority Request for Proposal No. 17-4, Legislative Advocacy  
and Advisory Services**

Submitted to:

Nick Chaset, Chief Executive Officer  
East Bay Community Energy  
222. W. Winton Avenue, Room 111  
Hayward, CA 94544  
nchaset@ebce.org

November 10, 2017



# WEIDEMAN GROUP

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# WEIDEMAN GROUP

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November 10, 2017

Nick Chaset  
Chief Executive Officer  
East Bay Community Energy  
222. W. Winton Avenue, Room 111  
Hayward, CA 94544

## **Re: Request for Proposal No. 17-4, Legislative Advocacy and Advisory Services**

Dear Mr. Chaset:

Weideman Group respectfully submits this response to the East Bay Community Energy Authority's (EBCE) Request for Proposal No. 17-4, Legislative Advocacy and Advisory Services. Weideman Group is a full-service government affairs firm headquartered in Sacramento, California. With over 30 years of experience representing entities seeking to navigate California's complex policymaking landscape, Weideman Group brings a potent blend of high-level relationships, legislative expertise, political acumen and policy depth that will ensure EBCE achieves its legislative and administrative goals.

### **What We Do**

Weideman Group is respected as an influential voice in government circles and its relationships with California's leaders run deep. The firm has a proven track record of protecting and advancing the interests of some of the largest and most sophisticated entities in the state, often in the face of strident opposition. Weideman Group professionals have represented both public and private entities in energy and utility matters before the California Legislature, the Governor's Office, the California Energy Commission, the California Public Utilities Commission, the California Environmental Protection Agency, and the California Air Resources Board, among others.

In representing EBCE, Weideman Group will implement tactical, goal-oriented strategies focused on consistently delivering positive policy outcomes, while remaining committed to EBCE's mission. Weideman Group professionals, in close coordination with EBCE staff, will provide comprehensive strategic, legislative/regulatory and administrative services to EBCE that will include the following core elements: (1) development and implementation of sophisticated strategies that will advance EBCE's proactive policy agenda and protect against outside attacks, (2) direct lobbying of elected officials, administration officials and staff at all levels of government, (3) unparalleled access to key decision-makers, (4) building and coordinating coalitions of third party validators

from key stakeholder groups, and (5) developing persuasive messaging that breaks through the clutter and resonates with decision-makers and external audiences alike.

### **What We Envision for EBCE**

Our overarching goal is to carve out a strong voice for EBCE as the statewide leader in the Community Choice Energy (CCE) industry and a respected presence in the broader energy sector. The advent of the CCE model has sparked a revolution in energy delivery and consumer choice – it is disrupting a century-old model defended by influential entrenched stakeholders. EBCE must not only help elevate the greater CCE mission, which is already under attack from powerful interests, but also forcefully protect its own interests and the interests of the communities it serves. It is through this lens that we propose a plan to help EBCE establish itself as an influential player in Sacramento.

In the first year of our representation of EBCE, we are confident we can build a firewall that will protect EBCE from adverse legislative and administrative outcomes. The foundation of the firewall will come from strong relationships between EBCE and elected officials that represent EBCE’s service territory. The firewall will be further bolstered by strong relationships between EBCE and leaders of the key policy and fiscal committees in the legislature. Attention will be given to educating these members on EBCE’s value to the communities it serves and to the role EBCE plays in achieving California’s greenhouse gas reduction goals, while also ensuring that EBCE has an opportunity to develop its own personal relationships with these members.

Weideman Group’s strong relationships with elected officials, especially the Bay Area delegation, and regulators form a key part of the firewall and will provide EBCE with early identification of issues, often well before a measure has been introduced. This early engagement strategy will give EBCE the ability to shape how matters are considered and may create opportunities to completely avoid adverse legislative or administrative action. Our firm will analyze, track and monitor proposals, always keeping EBCE well informed of even the smallest developments. We will develop sophisticated strategies designed to shape outcomes for EBCE, we will draft written and oral comments on proposals, provide direct testimony in legislative and regulatory hearings, lobby state officials and ensure EBCE has direct access to decision-makers.

In the second year of our representation of EBCE, we are confident we can position EBCE to enact meaningful affirmative legislation. This will be done by laying an early policy and relationship foundation with legislative leadership and committee chairs in both houses, securing a strong author, building a diverse coalition of supporters and crafting a powerful, succinct narrative. This top-down strategy will be reinforced by a bottom-up grassroots effort that involves coalescing broad support from powerful local stakeholders. EBCE and its coalition of supporters will walk into hearings knowing they have the votes, not wondering what their fate might be.

### **Our Expertise**

Weideman Group specializes in representing entities dealing with heavily regulated and complex policy areas, including comprehensive engagement in the energy sector and its

increasing intersection with environmental policy. Although the firm has not directly represented any entities in the CCE arena to date, we have served as the chief architect behind numerous legislative and regulatory victories in the energy space at large. For example, Weideman Group professionals were directly responsible for successfully extending and expanding a net energy metering tariff that was critical for distributed generation fuel cells, while overcoming active opposition from several powerful stakeholders, including investor-owned utilities and IBEW. The firm also successfully enacted a procurement mandate for the biomass industry, which is designed to address the state's tree mortality crisis. Moreover, the firm recently carried out a multi-faceted campaign utilizing the introduction of a targeted legislative vehicle to negotiate our desired outcome between solar firms and load-serving entities that opened up new markets for our client. And as part of our representation of NextGen Climate Action, Weideman Group played a key role in the passage of the high-profile SB 350 (De Leon) which doubled building energy efficiency standards and set the state's Renewable Portfolio Standard at 50% by 2030. This victory was followed by the firm's pivotal role on behalf of NextGen in the reauthorization of California's world-renowned cap and trade program. Beyond pushing affirmative legislation, the firm regularly leverages its legislative expertise and relationships to block and defeat measures in the energy space that are adverse to our clients' interests.

### **Our Team and Proposed Fee**

A team of Weideman Group professionals will represent EBCE on all legislative, administrative and other matters of interest. Mark Weideman, Principal and Founder, will serve as EBCE's chief lobbyist and strategist. Managing Director Tim Valderrama will provide a second layer of direct day-to-day lobbying for EBCE and will oversee other firm professionals supporting EBCE. Associates Vincent Wiraatmadja and Alejandra Duran, along with Legislative Aide Bethany Heckman, will provide day-to-day legislative monitoring, representation and support services to EBCE. Weideman Group does not believe that any of its current clients raise conflict concerns.

In consideration for providing the services outlined above, Weideman Group proposes a 12 to 24 month engagement at a flat monthly retainer fee of \$10,000. The firm is willing to offer payment terms that allow deferral of some or all fees until summer of 2018. No additional fees would be charged by Weideman Group other than reimbursement for customary costs associated with business travel, meals and the like that are approved by EBCE. No outside contractors will be used.

With our combination of legislative experience, policy expertise and substantial relationships, Weideman Group will give EBCE a powerful voice in Sacramento. If you have any questions, please do not hesitate to contact me at [mark@weidemangroup.com](mailto:mark@weidemangroup.com) or 916.600.2288.

Sincerely,



Mark Weideman  
Principal



# WEIDEMAN GROUP

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## Key Personnel

A team of Weideman Group professionals will staff and represent EBCE for all legislative, administrative and other matters of interest. Mark Weideman, Principal and Founder, will serve as EBCE's chief lobbyist and strategist. Managing Director Tim Valderrama will also provide direct day-to-day lobbying services for EBCE and will oversee other firm professionals supporting EBCE. Associates Vincent Wiraatmadja and Alejandra Duran will provide day-to-day representation and support services to EBCE. Weideman Group Legislative Aide Bethany Heckman will provide administrative support.

### **Mark Weideman, Founder and Principal**

Weideman is the founder and principal of Weideman Group and has over two decades of experience as a regulatory attorney and legislative advocate representing some of the nation's most sophisticated clients. He provides strategic advice and counsel to his clients designed to achieve their objectives before government entities and acts as their chief advocate before legislative, regulatory and administrative bodies. Weideman designs grassroots campaigns that provide broad organic support for policy initiatives and he coordinates activity in local, state and national elections. Under his leadership, Weideman Group was founded in 2010 and has become one of the most influential, respected and fastest-growing government affairs firms in Sacramento.

Weideman has served as an officer of two large corporations, Blue Shield of California and AT&T of California, with responsibility for legislative, regulatory, legal and political activities in California and Washington D.C. At AT&T, Weideman was the architect of a successful regulatory strategy that allowed the company to enter the long distance business and successful legislative campaigns that preserved funding for key public programs serving California communities. At Blue Shield, Weideman spearheaded a multi-year political and legislative effort that positioned the company for success on federal and state health reform.

Weideman is a licensed attorney with the State Bar of California. He has practiced regulatory law before the California Public Utilities Commission and other agencies with the international law firm Pillsbury and with the Sacramento firm Wilke Fleury. Weideman received his Bachelor of Arts degree with honors from the University of California at Berkeley. He earned his law degree with honors in written and oral advocacy from the University of California Hastings College of Law.

Address: 1215 K Street, Suite 2290, Sacramento, CA 95814

Phone: (916) 600-2288

Fax: (916) 448-4005

Email: [mark@weidemangroup.com](mailto:mark@weidemangroup.com)



**Tim Valderrama, Managing Director**

Valderrama is the Managing Director at Weideman Group and will provide a second layer of direct day-to-day lobbying for EBCE along with overseeing other firm professionals supporting EBCE. Valderrama is a Capitol veteran, having served in staff leadership roles in both the Senate and Assembly. As Managing Director of the Weideman Group, he spearheads strategic engagement with legislative, administrative and regulatory entities. Clients benefit from Valderrama's extensive knowledge of the legislative process and his strong bipartisan relationships with legislators, staff and administration officials. He has experience in all phases of political work including coalition building, grassroots mobilization, strategic planning, PAC management and legislative/initiative campaigns.

Over the last 15 years, Valderrama has served as Chief of Staff to State Senator Ed Hernandez, Chief Consultant to an Assembly Policy Committee, Legislative Director and Special Assistant for two Assembly Speakers. He was also the California Executive Director of TechNet, the bipartisan organization of high tech companies that promotes the growth of technology-led innovation. There he represented the interests of the nation's leading companies in the fields of information technology, biotechnology, clean energy, venture capital, e-commerce and finance. Valderrama received his bachelor's degree from the California State University, Chico and has been with the firm nearly two years. Valderrama is a registered lobbyist with the State of California.

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Fax: (916) 448-4005

Email: [tim@weidemangroup.com](mailto:tim@weidemangroup.com)

**Vincent Wiraatmadja, Associate**

Wiraatmadja is a registered lobbyist and has been an associate at Weideman Group for nearly three years. He will provide direct lobbying, strategic counsel and legislative tracking for EBCE. Wiraatmadja previously worked in the California State Legislature, including for an Assembly policy committee, and on legislative campaigns. He also clerked for an administrative law judge and worked in the legal division of the State Treasurer's Office. Wiraatmadja received his bachelor's degree from the University of California, Irvine, and his law degree with the Capitol Certificate in Public Policy from the University of Pacific, McGeorge School of Law. Wiraatmadja is a registered lobbyist with the State of California.

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Email: [vincent@weidemangroup.com](mailto:vincent@weidemangroup.com)

**Alejandra Duran, Associate**

Duran is a registered lobbyist and associate that joined Weideman Group this year. She will provide direct lobbying, strategic counsel and legislative tracking services for EBCE. Duran previously worked in the California State Assembly, on legislative campaigns and

in an advocacy position for a government affairs firm. Duran received her bachelor's degree in Political Science from the University of California, Davis.

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Email: [alejandra@weidemangroup.com](mailto:alejandra@weidemangroup.com)

**Bethany Heckman, Legislative Aide**

Heckman oversees the internal business operations of the firm and will provide legislative tracking and support services for EBCE. She has been with Weideman Group for over a year. Heckman previously worked in the California Senate in policy and constituent facing roles. She is well versed in the timelines and culture of the Legislature and ensures that documents and letters are timely delivered to policymakers. Heckman received her bachelor's degree in Journalism from the California State University, Chico.

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## Overview of the Firm

Weideman Group has a history of providing effective results-oriented representation to its clients, both public agencies and private entities, in the legislative and administrative arenas. Weideman Group's experience and expertise in the environmental and energy sectors make the firm particularly well positioned to provide legislative representation for EBCE. Weideman Group has built a reputation as a known and respected advocate on environmental and energy matters under consideration by state policymakers and regulators. The Chairs, Vice Chairs, Members and staff of the key policy and fiscal committees view the firm as a fierce and trusted ally collaborating with them to achieve sound energy policy on behalf of Californians. Indeed, part of the value Weideman Group can offer to EBCE is the fact that the firm already enjoys tremendous credibility on energy and environmental issues due to its representation of other respected public agency, environmental and energy clients.

Weideman Group professionals have represented both public and private entities on energy and environmental matters before the California Legislature, the Governor's Office, the California Natural Resources Agency, the California Environmental Protection Agency, the California Energy Commission, the California Public Utilities Commission, the California Air Resources Board, the State Water Resources Control Board, the State Lands Commission, local boards and other regulatory bodies.

Weideman Group has served as the chief architect behind numerous legislative and regulatory victories in the energy space at large. For example, Weideman Group professionals were directly responsible for successfully extending and expanding a net energy metering tariff that was critical for distributed generation fuel cells, while overcoming active opposition from several powerful stakeholders, including investor-owned utilities and IBEW. In another example, the firm leveraged the legislative process to enable positive negotiated outcomes between solar clients and load-serving entities that opened up new markets. The firm also successfully enacted a procurement mandate for the biomass industry, which is designed to address the state's tree mortality crisis. And as part of our representation of NextGen Climate Action, Weideman Group played a critical role in the passage of the high-profile SB 350 (De Leon) which doubled building energy efficiency standards and set the state's Renewable Portfolio Standard at 50% by 2030. This victory was followed by the firm's centerpiece role on behalf of NextGen in the reauthorization of California's cap and trade program in this year's AB 398 (E. Garcia). Beyond pushing affirmative legislation, the firm regularly leverages its legislative process expertise and relationships to block and defeat measures in the energy space that are adverse to our clients' interests.



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## Qualifications

### *(a) Description of the firm's experience in the government sector*

Weideman Group professionals have extensive experience representing governmental entities. Representative work of Weideman Group professionals in the government sector includes the following examples.

#### **Antelope Valley Transit Authority**

Weideman Group currently provides comprehensive legislative and administrative representation to the Antelope Valley Transit Authority (AVTA), a public agency responsible for public transportation services in California's Antelope Valley and surrounding region.

Weideman Group oversees the AVTA's engagement before the legislature, Governor's office and key regulatory entities such as CalEPA, CARB and the CEC. This includes legislative representation on matters that advance clean transit and regulatory representation on proceedings such as the CARB Cap and Trade program, the Advanced Clean Transit Rule and the Scoping Plan. Weideman Group also facilitates relationship development through regular meetings and hosting site tours for CARB and other key agency officials and by drafting persuasive messaging and materials in support of the AVTA's positions.

Since being retained by the AVTA in 2015, Weideman Group has dramatically accelerated the AVTA's success at achieving its public policy agenda. For example, shortly before retaining the Weideman Group, the AVTA set an ambitious goal to transition its existing transit fleet to 100 percent zero emission vehicles by 2018. Weideman Group was the architect of a multi-faceted strategy that targeted multiple governmental agencies as well as the Legislature. Core elements included 1) crafting a compelling new narrative that positioned the AVTA as a thought leader within the transit industry; 2) launching a new engagement strategy focused on developing relationships within regulatory agencies and the legislature; 3) advocating for reauthorization of the Cap and Trade program and allocation of Greenhouse Gas Reduction Fund revenues; and 4) aggressively competing for and winning GGRF dollars. These efforts have all borne fruit. Key deliverables include:

- Secured over \$33 million in new public grant funding from the California Transportation Agency and the California Energy Commission.
- Protected Greenhouse Gas Reduction Fund monies for clean transit through state budget negotiations.

- Developed and deployed a strategy to secure \$180 million in the State Budget dedicated to incentivizing cutting-edge clean trucks and buses that will allow AVTA to fully transition its fleet to 100% electric on a much shorter timeline.
- Navigated the AVTA successfully through a series of complicated regulatory engagements, including a major 2016 Federal Transit Administration audit.

### **Los Angeles Department of Water & Power**

Weideman Group provided comprehensive representation to the Los Angeles Department of Water & Power (DWP) from 2010-11 on high profile regulatory, legislative and administrative matters. Weideman Group served as the on-the-ground lobbying presence in Sacramento for the department, providing daily interaction with key policymakers in the Governor’s Office, the Legislature and before all relevant regulatory bodies, including the CARB, SWRCB, SLC and other agencies. Weideman Group monitored all legislative and regulatory matters and served as LADWP’s chief advocate before the administration, legislature and regulators. Outcomes produced include the following:

- Weideman Group’s representation was instrumental in the department’s successful efforts to secure a SWRCB decision on once through cooling, helping extend the department’s implementation schedule and thereby mitigating a financial impact projected at over \$2 billion to DWP ratepayers.
- Weideman Group’s representation helped the department reverse a CARB proposed cap and trade methodology that would have resulted in a financial impact to DWP ratepayers of between \$500 and \$750 million per year.
- Weideman Group produced a successful decision by the SLC in its consideration of Owen's Lake Dust Mitigation. This effort involved securing regulatory agency consensus and approval on current and future courses of action resulting in the mitigation of fugitive dust emission from the Owens Dry Lake while significantly reducing the amount of fresh water currently being utilized, optimizing any water usage on desirable lake habitat, and implementing waterless Best Available Control Measures for any current or future mitigation measures.

#### *(b) The firm’s experience with the CCE sector*

Weideman Group has not yet had any direct engagement in the CCE sector.

#### *(c) The firm’s experience in related sectors*

Weideman Group has significant experience with energy and environmental issues and has served as the chief architect behind several legislative and regulatory victories in this space. Representative work of Weideman Group professionals in the energy and environmental sectors includes the following examples.

### **NextGen Climate Action**

Weideman Group is and has been for several years the chief lobbyists for NextGen Climate Action, an organization that advocates for policies designed to combat climate change and advance social issues. The firm has represented NextGen before the Legislature and Governor’s Office on major environmental issues such as cap-and-trade

renewal, and has served as a primary strategist as NextGen executes on an increasingly robust, multi-jurisdictional policy platform in California and beyond. Successful representation includes:

- Enactment of AB 398 (E. Garcia), which reauthorized California’s cap and trade program.
- Enactment of SB 350 (de Leon), establishing new clean energy, clean air and greenhouse gas reduction goals for 2030 and beyond.
- Enactment of SB 32 (Pavley), requiring the state to slash greenhouse gas emission to 40% below 1990 levels by 2030.
- Enactment of AB 197 (E Garcia), which creates a legislative committee to oversee regulators and pushes the state to take stronger steps to curb local pollution.

### **Solar Industry**

Weideman Group has had the opportunity to represent several solar entities as part of discrete, single-goal campaigns. Entities have ranged from a small solar installation company to the industry’s statewide association. Successful representation includes:

- During the course of its representation of RS Energy, a solar installation company, Weideman Group leveraged the legislative process to bring an investor-owned utility to the bargaining table and implement an aggregated metering program.
- Weideman Group represented the California Solar Energy Industries Association (CalSEIA) as part of an effort to push a local utility to implement a solar net energy metering program. Although legislation was introduced, a concerted negotiation effort resulted in an agreement that achieved CalSEIA’s objectives and negated the need for a bill.

### **IHI Power Services**

Weideman Group has represented IHI Power Services, a biomass power generation company, since 2015. As part of an industry facing an imbalanced energy procurement field, IHI has utilized Weideman Group to enact the following key legislative and administrative victories:

- Weideman Group’s advocacy with the Administration and Legislature was instrumental in creation of the BioRAM program, which called for the procurement of biomass power capacity in order to address the Tree Mortality Crisis. This opening allowed IHI to compete successfully for new contracts.
- Weideman Group masterminded and executed the inclusion of a set-aside for biomass power as part of SB 859 (Committee on Budget and Fiscal Review, 2016).

### **Bloom Energy**

Weideman Group provides comprehensive representation to Bloom Energy (Bloom), a manufacturer of distributed generation fuel cells, for all of its legislative and

administrative matters. The firm's representation was essential to the passage of AB 1637 (Low, 2016), which saw the extension and expansion of the fuel cell net energy metering tariff. This successful effort, which was opposed by several powerful stakeholders, including the investor-owned utilities and IBEW, required successful negotiations and lobbying at the highest levels of California government. The passage of AB 1637 gave the fuel cell industry much-needed room to grow in California.

*(d) Other relevant qualifications*

Beyond its legislative knowledge and policy expertise, one of the primary drivers behind Weideman Group's ability to successfully advance legislative agendas is the credibility it carries with California leaders. The firm has deep relationships with decision makers who play a determining role in matters that affect the energy industry. This includes unmatched relationships with legislative leadership, key committee Chairs and Vice Chairs, Members of the Bay Area delegation, as well as high-ranking Members within the Administration. These relationships ensure that EBCE will have direct access to key individuals leading up to and throughout the legislative session. Weideman Group will provide the logistical and substantive support needed for EBCE Board and staff to meet with members of the legislature and state agencies. Despite our heavy involvement in energy and environmental policy matters, we do not believe that any of our clients are conflicted with EBCE.





## Staff Report Item 9

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer  
Inder Khalsa, EBCE Interim General Counsel

**SUBJECT:** **Designation of the CEO as Personnel Officer and Authorization to Approve and Adopt Employee Handbook**

**DATE:** January 17, 2018

---

### **Recommendation**

Adopt a Resolution designating the Chief Executive Officer as Personnel Officer for EBCE and authorizing him to approve and adopt the EBCE Employee Handbook.

### **Background**

Section 2.5.2 of the EBCE Joint Powers Agreement authorizes the EBCE to hire employees and agents. EBCE currently has 10 employees and continues to actively recruit. The adoption of an employee handbook and other personnel policies is necessary to ensure fairness and equity to employees and attract the best candidates. A draft employee handbook has been prepared for the EBCE and is currently undergoing internal review. The handbook is expected to be finalized by the end of January.

### **Analysis & Discussion**

This resolution establishes a personnel system and designates the Chief Executive Officer as Personnel Officer for the EBCE. The resolution provides that he or she will hire all employees of the EBCE with the exception of the General Counsel, prepare and implement personnel rules and regulations (including the employee handbook), position classifications, and compensation schedule, in compliance with applicable laws. The CEO would also oversee selection and administration of benefits programs. Some of these functions may be performed by contractors/consultants or delegated to EBCE staff at the discretion and under the oversight of the CEO.

### **Attachments:**

- A. Resolution Designating the CEO as Personnel Officer and Appointing Authority to Approve and Adopt the Employee Handbook



**Attachment 9A**

**RESOLUTION EBCE R-2018 \_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY  
COMMUNITY ENERGY AUTHORITY DESIGNATING THE CHIEF  
EXECUTIVE OFFICER NICOLAS CHASET AS PERSONNEL OFFICER AND  
APPOINTING AUTHORITY TO APPROVE AND ADOPT THE EMPLOYEE  
HANDBOOK**

**RECITALS**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016 pursuant to a Joint Powers Agreement (“Agreement”) to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, under Section 2.5.2 of the Agreement the EBCE has the power to employ agents and employees; and

WHEREAS, in exercising its powers, the EBCE wishes to establish a uniform and equitable system of personnel administration to ensure effective service to and on behalf of the EBCE, and to establish procedures for administering personnel matters in compliance with applicable laws; and

WHEREAS, in adopting a personnel system, the EBCE desires to promote fairness and equity to employees; to attract the best and most competent persons available; to ensure that appointment and promotions of employees will be based on merit; and to implement best practices in the administration of its system; and

WHEREAS, the personnel system as set forth below meets all of the requirements of applicable Government Code provisions and the Agreement;

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. A personnel system for the recruitment, selection, employment, conduct, classification, compensation, advancement, performance review, discipline, discharge and retirement of employees is hereby established.

Section 2. The Chief Executive Officer shall be designated as the Personnel Officer and is authorized and directed to administer the personnel system. The Chief Executive Officer may delegate powers conferred upon him or her by this Resolution as he or she deems appropriate.

Section 3. The Personnel Officer shall:

(a) Act as the appointing authority for all employees of the EBCE with the exception of the EBCE's General Counsel;

(b) Prepare and implement personnel rules and regulations for the administration of this personnel system, including an employee handbook;

(c) Prepare position classifications, including the establishment of minimum standards of employment and qualifications for the various positions;

(d) Prepare a plan of compensation including salary and other benefits covering all employees;

(e) Provide for the publishing, posting or other methods of notices of recruitments for positions, when applicable, and develop and administer procedures of the selection process;

(f) Prepare and present to the EBCE Board of Directors a budget for implementation of the personnel system, including employee salary and benefit costs;

(g) Prepare policies and procedures regarding ethics and the conduct of business including, without limitation, policies relating to the conflict of interest, fair and equitable treatment of employees, use and safeguarding of EBCE property and resources, and standards of ethical conduct by employees; and

(h) Perform such other functions as necessary to administer the personnel system as directed from time to time by the EBCE Board of Directors.

Section 4. Right to Contract for Special Services. The Personnel Officer may contract for the performance of technical or special services necessary for the establishment or operation of the personnel system including, without limitation, services for the preparation of personnel rules and subsequent revisions and amendments thereof; preparation of classification and pay plans and subsequent revisions and amendments thereof; the conduct of employee training programs; the conduct of recruitment and hiring processes; and other special and technical services of an advisory or informational character on matters related to the administration of the personnel system.

Section 5. This Resolution shall take effect immediately.

**ADOPTED AND APPROVED this \_\_ day of January, 2018.**

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Scott Haggerty, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board



## Staff Report Item 10

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer  
Inder Khalsa, EBCE General Counsel

**SUBJECT:** Amend the Conflict of Interest Code

**DATE:** January 17, 2018

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### **Recommendation**

Adopt a Resolution amending the EBCE Conflict of Interest Code to add the positions of Chief Operating Officer, Vice President of Marketing and Customer Accounts, Director of Power Resources, and Director of Regulatory and Legislative Affairs.

### **Background**

Shortly after the formation of the EBCE, the Board of Directors adopted a conflict of interest code as required by the Political Reform Act, commencing at Government Code Section 81000. The code lists the positions within EBCE that are required to file statements of economic interests (Form 700). Pursuant to Government Code 87306, EBCE must update its conflict of interest code within 90 days of the creation of a new position that must file a Form 700.

### **Analysis & Discussion**

Four new staff positions have been created at EBCE: Chief Operating Officer, Vice President of Marketing and Customer Accounts, Director of Power Resources, and Director of Regulatory and Legislative Affairs. In accordance with the requirements of the Political Reform Act, a new conflict of interest code must be adopted by resolution which includes the newly created positions. The attached resolution amends Appendix A to the conflict of interest code to add the new positions.

### **Attachment:**

- A. Resolution amending the EBCE Conflict of Interest Code

**Attachment 10A**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY  
UPDATING THE CONFLICT OF INTEREST CODE**

**THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY  
AUTHORITY DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:**

Section 1. The East Bay Community Energy Authority (“Authority”) was formed on December 1, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County.

Section 2. The Political Reform Act, Government Code Section 81000, *et seq.*, (the “Political Reform Act”) requires all agencies, including the Authority, to adopt and promulgate a local conflict of interest code.

Section 3. On January 30, 2017 the Board of Directors of the Authority approved Resolution No. R-2017-1, adopting a Conflict of Interest Code for the Authority. Appendix A to the Conflict of Interest Code lists the employee and consultant positions subject to the Code and establishes economic disclosure categories, and Appendix B identifies the specific financial interests to be reported.

Section 4. The Board of Directors of the Authority desires to amend Appendix A of the Conflict of Interest Code in order to add four new positions that require economic disclosures and to enumerate the appropriate disclosure categories.

Section 5. Accordingly, the designated positions and disclosure categories described in the Appendix A to this Resolution are hereby incorporated into the Authority’s Conflict of Interest Code. Appendix A to this Resolution shall replace Appendix A to Resolution No. R-2017-1.

Section 6. All officials and employees required to submit a statement of economic interests pursuant to Appendix A shall file their statements with the Authority’s Filing Official. The Filing Official, or his or her designee, shall make and retain a copy of all statements filed with the Authority and forward the originals of such statements to the County Administrator’s Office of the Alameda County Board of Supervisors. All retained statements, original or copied, shall be available for public inspection and reproduction (Gov. Code Section 81008).

Section 7. The Board of Directors of the Authority hereby directs the Secretary of the Board to coordinate the preparation of a revised Conflict of Interest Code in succeeding even-numbered years in accordance with the requirements of Government Code Sections 87306 and 87306.5. Future revisions to the Conflict of Interest Code should reflect changes in employee or official designations. If no revisions to the Code

are required, the Authority shall submit a report to the County Administrator's Office of the Alameda County Board of Supervisors no later than October 1st of the same year, stating that amendments to the Authority's Conflict of Interest Code are not required.

**ADOPTED AND APPROVED this 17th day of January, 2018.**

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Scott Haggerty, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board

**EAST BAY COMMUNITY ENERGY AUTHORITY  
CONFLICT OF INTEREST CODE**

**APPENDIX "A"**

**DESIGNATED POSITIONS**

<u>Designated Positions</u>	<u>Disclosure Categories</u>
Member of Board of Directors	1, 2, 3, 4
Member of Board of Directors (Alternate)	1, 2, 3, 4
Chief Executive Officer	1, 2, 3, 4
General Counsel	1, 2, 3, 4
Chief Operating Officer	1, 2, 3, 4
Vice President of Marketing and Customer Accounts	1, 2, 3, 4
Director of Power Resources	1, 2, 3, 4
Director of Regulatory and Legislative Affairs	1, 2, 3, 4
Consultant	5
Newly Created Position	*

**\* Newly Created Position**

A newly created position that makes or participates in the making of governmental decisions that may foreseeably have a material effect on any financial interest of the position-holder, and which specific position title is not yet listed in the Authority's Conflict of Interest Code, is included in the list of designated positions and shall disclose pursuant to the broadest disclosure category in the Code, subject to the following limitation: The Chief Executive Officer of the Authority may determine in writing that a particular newly created position, although a "designated position," is hired to perform a range of duties that are limited in scope and thus is not required to fully comply with the broadest disclosure requirements, but instead must comply with more tailored disclosure requirements specific to that newly created position. Such written determination shall include a description of the newly created position's duties and, based upon that description, a statement of the extent of disclosure requirements. The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Section 81008.)

Within 90 days of the creation of a newly created position that must file a statement of economic interests, the Authority shall update this Conflict of Interest Code to add the actual position title in its list of designated positions, and submit the amended Conflict of Interest Code to the County Administrator's Office for code-reviewing body approval by the Alameda County Board of Supervisors. (Gov. Code Section 87306.)



## Staff Report Item 11

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer  
Inder Khalsa, EBCE General Counsel

**SUBJECT:** **Approve EBCE Customer Confidentiality Policy**

**DATE:** January 17, 2018

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### **Recommendation**

Approve the EBCE Customer Confidentiality Policy: Notice for Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information, contained in Attachment 1.

### **Background**

In August of 2012, the California Public Utility Commission CPUC issued Decision 12-08-045, extending privacy protections to customers of gas corporations and community choice aggregators, and to residential and small commercial customers of electric service providers. The decision requires community choice aggregators (CCAs) to develop and post a notice to customers regarding access, collection, storage, use and disclosure of energy usage information.

### **Analysis & Discussion**

In the summer of 2018, EBCE will start sending notices to customers scheduled to be enrolled in EBCE's program, as required by law. These notices will go out as the EBCE phases in governmental, industrial, commercial and residential customers over the launch period, and will inform customers of how they can get access to EBCE rates, and the terms and conditions of EBCE service. The terms and conditions include a reference to EBCE's customer confidentiality policy, accessible via EBCE's website.

Staff reviewed related customer confidentiality and privacy policies and noticing processes at operating CCAs, including Marin Clean Energy, Sonoma Clean Power, and Silicon Valley Clean Energy. Attachment 1 contains EBCE's proposed Customer Confidentiality Policy: Notice for Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information.



This policy will become effective immediately upon adoption and will be provided a dedicated page on EBCE's website. The URL will be listed in EBCE customer enrollment notices, and a Customer Confidentiality Policy link will be placed in the menu appearing in the upper corner of the EBCE website. In addition, a notice of the policy will be provided annually to customers via an on-bill message guiding customers to the most updated version on the EBCE website. Any material changes to the policy between notification periods will be communicated through EBCE's website.

**Attachment:**

- A. EBCE Customer Confidentiality Policy: Notice for Accessing, Collecting, Storing, Using and Disclosing Energy Usage Information

## **EBCE Customer Confidentiality Policy**

### *Notice of Accessing, Collecting, Storing, Using, and Disclosing Energy Usage Information*

East Bay Community Energy (EBCE), its employees, agents, contractors, and affiliates shall maintain the confidentiality of individual customers' names, service addresses, billing addresses, telephone numbers, email addresses, account numbers, and electricity consumption, except where reasonably necessary to conduct EBCE's business or to provide services to customers pursuant to the "Rules Regarding Privacy and Security Protections for Energy Usage Data" issued by the California Public Utilities Commission (CPUC). Examples of reasonably necessary business purposes include but are not limited to when such disclosure is necessary (a) to comply with law, regulation, or court order; (b) to enable EBCE to provide service to its customers; (c) to collect unpaid bills; (d) to obtain and provide credit reporting information; (e) to resolve customer disputes or inquiries; (f) to communicate about demand response, energy efficiency, energy management, and conservation programs; or (g) in a situation of imminent threat to life or property. EBCE shall not, under any circumstance, disclose customer information for third-party telemarketing, e-mail, or direct mail solicitation. Aggregated data that cannot be traced to specific customers may be released at EBCE's discretion.

Customer data, including individual customer names, addresses, and electric energy usage data, is collected via PG&E's metering systems. EBCE may share customer data with contractors and vendors for purposes of providing services and operating programs. Contractors and vendors are required to agree to only use customer data for program operational purposes and protect it under the same standards as EBCE. EBCE maintains customer-specific energy usage and billing information for only as long as is reasonably necessary, typically not more than five years unless otherwise required by law or regulation.

The effective date of this policy is October 18, 2017. Notice of this policy will be provided annually to customers via an on-bill message guiding customers to the most updated version on EBCE's website at [www.ebce.org](http://www.ebce.org). Any changes to this policy between notification periods will be communicated on EBCE's website. Previous versions of this policy can be requested via email at [info@ebce.org](mailto:info@ebce.org) or by mailed request to the address below.

Customers having any questions or concerns regarding the collection, storage, use, or distribution of customer information, or who wish to view, inquire about, or dispute any customer information held by EBCE or limit the collection, use, or disclosure of such information, may contact us using the following options:

Stephanie Cabrera, Executive Assistant  
Phone: 510-736-4981  
Email: [Scabrera@ebce.org](mailto:Scabrera@ebce.org)

East Bay Community Energy  
Attention: Customer Confidentiality  
1111 Broadway, Suite 300  
Oakland CA 94607



## Staff Report Item 12

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer  
Inder Khalsa, EBCE General Counsel

**SUBJECT:** **Approval of Administrative and Operational Policies**

**DATE:** January 17, 2018

---

### **Recommendation**

- A. Approve policies relating to: Customer Confidentiality and Process for Considering Policy or JPA Agreement Amendments;
- B. Discuss Policies relating to: Administrative Procurement Practices and Delinquent Accounts and Collections; and
- C. Adopt two Resolutions regarding: Delegation of Authority to the CEO for Regulatory and Legislative Matters, and Records Retention Policy

### **Background**

As the EBCE approaches launch, the adoption of administrative and operational policies will help ensure smooth operations consistent with Board direction. Staff is proposing six policies for Board consideration and adoption during the January 17 Board meeting. The Board may adopt all six of the proposed policies or may provide direction to staff to revise and return with one or more of the policies at a later meeting. Each of the policies, and resolutions where applicable, are attached to this staff report.

### **Analysis & Discussion**

#### **1. Administrative Procurement Practices**

The Board has directed staff to propose agency procurement practices to facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings. The attached Administrative Procurement Practices policy provides for the following:

- a. The delegation of the CEO's signing authority to EBCE staff for certain types of contracts.
- b. The award of professional services agreements.
- c. Issuance of RFPs for non-professional services contracts.
- d. Evaluation of bids and proposals.
- e. Local, union labor and other preferences.
- f. Ethical vendor standards.
- g. Reporting & public access to contracts.

Please note that policies related to power procurement and wholesale energy services will be included in an energy risk management policy coming to the Board for consideration in February.

## **2. Delegation of Authority for Regulatory and Legislative Matters**

This policy delegates authority to the CEO and/or his designees to take necessary regulatory or legislative action consistent with EBCE's mission with a requirement to report these actions at the next regularly scheduled Board meeting.

## **3. Records Retention Policy**

This policy establishes minimum records retention periods for EBCE documents, consistent with California law.

## **4. Delinquent Accounts and Collections Policy**

Pacific Gas & Electric (PG&E) issues bills to customers. This policy identifies the process by which PG&E determines when an account is delinquent and the actions both PG&E and EBCE will take to address the delinquency.

## **5. Customer Confidentiality Policy**

This policy establishes the EBCE's customer privacy and confidentiality standards, limiting the EBCE's use of customer account information. This policy will be posted to a dedicated page on EBCE's website. Customers will be provided with the webpage URL in EBCE's customer enrollment notices, or can access the page through a Customer Confidentiality Policy link that will be added to the menu on the EBCE website.

## **6. Process for Considering JPA Agreement and Policy Amendments**

This policy establishes a structured and transparent process in March and September of each year for proposing policy changes or amendments to the EBCE Joint Powers Agreement for Board direction and decision.

### **Attachments:**

- A. Policy - Administrative Procurement Practices
- B. Resolution adopting Delegation of Authority for Regulatory and Legislative Matters
- C. Policy - Delegation of Authority for Regulatory and Legislative Matters
- D. Resolution adopting Records Retention Policy
- E. Policy - Records Retention Policy
- F. Policy - Delinquent Accounts and Collections Policy
- G. Policy - EBCE Customer Confidentiality Policy

## H. Policy - Process for Considering Joint Powers Agreement and Policy Amendments



POLICY # \_\_\_\_\_

## Administrative Procurement Practices

**Purpose:** It is in the interest of East Bay Community Energy to establish administrative procurement practices that facilitate efficient business operations and provide fair compensation and local workforce opportunities whenever possible within a framework of high quality, competitive service offerings.

**Policy:**

**1. Executive Management Signing Authority:**

- a. On August 2, 2017, the EBCE Board of Directors authorized the Chief Executive Officer to enter into contracts of \$100,000 or less without prior Board approval with the stipulation that all new contracts must be reported at the next scheduled Board meeting. This policy does not include power supply or wholesale energy services and shall remain in place unless and until amended by the EBCE Board of Directors.
- b. EBCE executive level staff, at the discretion and approval of the CEO, may sign professional service agreements and vendor contracts up to \$100,000 as an authorized designee of the CEO subject to Board reporting requirements outlined above. In addition, the following authorities shall apply except where in conflict with the Joint Powers Agreement, state or federal law:
  - Non-Disclosure Agreements – Director level and above;
  - Banking and Treasury Administration – Chief Operating Officer level and above.
- c. Invoices and vendor payments shall be approved by the contract signee, his/her executive level manager and/or the COO.

**2. Professional Services Agreements:** EBCE may contract for professional services, including but not limited to consultant, legal, or design services, in its sole discretion. Contracts valued at greater than \$100,000 in a contract year shall require Board approval, and staff shall obtain at least three bids if feasible. Contracts valued at less than \$100,000 may be signed at the discretion of the CEO and subject to Board reporting requirements outlined in section 8.

**3. Competitive Solicitations:** EBCE will run competitive solicitations through the issuance of requests for proposals (RFPs) or similar instruments for all non-professional services contracts with a contract value in excess of \$100,000 in any given contract year. These contracts are subject to Board approval before final execution. For contracts valued below \$100,000 in a given year, staff shall obtain at least three bids if feasible; a formal RFP process for contracts under \$100,000 is not required unless otherwise directed by the CEO.

4. **Contract Amendments:** Contract amendments including changes in timeframe, scope, and value shall be at the discretion of the CEO, subject to Board approvals and signing authorities outlined in section 1.
5. **Bid Evaluation:** Bids and proposals received through a competitive solicitation shall be subject to a set of criteria and scoring system, reviewed and evaluated by relevant EBCE staff and an evaluation committee selected by the CEO, or at the discretion of the Board, members of a designated Board subcommittee or the Community Advisory Committee. Bids for contracts received through formal or informal solicitation shall be evaluated based on competency to perform scope of work, best fit, price competitiveness and compliance with sections 6-7 below.
6. **Special Procurement Preferences:** EBCE seeks to support companies and contractors that reflect its values, and has identified three vendor/contractor categories that shall be given special consideration during bid evaluation and selection. In competitive solicitations, these categories shall receive bonus percentages/points ranging from 2.5% - 5% for a maximum bonus total of 10% in a bid scoring process.
  - 6a. **Alameda County Preference:** EBCE desires to support Alameda County businesses where possible. Businesses with office(s) located in Alameda County and including at least 25% Alameda County residents under their employment shall receive a bonus equal to 5% or 5 points out of a 100-point scoring system in competitive solicitations.
  - 6b. **Union Labor Preference:** EBCE desires to support the use of union labor where possible. EBCE shall make its best effort to work with unionized contractors and subcontractors in the provision of goods and services to EBCE. Businesses who use union labor and/or unionized contractors shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
  - 6c. **Other Preferences:** EBCE desires to support diversity among its contractors and vendors by working with women, minority, disabled veteran, and lesbian, gay, bisexual, and transgender-owned businesses. Businesses owned and operated by a person representing one or more of these categories shall receive a bonus equal to 2.5% or 2.5 points out of a 100-point scoring system in competitive solicitations.
7. **Ethical Vendor Standards:** EBCE is committed to the highest standards of responsible behavior and integrity in all of its business relationships. EBCE will consider a company's business practices, environmental track record, and commitment to fair employment practices and compensation in its procurement decisions.



8. **Reporting, Public Access:** EBCE shall report on all new contracts, regardless of scope or contract value, at each Board meeting. As a public agency, the EBCE shall release all public records, including contracts as applicable, as required by the Public Records Act.

**Attachment 12B**

**RESOLUTION EBCE R-2018 \_**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY  
COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE  
OFFICER TO ENGAGE IN REGULATORY AND LEGISLATIVE MATTERS**

**RECITALS**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016 pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County; and

WHEREAS, pursuant to Section 4.10 of the East Bay Community Energy Authority Joint Powers Agreement, the Chief Executive Officer may exercise all powers of the EBCE including day to day operations and management responsibilities; and

WHEREAS, there may be times the Chief Executive Officer deems it necessary to advocate in support of or in opposition to regulatory, legislative, or other initiatives related to the mission of EBCE; and

WHEREAS, it is beneficial for EBCE to engage in regulatory and legislative affairs that impact its customers and member jurisdictions.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE, DETERMINE, AND ORDER AS FOLLOWS:

Section 1. The Board finds and declares that regulatory and legislative affairs may, from time to time, require time sensitive decisions to be made by those organizations impacted by said legislation.

Section 2. The Board hereby adopts Policy #\_\_\_\_\_ attached hereto as Exhibit A authorizing the Chief Executive Officer or his/her designee to take action in accordance with the provisions of said policy.

Section 3. The Board finds that the Recitals set forth above are true, correct, and incorporated herein by reference.

Section 4. This Resolution shall take effect immediately.

**ADOPTED AND APPROVED this\_\_ day of January, 2018.**

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Scott Haggerty, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board



POLICY # \_\_\_\_\_

## Delegation of Authority to CEO for Regulatory and Legislative Matters

**Subject:** Delegation of authority to Chief Executive Officer and his designee(s) to take action on regulatory and legislative matters impacting EBCE.

**Purpose:** On occasion, the Chief Executive Officer is approached with a time-sensitive request to sign a letter of support (or opposition) regarding regulatory, legislative, or other initiatives related to East Bay Community Energy's mission and operations. This policy is intended to delegate authority to the Chief Executive Officer and/or his relevant designee(s) to take necessary action in various regulatory matters and proceedings and respond to legislative matters on behalf of East Bay Community Energy when certain conditions are met.

**Policy:** East Bay Community Energy hereby delegates its authority to the Chief Executive Officer and his/her relevant designees to sign regulatory and legislative documents or related materials on behalf of East Bay Community Energy, when the following conditions are met:

1. The regulatory, legislative, or related action is directly related to and consistent with East Bay Community Energy's mission and operations.
2. Because of time constraints, bringing the matter to the Board of Directors at a special meeting or its next scheduled meeting is not practical.
3. The Chief Executive Officer has investigated the positions of (1) other California CCAs; (2) state and federal legislators representing Alameda County and its cities.
4. The Chief Executive Officer has conferred with the Chair of the Board (or Vice Chair in the Chair's absence) and both the Chief Executive Officer and the Chair/Vice Chair agree that: (a) the position that the Chief Executive Officer intends to take is consistent with the mission of East Bay Community Energy; (b) bringing the matter to the Board at its next scheduled meeting or at a special meeting is not practical or appropriate under the circumstances; and (c) taking the position without a vote of the Board is appropriate under the circumstances.
5. The Chief Executive Officer reports positions taken pursuant to this policy at the next regularly scheduled Board of Directors meeting as part of the CEO Report or Regulatory/Legislative Report.

**Attachment 12D**

**RESOLUTION EBCE R-2018-\_\_**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING A  
RECORDS RETENTION SCHEDULE**

**WHEREAS**, the maintenance of numerous records is expensive, slows document retrieval, and is not necessary after a certain period of time for the effective and efficient operation of the East Bay Community Energy Authority (“EBCE”); and

**WHEREAS**, Section 34090 of the Government Code of the State of California provides a procedure whereby any City record which has served its purpose and is no longer required may be destroyed; and

**WHEREAS**, the State of California has adopted guidelines specifying retention periods for various government records; and

**WHEREAS**, the Board of Directors of the EBCE desires to adopt a records retention schedule to ensure efficient and effective maintenance of its various documents and records.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY, DOES HEREBY RESOLVE AS FOLLOWS:**

**SECTION 1.** The records of the EBCE, as set forth in the Records Retention Schedule, attached hereto as “Exhibit A”, are hereby authorized to be destroyed as provided by Section 34090 et seq. of the Government Code of the State of California and in accordance with the provision of said schedule upon the request of the Clerk of the Board and with the consent in writing of the General Counsel, without further action by the Board of Directors of EBCE.

**SECTION 2.** With the consent of the Clerk of the Board and the General Counsel, updates are hereby authorized to be made to the Records Retention Schedule without further action by the Board of Directors.

**SECTION 3.** The term “records” as used herein shall include documents, instructions, books, microforms, electronic files, magnetic tape, optical media, or papers; as defined by the California Public Records Act.

**SECTION 4.** This resolution shall become effective immediately upon its passage and adoption.

**ADOPTED AND APPROVED this \_\_\_ day of January, 2018.**

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Scott Haggerty, Chair

**ATTEST:**

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Stephanie Cabrera, Clerk of the Board



POLICY # \_\_\_\_\_

**Records Retention**

**Subject:** East Bay Community Energy’s legal and compliance recordkeeping requirements.

**Purpose:** Implement a records retention schedule in order to ensure that EBCE’s records are kept as long as legally and operationally required and that obsolete records are disposed of in a systematic and controlled manner. The records retention schedule is intended to ensure that employees adhere to approved recordkeeping requirements, and that they do so consistently.

**Policy:** Records will be retained according to the following schedule. After the required retention date has passed, all documents or electronic files will be deleted or discarded.

Record Type	Required Retention	Sample Descriptions
Executed Contracts	5 years after completion of contract	Power supply contracts, contracts with vendors or consultants
Invoices from Vendors	2 years after completion of contract	Vendor invoices for payment
Non-Disclosure Agreements	In perpetuity	NDA with vendor, employee, Board member or advisor
Board Approved Decisions	In perpetuity	Resolutions, meeting minutes, and other items approved at regular or special Board meetings
Board and Committee Meeting Materials	In perpetuity	Agendas, staff reports and other material provided to Board members in preparation for meetings
Board Approved Budgets	In perpetuity	Final, approved budgets
Drafts of Documents	30 days after final version is approved	Draft contracts, programs, RFPs, etc.
General Electronic Correspondence	2 years	Relevant email correspondence at staff discretion
Customer-Specific Usage Information and Data	5 years	Electronic information and reporting from Data Manager, bill analyses
Marketing Material	2 years after public distribution	Flyers, brochures, electronic advertisements

General Educational or Informational Material	2 years	Brochures, reports, electronic information
Personnel Information	3 years after termination	Offer letter, resume, evaluations, personnel records, payroll records, and 1-9 forms
Accounting Records	7 years	Unaudited financials, bank statements, payables/receivables and controls back up documentation, etc.
Recruitment Materials	3 years after completion	Ads, responses





POLICY # \_\_\_\_\_

**Delinquent Accounts and Collections****Subject:** Delinquent Accounts and Collections Policy**Policies:**Delinquent Accounts:

Pursuant to Electric Rules 8 and 11, Pacific Gas & Electric (PG&E) uses the following process to determine past due accounts and the necessary action:

Residential Accounts		Non-Residential Accounts	
Day 1 - Issuance of Bill	Customer Receives Bill	Day 1 - Issuance of Bill	Customer Receives Bill
Day 22	Past Due	Day 18	Past Due
Day 27 - 33	15 Day Notice on Next Bill	Day 21	7 Day Notice Delivered
Day 41-47	48 Hour Notice via Mail	Day 29	24 Hour Phone Call or In Person Notice
Day 45 - 51	24 Hour Phone Call or In Person Notice	Day 32	Account is Eligible for Disconnection
Day 50-56	Account is Eligible for Disconnection		

Aging Accounts:

All EBCE accounts, whether Residential or Non-Residential, identified in the month aging accounts receivable report, as provided by PG&E, with outstanding balances over 90 days or more are eligible to be returned to PG&E.

EBCE Residential customer accounts exceeding \$250 in charges overdue for more than 90 days will be sent a late payment notification by EBCE. The customer will be provided 60 days to pay or make payment arrangements. If payment in full is not received within 60 days from the date of notification, or the terms of an activated payment arrangement are not fulfilled, the EBCE customer account may be closed and returned to PG&E bundled generation service on the next account meter read date. Residential customers returned to PG&E will be charged the applicable EBCE opt-out fee.

EBCE Non-Residential customer accounts exceeding \$500 in aggregate in unpaid charges for 60 days or more will be sent a late payment notification by EBCE. The customer will be provided 30 days to pay or make payment

arrangements. If payment in full is not received within 30 days of the date of notification, or the terms of an activated payment arrangement are not fulfilled, the EBCE customer account may be closed and returned to PG&E bundled generation service on the next account meter read date. Non-residential customers returned to PG&E will be charged the applicable EBCE opt-out fee.

Collections:

Closed East Bay Community Energy accounts with overdue amounts greater than \$100 may be referred to a collection agency. Amounts \$100 or less may be written off. PG&E may close customer accounts before payment delinquencies bring them to the attention of EBCE operations. When PG&E closes customer accounts, these accounts are also closed in the EBCE program. In these cases, the thresholds outlined in the preceding paragraphs apply in either referring closed accounts to collections or writing off balances.



POLICY # \_\_\_\_\_

**Customer Confidentiality**

**Subject:** EBCE Customer Confidentiality Policy -- Notice of Accessing, Collecting, Storing, Using, and Disclosing Energy Usage Information

**Policy:** East Bay Community Energy (EBCE), its employees, agents, contractors, and affiliates shall maintain the confidentiality of individual customers' names, service addresses, billing addresses, telephone numbers, email addresses, account numbers, and electricity consumption, except where reasonably necessary to conduct EBCE's business or to provide services to customers pursuant to the "Rules Regarding Privacy and Security Protections for Energy Usage Data" issued by the California Public Utilities Commission (CPUC). Examples of reasonably necessary business purposes include but are not limited to when such disclosure is necessary (a) to comply with law, regulation, or court order; (b) to enable EBCE to provide service to its customers; (c) to collect unpaid bills; (d) to obtain and provide credit reporting information; (e) to resolve customer disputes or inquiries; (f) to communicate about demand response, energy efficiency, energy management, and conservation programs; or (g) in a situation of imminent threat to life or property. EBCE shall not, under any circumstance, disclose customer information for third-party telemarketing, e-mail, or direct mail solicitation. Aggregated data that cannot be traced to specific customers may be released at EBCE's discretion.

Customer data, including individual customer names, addresses, and electric energy usage data, is collected via PG&E's metering systems. EBCE may share customer data with contractors and vendors for purposes of providing services and operating programs. Contractors and vendors are required to agree to only use customer data for program operational purposes and protect it under the same standards as EBCE. EBCE maintains customer-specific energy usage and billing information for only as long as is reasonably necessary, typically not more than five years unless otherwise required by law or regulation.

The effective date of this policy is January 1, 2018. Notice of this policy will be provided annually to customers via an on-bill message guiding customers to the most updated version on EBCE's website at [www.ebce.org](http://www.ebce.org). Any changes to this policy between notification periods will be communicated on EBCE's website. Previous versions of this policy can be requested via email at [info@ebce.org](mailto:info@ebce.org) or by mailed request to the address below.

Customers having questions or concerns regarding the collection, storage, use, or distribution of customer information, or who wish to view, inquire about, or dispute any customer information held by EBCE or limit the collection, use, or disclosure of such information, may contact EBCE Clerk of the Board and Executive Assistant, Stephanie Cabrera, at [scabrera@ebce.org](mailto:scabrera@ebce.org) or by US mail at 1111 Broadway Ave, Oakland, CA 94607.



POLICY # \_\_\_\_\_

**PROCESS FOR CONSIDERING POLICY AND  
JPA AGREEMENT AMENDMENTS**

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**Subject:** Process and timing for placing potential policy and/or JPA Agreement amendments on the Board of Directors agenda.

**Purpose:** EBCE desires to have a structured and transparent process for proposing and advancing JPA Agreement amendments and/or policy amendments to the Board of Directors for their direction and decision.

**Policy:** Twice per year, in March and September, the CEO shall place an item on the Board meeting agenda regarding suggested or proposed policy and/or JPA Agreement amendments for Board consideration. The Board will be asked to either approve a certain change or addition (for policy matters), or provide direction to staff regarding its interest in pursuing an amendment for approval at a future Board meeting (for JPA Agreement matters). In either case, a majority of the Board will need to indicate support for a policy amendment or JPA Agreement matter to move forward with Board action.

Anyone wishing to place a suggested amendment/addition for consideration on the March or September Board agenda should contact EBCE's CEO, COO or Board Clerk.

This administrative process precedes, but does not alter, Section 8.4 of EBCE's JPA Agreement which specifies the noticing and Board voting requirements for JPA amendments.



### Staff Report Item 13

**TO:** East Bay Community Energy Board of Directors  
**FROM:** Supria Ranade, Director of Power Resources  
**SUBJECT:** EBCE Risk Policy and Risk Guidelines Update  
**DATE:** January 17, 2018

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#### **Recommendation**

Receive update and provide feedback on EBCE Risk Policy and Risk Guidelines

#### **Background**

**Energy Risk Management Policy and Guidelines:** The primary purpose of the Energy Risk Management Policy and Guidelines (ERM) is to identify risks associated with the procurement of the power supply, identify those responsible for administering the various elements of the risk management policy from procurement operations to oversight, and to set policy parameters for managing risk associated with procuring and hedging the power supply portfolio.

The Board will receive a presentation from EBCE's Director of Procurement regarding the development of EBCE's load profile and procurement recommendations based on projected needs for base load energy supply, shaped energy (off-peak, on-peak and super-peak energy), renewable energy, carbon-free hydropower, and resource adequacy (including system, local and flex capacity). The procurement of power ranges from the hour-ahead market to multi-year power purchase agreements (PPAs).

The Scope of the Policy provides an overview of the types of risks managed through application of the Energy Risk Management Policy and identifies types of risks which are not addressed by the Policy.

#### **Scope of ERM**

This Energy Risk Management Policy and Guidelines (ERM) addresses risks arising from EBCE

participation in the Western Interconnection energy markets and applies to all transactions into which EBCE enters. This ERM does not address the following types of general property and casualty business risk: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in wholesale energy markets as herein defined.

EBCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. Additionally, for ECBE, demand variability is largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting ECBE service. This third portion of demand uncertainty is unique to CCA's and the risks associated with it need to be carefully considered. From the perspective of risk mitigation, EBCE's primary objective is to cover load and optimize the value of assets. Taking risks in order to arbitrage market opportunities or risks unrelated to EBCE's normal power supply business activities is not permitted.

EBCE is also exposed to regulatory and operational risks. However, these exposures are not quantifiable as they affect structural change. As a result, these risk categories are managed as separate enterprise risk exposures and are not directly governed by this Energy Risk Management Policy, but are addressed in the Energy Risk Guidelines.

This policy prescribes the management organization, authority and processes to monitor, measure and control the risks to which EBCE is exposed in the normal course of business. Specific methodologies used to measure, monitor and control these risks shall be established by the Executive Director's Risk Oversight Committee (ROC) in accordance with sound utility practices and included in the Energy Risk Management Regulations.

EBCE's wholesale electricity cost is expected to be over 90% of the CCA operating expenses. In the early years of its operation, EBCE will rely heavily on purchases from the power market which fluctuates on an hourly basis and will have a significant impact on wholesale electricity costs.

EBCE Staff will be working with NCPA to purchase power and enter into transactions to hedge electricity prices on an ongoing basis, as needed to fill load demand. Each of these transactions can be several million dollars and are typically transacted within 2 hours from the time prices are offered by the supplier, to the time transaction confirmations are executed. This short time frame cannot accommodate the need to seek Board approval for each transaction and generally requires that oversight must be conducted using a different approach. The attached ERM Policy and Guidelines provides for internal controls, a Risk Oversight Committee and other measures consistent with power industry standards and the majority of utilities and energy companies.

**Attachments:**

- A. Risk Management Policies presentation
- B. Draft Energy Risk Management Policies
- C. Draft Energy Risk Management Regulations

# Energy Risk Policy & Guidelines

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## **Item 8**

**January 17, 2018**

**EBCE Board Meeting**

Supria Ranade

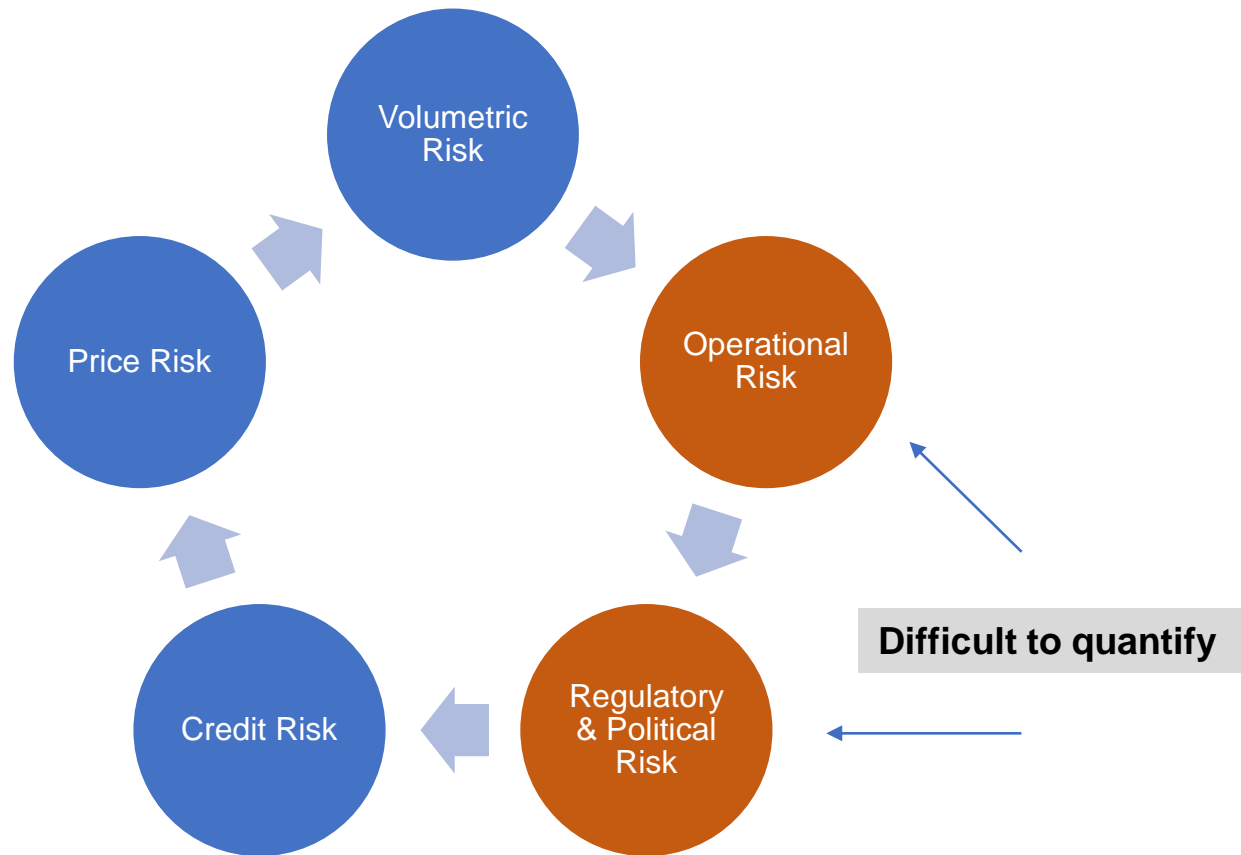
Director of Power Resources

East Bay Community Energy

# What is Energy Risk?

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**CCAs and other Load Serving Entities are subject to various risks in the wholesale energy markets**





# Risk Mitigation Strategies

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Volumetric risk is the risk that fluctuations in **supply** and **demand** will adversely affect EBCE's net revenues.

## **SUPPLY**

- Weather
- Unplanned loss of generation resources
- Transmission curtailments

## **DEMAND**

- Weather
- Economic Activity
- Customers joining/exiting EBCE service



## **MANAGEMENT STRATEGIES:**

Managed by maintaining financial reserves, diversifying the resource portfolio and developing a regular and accurate update of load and resource forecasts.

# Risk Mitigation Strategies

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Price risk is the risk associated with changes in the market prices of Energy and Energy related products.

## **MARKET RISK**

Ex. Price of a given Energy product will fluctuate in an unfavorable manner, exposing EBCE to potential cost increases or loss

## **SHAPE RISK**

Ex. Production profile of the supply resource does not match the consumption profile of customers

## **BASIS RISK**

Ex. An entity with generation in one region serving load in another region is exposed to price differences between the two regions.



## **MANAGEMENT STRATEGIES:**

- 1. VOLUME MATCHING:** Rigorous analysis of net open position limits by month
- 2. COST AT RISK:** Total portfolio cost-at-risk, rate-at-risk, cost per wholesale MWh-at risk

# Risk Mitigation Strategies

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Counterparty credit risk means risks which EBCE incurs as the result of transacting with other entities.

**DEFAULT RISK**

**DELIVERY RISK**

**CREDIT EXTENSION RISK**

**BANKRUPTCY RISK**



## **MANAGEMENT STRATEGIES:**

Counterparty diversification, standard agreements (EEI, WSPP), credit risk premium, covenants, credit derivatives (credit default swaps) and insurance.

# Governing Risk Management

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## **EBCE Energy Risk Policy & Guidelines**

If approved, outlines the philosophies and objectives of East Bay Community Energy (EBCE) Board of Directors (Board).



## **EBCE Risk Oversight Committee (ROC)**

## **Final EBCE Energy Risk Guidelines**

Utilize the philosophies and objectives specified in the Energy Risk Management Policy, and document and describe the roles, strategies, controls and authorities that will govern EBCE's comprehensive energy risk management program.



**ENERGY RISK MANAGEMENT REGULATIONS**  
**Version 1.0**

Effective:  
**DATE**

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## **Objective of the Energy Risk Management Regulations**

East Bay Community Energy (EBCE) provides a variety of wholesale and retail energy services to customers within the service areas of its participating jurisdictions (Participating Members). EBCE's goals regarding the provision of such services include, but are not limited to: (i) optimizing the value of EBCE's generation assets, (ii) providing its Participating Members with the lowest cost supply portfolio based on certain policies that may be adopted by the Board from time to time (e.g., renewable energy policy goals), and (iii) maintaining reliable electric service to its Participating Members' customers. Inherent in these goals is the need to manage risks related to transacting in various Energy markets, and providing other wholesale Energy and transmission services on behalf of the Participating Members (e.g., resource optimization).

The purpose of these Energy Risk Management Regulations (Regulations) is to utilize the philosophies and objectives specified in the Energy Risk Management Policy, and document and describe the roles, strategies, controls and authorities that will govern EBCE's comprehensive energy risk management program.

# Part I: Energy Risk Management

## 1. Scope of Regulations and Procedures

### 1.1. Overview

The EBCE Board will adopt an Energy Risk Management Policy (ERMP) which addresses risks faced by EBCE arising from EBCE's procurement activities on behalf of Participating Members in Energy and related markets. EBCE will develop two-pronged set of metrics that guide procurement decisions that include a rigorous analysis of net open position limits by month (discussed further in Appendix 9) and a cost-at-risk which may include but not limited to total portfolio cost at risk, rate at risk, and cost per wholesale MWh at risk. The ERMP provides for oversight by the Risk Oversight Committee (ROC) and mandates adoption of these Regulations by the ROC to address specific risk management issues. Controls, strategies and processes for managing risks outlined in the ERMP are documented in these Regulations.

### 1.2. Applicability, Amendments and Updates

These Regulations are initially made effective upon the Board's adoption of the ERMP, and shall subsequently be amended and/or restated from time to time by action of the ROC, when deemed necessary, by the ROC.

## 2. Definitions of Risk

The term "risks," as used herein, refers specifically to those categories of risk which relate to EBCE's participation in wholesale Energy markets for the purchase and sale of Approved Products, as further described in these Regulations. These risks include, but are not limited to, volumetric, price, counterparty, regulatory and political, and operational risks.

### 2.1. Volumetric Risk

Volumetric risk is the risk that fluctuations in supply or demand will adversely affect net revenues. Thus, if actual load demands are higher than anticipated, and market prices have increased beyond expectations, the costs to serve such load will be greater than expected. Alternately, if load demands are less than expected, then surplus supply may be sold back into the market. If market prices have declined since the Energy was originally purchased, the ability to serve load at least cost may be impacted. For ECBE, demand variability is largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting ECBE service. This third portion of demand uncertainty is unique to CCA's and the risks associated with it need to be carefully considered. If supply availability is uncertain, such as when hydroelectric generation capacity is impacted by uncertain rainfall patterns, a resulting shortfall in generation may necessitate the purchase of alternative supply through the wholesale market when prices may be rising, which may also result in increased costs. Volumetric risk



also covers the possibility of the unplanned loss of generation resources, transmission curtailments, and extreme weather events that can result in insufficient resources to meet load demands.

Volumetric risk is managed by maintaining financial reserves, diversifying the resource portfolio and developing a regular update of load and resource forecasts.

## **2.2. Price Risk**

Price risk is the risk associated with changes in the market prices of Energy and Energy related products. Price risk is the possibility that the absolute price of a given Energy related product will fluctuate in an unfavorable manner, thereby exposing EBCE to potential cost increases or loss in value to its Participating Members. ECBE will be exposed to price risk any time its fixed-price supply does not perfectly match demand. There are a number of ways that supply and demand may be mismatched. In its simplest form, demand may exceed supply, and any unhedged demand is exposed to changes in prices. With renewable supply, it is common that the production profile of the supply resource does not match the consumption profile of customers. Since hourly prices for electricity vary greatly within the day, this creates risk. This is referred to as “shape” risk. Another mismatch results from locational differences – an entity with generation in one region serving load in another region is exposed to price differences between the two regions. This is referred to as “basis” risk. These risks can manifest themselves over different time periods ranging from sub-hourly mismatches to long term mismatches.

Price risk is managed by closely monitoring and measuring the supply portfolio against estimated demand. The supply portfolio should be constructed to match resources against load obligations taking into account the various risks. Supply portfolios can benefit from resource and fuel source diversification, start dates, duration, pricing terms, types of products, geographic location, and by actively managing portfolios and assets.

### **Example of Price Risk**

ECBE will focus on the price risk of its entire portfolio which is comprised of many individual transactions. When managing risk, ECBE will care about the impact of all of the transactions in the portfolio rather than a single transaction. That said, the portfolio is comprised of a series of individual transactions, and the examples below illustrate how the value of an individual transaction can be impacted by changes in prices.

For example, assume EBCE needs to buy 10,000 MWh of electric power for the last quarter of the coming year (October through December). On January 15<sup>th</sup>, the market price for that power was \$28.90/MWh, for a total cost of \$289,000. On March 15<sup>th</sup>, the market value was \$39.00/MWh, or \$390,000. If the budget was set as of the January 15<sup>th</sup> market price, but the product was not purchased until March 15<sup>th</sup>, then the cost would be \$101,000 more than budgeted.

Price risk can be viewed as the possibility of a change in the MTM value of a transaction. To illustrate this definition, assume as above that the 10,000 MWh for October –

December was purchased on March 15 for \$390,000. If the price for that product drops to \$25/MWh or \$250,000 on September 15<sup>th</sup>, the MTM of the transaction is negative \$140,000 as of September 15<sup>th</sup>.

### **2.3. Counterparty Credit Risk**

Counterparty credit risk means risks which EBCE incurs as the result of transacting Approved Products with other entities. It must be understood that in the context of wholesale electric utility operations, both buyers and sellers may be exposed to counterparty credit risks. These risks are of five general types:

- Transacting counterparties may fail to render payment for Energy related products delivered, or otherwise default under the terms of the transaction;
- Transacting counterparties may fail to deliver Energy related products;
- Transacting counterparties may fail to take delivery of Energy related products sold to them, necessitating a resale elsewhere (potentially at a loss) of the Energy related products;
- Counterparties may refuse to extend credit to EBCE; and
- A counterparty or its guarantor may seek bankruptcy protection.

Counterparty credit risk can be mitigated through counterparty diversification, credit risk premium, covenants, credit derivatives (credit default swaps) and insurance.

### **2.4. Regulatory and Political Risk**

Regulatory and political risks are the risks that regulatory agencies, courts and legislatures may take actions or adopt measures which:

- Result in fines, assessments or other unrecoverable costs;
- Make a transaction unlawful or adversely change the its economic benefit;
- Adversely affect market prices or liquidity, leading to trading losses and stranded asset costs;
- Impair the capability or willingness of EBCE's trading counterparties and wholesale suppliers to perform;
- Prevent EBCE from performing to its own contractual obligations;
- Interfere with operation of EBCE's generation or related assets; or
- Negatively impact EBCE's ability to finance capital projects.

Regulatory and political risks are difficult to measure and manage. EBCE has an active legislative and regulatory strategy which monitors and influences the outcome of legislative and regulatory actions for the benefit of EBCE and its Participating Members.

### **2.5. Operational Risk**

Operational risk consists of the potential failure to act effectively to plan, execute and control business activities. Operational risk includes the potential for:

- An organizational structure that is ineffective in addressing risk (i.e., the lack of sufficient authority to make and execute decisions, inadequate supervision, no internal controls, incomplete and untimely reporting, failure to separate incompatible functions, etc.);
- Absence, shortage or loss of key personnel;
- Lack or failure of facilities, equipment, systems and tools such as computers, software, communications links and data services;
- Inability to finance capital projects or meet financial obligations incurred in the course of wholesale operations;
- Exposure to litigation or sanctions as a result of violating laws and regulations, not meeting contractual obligations, failure to address legal issues and/or receive competent legal advice, not drafting and analyzing contracts effectively, etc.; and
- Errors or omissions in the conduct of business, including failure to execute transactions, violation of guidelines and directives, etc.

Operational risk can be managed by adequate oversight and the existence of and adherence to contracts, policies, regulations, and procedures. Operational risk is reduced by streamlined and well defined simple processes managed by skilled and competent staff with appropriate supporting physical and technological resources and appropriate oversight.

## **2.6. Market Risk**

Market risk is manifested by the interdependencies of a market where the failure of a single entity or cluster of entities that may or may not be counterparties can cause a cascading failure which could affect an entire market.

## **2.7. Legal Risk**

Legal risk arises when a counterparty or a Participating Member is not capable of entering into, or has procedurally failed to obtain appropriate approvals to enter into, a contract. Legal risk is managed externally by ensuring counterparty representatives are authorized by the counterparty. Regarding long-term contracts, EBCE will manage legal risk by rigorously vetting and reviewing wholesale electricity contracts with appropriate legal and market experts.

## **2.8. Concentration Risk**

Concentration risk denotes the overall spread of exposures over the number or variety of counterparties. Concentration risk is calculated using the percentage of outstanding exposures each counterparty represents. Concentration risks may result from an uneven distribution of exposures to an individual counterparty, or an uneven distribution of exposures to particular sectors or regions.

Concentration Risk is managed pursuant to Section 18.3 of Part II of these Regulations which requires staff to document the business reasons for awarding Energy contracts to counterparties to whom EBCE has high concentrations of credit exposure.

### **2.9. Liquidity Risk**

Liquidity risk is financial risk due to uncertain liquidity. Liquidity risk may include the risk of insufficient net cash flows on a short term basis, lack of access to credit facilities, the inability to liquidate an asset or position on short notice, and the risk of maintaining explicit liquidity reserves.

EBCE mitigates counterparty liquidity risk with regular, up-to-date credit evaluations; mitigates internal liquidity risks with adequate deposits from Participating Members (if required); and mitigates asset liquidity risk by utilizing contractual instruments (e.g., approved enabling agreements).

### **2.10. Custodial Credit Risk**

Custodial credit risk is the risk that, in the event of the failure of a custodial asset holder, an entity would not be able to recover the value of its deposits, investments or collateral securities that are in the possession of the custodian.

Custodial credit risk is mitigated by keeping deposits at FDIC insured institutions below insurance thresholds and actively monitoring the creditworthiness of the custodian.

### **2.11. Business Risk**

Business risks are the risks inherent in EBCE's operations and environment that may impair its financial sustainability. These risks include the risks listed in this Section 2, in addition to the risks of creating and maintaining production and administrative facilities.

Business risks are mitigated by adequate planning and budgeting, training of staff and maintaining appropriate insurance coverage.

## **3. Risk Management Strategies**

An important aspect of implementing an overall energy risk management program is the development of related strategies to mitigate all of the related risks associated with Energy product trading activities. The key strategies used by EBCE are outlined below.

### **3.1. Balanced Portfolio**

EBCE shall strive to maintain an integrated and balanced portfolio of resources to cover its Participating Members' load serving obligations, and maintain the value of EBCE's assets, and manage resources within EBCE's financial requirements and within a dual volume and cost-at-risk framework, integral to EBCE's risk management strategy. The "cost at risk" will be designed to capture all of the volume

mismatches, basis risk, shape risk, and other balancing risks associated with a given wholesale electricity contract.

## **3.2. Minimum Coverage Requirements**

### **3.2.1. Minimum Coverage Requirements for Energy**

EBCE shall strive to manage price and volatility risk by implementing a diversified procurement strategy that involves purchasing energy products to hedge costs for serving load. EBCE shall strive to purchase amounts of energy based on defined minimum coverage thresholds as set forth in the Time-Price Coverage Matrix combined with a cost-at-risk metric contained in Appendix 9 (Recommended Coverages) of these Regulations. The Time-Price Coverage Matrix, along with the cost-at-risk metric will be used as a guide for EBCE's short term and long-term procurement strategies. The objective of the dual framework is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate EBCE's exposure to market price volatility and other pricing risk. The actual covered positions taken by EBCE, reflected as a percentage of forecasted load, may deviate from the recommended coverages contained in the dual framework based upon EBCE's staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

### **3.2.2. Minimum Coverage Requirements for Capacity**

EBCE is required to acquire certain types and amounts of Resource Adequacy capacity, as further set forth in applicable requirements. Such rules, including the CPUC Decisions, establish minimum Resource Adequacy requirements in accordance with policies adopted by EBCE's respective Local Regulatory Authority. Pioneer shall acquire the types and amounts of capacity required to comply with the Resource Adequacy requirements established by its respective Local Regulatory Authority.

## **3.3. Diversification of Portfolio**

EBCE shall strive to develop an integrated resource portfolio that includes a minimum level of diversification in fuel type, contract duration, geographic location, counterparties, pricing terms, cash reserves and types of products.

## **3.4. Purchases to Cover Load Serving Obligations (No Speculation)**

EBCE's primary objective for energy product procurement activities is to cover the load serving obligations of its Participating Members. In the course of performing these activities, EBCE shall not engage in activities that expose EBCE to speculative trading risks, and shall only utilize approved products and transaction parameters as approved by the ROC, and defined in these Regulations.

## **3.5. Authority to Transact Approved Products**

The type of Energy related products EBCE may transact will have a direct impact on the amount of risk EBCE assumes as a result of such activities. The types of Energy related products that EBCE is authorized to transact (herein after referred to as “Approved Products”) are specifically identified in Appendix 6 of these Regulations.

## **4. Roles and Responsibility for Energy Risk Management**

### **4.1. Board of Directors**

The Board has the ultimate responsibility for oversight of EBCE’s operations, and is responsible for establishing an organizational framework for risk management and for ensuring that risk management results are achieved as planned. The Board has approved and established organizational policies for risk management, and has delegated to the Executive Director the responsibility for implementing the ERMP. The Board is responsible for ensuring appropriate results are achieved in accordance with the ERMP. The Board shall perform an annual review of the ERMP and modify the policies, as needed.

### **4.2. Executive Director**

The Executive Director has day-to-day responsibility for executing and ensuring compliance with the ERMP, and for communicating risk management issues to the Board. The Executive Director shall ensure clear lines of authority and responsibility for assessing, measuring, and managing the risks of EBCE, and for monitoring the functionality of all components of the risk management system. The Executive Director may delegate specific duties for carrying out the policy and insuring compliance by all affected EBCE employees or contractors.

### **4.3. Risk Oversight Committee**

The ROC is responsible for overseeing EBCE’s compliance with the ERMP. The ROC serves as the highest level of organizational risk management reporting to the Executive Director. The members of the ROC consist of the Executive Director, Director of Finance and Administrative Services, Director of Power Resources, and two (2) Participating Member representatives. EBCE’s legal counsel shall serve as legal advisor to the ROC. The ROC may seek the advice of other advisors at its discretion, including EBCE’s Wholesale Energy Services Provider. A quorum of the ROC consists of not less than three ROC members, or their designees, including at least one Participating Member representative. A quorum of the ROC shall be required for the ROC to conduct business.

The two (2) Participating Member representatives shall be appointed to the ROC by the Executive Director. These Participating Member representatives shall reflect the diversity of EBCE’s participating jurisdictions (e.g., both larger and smaller Participating Member representation). EBCE’s Participating Members may also nominate potential ROC members. The Executive Director shall select Participating Member representatives based on these recommendations. Participating Member representatives shall be appointed for a term of two (2) years.

Each ROC member shall have the right to cast one (1) vote per issue, and may appoint a voting alternate with the approval of the Executive Director. Participating Members that are not represented on the ROC may attend ROC meetings and participate in ROC discussions; provided, however, non-ROC Participating Members will have no voting rights.

The ROC will meet at least quarterly, or as needed, to carry out the responsibilities described in these Regulations. Individual Participating Members may request the ROC to convene at any time, in a timely fashion. Minutes of each meeting will be maintained by EBCE staff.

The ROC shall provide a report to the Board at least annually, regarding the business activities of the ROC, or at such other interval as directed by the Board.

The ROC is responsible for ensuring that EBCE's risk management practices are conducted in accordance with the ERMP and these Regulations. The ROC shall adopt and keep current these Regulations, which shall define in detail the internal controls, strategies and processes for managing risks covered under the ERMP.

ROC responsibilities and delegated authorities are:

- Establishing overall risk tolerances related to Approved Product transactions and counterparty credit risk;
- Reviewing and approving Exception Reports to the ERMP and these Regulations;
- Setting, changing and approving the design of all internal control processes related to energy risk management and Approved Product transactions;
- Assessing the adequacy and functioning of the system of controls over volumetric, price and counterparty credit risks;
- Reviewing all statistical modeling parameters, risk tolerances, risk factors and/or risk weights associated with all Approved Product transaction strategies;
- Reviewing and recommending changes to ERMP policies, the types of Approved Product transactions and controls (e.g., limits, risk/performance methodology, etc.), including the addition of new products and instruments as described in these Regulations;
- Recommending appropriate cash reserve levels to support EBCE's Approved Product transaction activities;
- Reviewing the ERMP, and recommending any amendments to the Board;
- Reviewing and assessing the adequacy of the risk reports generated by the risk management function;
- Ensuring that the results of risk management activities are reported to the Board, and all risk management reports are provided to the Board in accordance with Appendix 7 of these Regulations, or as necessary;
- Reviewing and recommending appropriate transaction authority levels and delegation of authority to EBCE personnel, related to Approved Product transactions; and
- Reviewing, recommending and approving changes to these Regulations, as needed.

Specific responsibilities of the ROC members and advisors are described in Appendix 2 of these Regulations.

#### **4.4. Front Office**

The Front Office staff is responsible for the provision of wholesale energy services, which include, but are not limited to, planning and portfolio management, Approved Product transacting, contract origination, schedule coordination and real-time dispatch operations. The Front Office provides recommendations for load and resource balances, and portfolio optimization. These activities are conducted in order to meet the physical, financial and contractual requirements of EBCE. As part of these functions, the Front Office is responsible for transacting Approved Products on behalf of EBCE, in accordance with certain transactional limits, as further defined in these Regulations. All Approved Products that the Front Office is authorized to transact are identified in Appendix 6 of these Regulations. The Front Office is responsible for ensuring that the procedures and processes needed to transact business within the requirements and guidelines of the ERMP and these Regulations are fully implemented, and shall perform all duties related to actual transacting in the wholesale Energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. The Director of Power Resources is responsible for managing the Front Office. The Front Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Front Office is primarily responsible for:

- Day-to-day purchases and sales of Approved Products for EBCE;
- Developing transaction strategies that are consistent with EBCE's ERMP and established risk tolerances;
- Ensuring infrastructure (hardware/software) is in place to support accurate and timely measurement and reporting of risk;
- Ensuring that procedures and systems can effectively and efficiently support the Front Office activities;
- Ensuring training is completed by Front Office staff, as required by CAISO, to comply with minimum participation requirements for participation in CAISO markets;
- Conducting needs analysis for meeting load forecasts, optimizing the value of resources, and satisfying regulatory and/or compliance requirements;
- Recommending transactions for authorization and approval;
- Proposing modifications to commercial provisions of Board approved contracts to the Executive Director for consideration and approval;
- Purchasing and/or selling Approved Products and services based on meeting the load forecast, optimizing the value of EBCE assets, and satisfying regulatory and/or compliance requirements;
- Conducting sales transactions for surplus resources;
- Nominating and managing CRRs in the annual and monthly allocation processes;
- Preparing and submitting bids in the CRR annual and monthly auction processes;



- Transacting Approved Products to satisfy applicable regulatory and compliance requirements (e.g., renewable Energy requirements, emission compliance obligations, etc.);
- Development and maintenance of Renewable Energy Products tracking and allocation;
- Competitively shopping and negotiating transactions in accordance with the ERMP;
- Generating trade confirmations (as needed);
- Ensure transactions are recorded timely and accurately, and that valuation and risk measurement are performed according to approved methodologies;
- Working with the Middle Office to develop and implement risk measurement methodologies and quantitative applications, where appropriate;
- Identifying new products and markets that may add value to EBCE;
- Prepare reports as outlined in Appendix 7 of these Regulation;
- Initiate requests for new counterparty reviews; and
- Prepare and maintain written Front Office procedures.

#### **4.5. Middle Office**

The duties of the Middle Office staff are conducted by the Finance and Administrative Services Department. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting Approved Products and services. The Middle Office must be independent from the Front Office functions. The Director of Finance and Administrative Services is responsible for managing the Middle Office. The Middle Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Middle Office is responsible for oversight, reporting and training; including:

- Managing and overseeing risk, including reviewing controls and reviewing valuation and risk management methodologies;
- Developing and implementing counterparty credit risk policies, procedures and limits as approved by the ROC;
- Reviewing and approving changes and provisions to enabling agreements (including all credit terms);
- Monitoring EBCE's current and potential risk exposures and ensuring compliance with the ERMP and these Regulations;
- Ensuring Middle Office training is completed;
- Verifying that Approved Product transactions are authorized and executed based on the requirements of the ERMP and these Regulations, and are properly recorded in the deal capture systems;
- Monitoring the effectiveness of the internal control structure, including the segregation of duties and independence of oversight;
- Maintaining a list of individuals who are authorized to approve and execute Approved Product transactions;
- Ensuring timely and accurate collection of market data for risk measurement and reporting;

- Conducting necessary stress test on portfolio exposure and CVaR models;
- Preparing, reviewing and distributing all risk management reports;
- Processing and verifying market data provided by the Front Office;
- Maintaining independent market forward price data;
- Evaluating performance of Approved Product procurement and hedging transactions relative to market indices and approved budget;
- Notifying the ROC of credit limit exceptions;
- Working with the Front Office to develop and implement risk measurement methodologies and quantitative applications;
- Serving as secretary of the ROC, developing ROC agendas, taking and compiling meeting minutes, and distributing meeting materials;
- Maintaining archives of risk management program documents;
- Monitoring and ensuring compliance with the Commercial Compliance Policy;
- Coordinating risk management education and training;
- Various credit management duties as outlined in these Regulations; and
- Prepare and maintain written Middle Office procedures.

#### **4.6. Back Office**

The Back Office staff is primarily responsible for settlement of invoices, verifying transactions, bookkeeping and accounting, and ensuring Approved Product transactional activities are consistent with contract authorities and requirements. The Back Office is responsible for providing assurance of accurate transaction records and settlements. The Director of Finance and Administrative Services is responsible for managing the Back Office. The Back Office may also utilize support from EBCE's Wholesale Energy Services Provider to carry out the duties described herein.

The Back Office is responsible for the following duties:

- Crosschecking counterparties confirmation documents for individual trade transactions to EBCE's own records of those transactions, and investigating and resolving exceptions;
- Ensuring settlements are made timely and in accordance with contract terms;
- Verifying and reporting compliance with procedures as reflected in the transaction tracking documentation;
- Ensuring that operations and systems can effectively and efficiently support the processing of approved transactions;
- Performing and supporting transaction allocations, invoicing and settlements;
- Development and maintenance of GHG Compliance Instrument tracking and allocation;
- Monitoring accounts receivable and payable;
- Verification of transaction data entry; and
- Preparing and maintaining written Back Office procedures.
- Disputing any charges from the ISO.

#### **4.7. Auxiliary Functions**

Other functions in support of and relevant to risk management are conducted by EBCE staff who are not directly including within the Front Office, Middle Office and Back Office functions. These include some contract administration functions, load forecasting and managing financial reserves.

Long term planning and forecasting of Energy supply requirements (long term supply plans) are developed by EBCE analytical support personnel who are not part of the Front Office transacting function.

The Finance and Administrative Services Department is responsible for preparation of the budget, and amounts billed for Approved Product transactions. Finance and Administrative Services Department staff also establish necessary financial reserve levels related to counterparty credit requirements for EBCE in general. These auxiliary functions may also be supplied to EBCE by EBCE's Wholesale Energy Services Provider.

## **5. Authorities, Limits and Prohibitions**

### **5.1. Individual Trading Authority and Transaction Limits**

All executed transactions shall conform to the policies set forth in the ERMP and these Regulations. It shall be the responsibility of the ROC, with approval of the Executive Director, to establish appropriate individual trading authority limits for the various staff involved in the Front Office function. All Middle Office and Back Office staff are strictly prohibited from executing any Approved Product transactions. The Middle Office shall confirm that the Front Office has informed EBCE's counterparties of changes in Front Office staff authorized to trade within seven (7) business days. Unless or except as recommended by the ROC from time to time, and approved by the Executive Director, trading authority limits for individual transactions shall be as outlined in Appendix 4 of these Regulations.

### **5.2. Permitted Transactions and Approved Products**

The ROC is responsible for authorizing and approving all Approved Products that may be transacted by EBCE. Transacting Energy related products that are not authorized as Approved Products by the ROC is strictly prohibited, unless the ROC grants an exception in advance.

All transactions shall conform to the following general principles:

- Be for an Approved Product;
- Be duly authorized and within risk limits, and shall not cause either aggregate or individual counterparty credit limits to be exceeded;
- Be executed with a counterparty with an approved credit limit;
- Shall utilize contract terms intended to minimize the risk of loss if a counterparty fails to deliver, take delivery or pay for transactions provided;
- Be executed and documented following standardized procedures; and

- Be in compliance with applicable laws, regulations and court orders.

Approved Products that have been authorized by the ROC are listed in Appendix 6 of these Regulations. Appendix 6 also contains certain limitations for each authorized Approved Product.

### **5.3. Unauthorized Transactions**

Any member of staff who enters into an unauthorized transaction may be subject to disciplinary action up to and including termination of employment.

The following provides the minimum procedures for managing unauthorized transactions:

- If a transaction is unauthorized, the Executive Director shall determine the course of action. If the transaction involves market risk, the Executive Director may elect to either enter into a risk neutralizing transaction, or attempt to unwind the transaction with the original counterparty. However, the first alternative (offsetting transaction) only offsets market price; operational and credit risk may still exist. Unwinding the transaction would likely remove all risk from the trade.
- Once the corrective steps have been taken, the Executive Director shall review the transaction to ensure all risks have been offset and report the results in the Exception Report.

### **5.4. Process for Adding New Approved Products**

All requests to add a new Approved Product to Appendix 6 must be analyzed by the Front Office, Middle Office, Back Office staff, and EBCE's legal counsel to determine what risks such product may create for EBCE, and what business needs exist that provide the basis for adding the new product to the Approved Products list. All requests to add a new Approved Product to these Regulations must be presented to the ROC for consideration, and if approved by the ROC shall be added to Appendix 6 as an Approved Product. Any product not listed as an Approved Product in Appendix 6 of these Regulations is considered to be a new product.

A report to the ROC recommending approval of a new Approved Product shall address the issues described in the New Product Approval Checklist contained in Appendix 5 of these Regulations. The New Product Approval Checklist is a guideline for activities that should be performed in evaluating and mitigating the market and credit risks associated with use and deployment of new products.

Front Office staff have primary responsibility for developing the report to identify the business needs for the new Approved Product being requested, and an assessment of risks that EBCE may be exposed to by transacting the new Approved Product. Front Office staff are responsible for presenting the report to the ROC for consideration and approval. Primary responsibility may be delegated by Front Office staff to those individuals having special knowledge or expertise of the activity or new product type.

## 6. Systems, Tools and Training

EBCE employees (or supporting suppliers) who are authorized to perform energy risk management functions on behalf of EBCE shall be provided the necessary systems and tools to support all risk management processes, including:

- Access in real time to market activity, prices and other data;
- Systematically evaluating the financial condition, credit standing and ability to perform of other entities with whom EBCE does business;
- Analyze the trends of supply, demand, market prices and costs of service;
- Record transactions accurately and completely;
- Measure key indicators and risk parameters; and
- Generate complete and accurate management and financial reports.

Provision of funding shall be requested and made in the budgets submitted for each division that performs market risk management functions on behalf of EBCE, for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools. Provision of funding shall also be requested and made in the budgets submitted for each EBCE division, which performs market risk management functions on behalf of EBCE for managers and staff to attend seminars and courses in risk management as required to comply with the ERMP and these Regulations.

## 7. Compliance Exceptions and Reporting

### 7.1. Compliance Exceptions

Compliance exceptions are actions which violate the provisions and/or requirements as set forth in the ERMP and these Regulations, and/or the procedures developed and approved by the ROC.

The following types of occurrences shall not be considered compliance exceptions:

- Losses incurred on wholesale transactions which were undertaken in compliance with the ERMP and these Regulations;
- Adverse changes in credit standing, financial condition or ability to perform of a wholesale trading counterparty which occur subsequent to the execution of a transaction or contract;
- Adverse changes in capital asset valuations, MTM exposures, or CVaR resulting from fluctuations in prices subsequent to the execution of a transaction or contract; and
- Actions compelled by order of regulatory authorities or by legislation, which are otherwise in violation of the ERMP, these Regulations, and/or related Procedures.

### 7.2. Exception Reporting

In the event a compliance exception occurs, the Executive Director is responsible for notifying the ROC within 48 hours after it is identified and ensure that the Front Office prepare a report (Exception Report) for the ROC at its next meeting. The Report shall identify the issue or violation, and discuss the alternative remedial actions, document the action taken in response, and describe the steps that will be taken to prevent a reoccurrence of the event. A summary of all exceptions shall be reported at least annually to the Board by the Executive Director.

## **8. Risk Management Methodologies**

### **8.1. Measurement of Risks**

EBCE measures risk by estimating how high or low future supply costs and revenues could be, given a particular portfolio position and specific confidence level of market price movements. These estimates apprise management as to the risks inherent in a particular position and are used to make decisions to accept that risk or to reduce the risk by changing the position or the portfolio management strategy going forward.

Volumetric variability is estimated as part of the load and resource forecasting process. Normal, High and Low scenarios are provided as part of the annual budget process. An updated load and resource forecasted balance is provided each month. Volumetric uncertainty shall be incorporated in the quantitative risk measures that EBCE tracks and reports on a regular basis. The financial consequences of volumetric risk depend upon both how actual loads and supplies compare to forecasts, and on market price variations.

Market price risk is measured by calculating forward price volatility (either using recent historical data for forward prices or market prices for options), and applying that volatility to the future to see how costs and revenues could change if there were an adverse market price movement.

Counterparty credit risk measures are captured in reporting of counterparty exposure and transaction limits.

Appendix 8 of these Regulations provides a more detailed description of EBCE's risk measurement methodology. Risk management reports that are presented to management and the ROC are described in Appendix 7 of these Regulations.

## **9. Risk Limit Structure**

EBCE sets risk limits in order to mitigate risk exposure within the broad objectives of optimizing the value of EBCE's assets, and serving Participating Member loads at cost effective and stable prices. Transaction limits authorized in Appendix 4 shall comply with the requirements described in this Section 9.

Portfolio risk limits are expressed based on volume, duration, dollar value, and CVaR. EBCE will develop a path towards setting (1) volume limits and (2) VAR limits. Risk limits include: (1) qualification criteria for counterparties, including creditworthiness and required contractual provisions, (2) counterparty credit limits, and (3) preferred contractual terms. Counterparty credit risk limits are intended to monitor and contain potential losses due to counterparty default. This Section 9 also includes a brief discussion of risk monitoring and reporting requirements.

Risk limits may be employed to indicate either:

- An exception, which requires an Exception Report to the ROC;
- A warning, which indicates that a risk measure is outside of an acceptable tolerance band, and should be reported to the ROC promptly; or
- A standard, such as minimum qualifications or contract provisions.

Risk limits are subject to regular review and adjustment by the ROC as market conditions change. Risk limit metric methodologies and limits are further explained in Part II of these Regulations.

### **9.1. Basic Principles for Setting Risk Limits**

The following set of basic principles shall guide the general approach to setting risk limits (including but not limited to credit exposure limits, contract duration, volume, and transaction limits):

- Enable staff to conduct required business effectively
  - Volume and dollar limits adequate to reliably meet physical and financial requirements at prevailing prices
- Reflect the risk-reward tradeoffs consistent with EBCE's risk tolerance
  - Duration, volume, dollar and exposure limits appropriate for associated risks
- Favor strong counterparty attributes
  - Creditworthiness and financial strength
  - Favorable contractual terms
  - Demonstrated performance
- Promote fair and competitive transacting process
  - Should not narrow field to a single supplier or unduly favor any supplier
- Promote diversification
  - Avoid too great a concentration of supply or exposure with any single supplier
- Facilitate operational flexibility
  - Allow for load uncertainty, resource uncertainty, and other contingencies
- Facilitate conformance to the ERMP and Regulations
  - Clear, measurable, consistent and enforceable
- Balance burden of monitoring and enforcing limits with value
  - Not so complex and cumbersome that it takes too many resources to manage

### **9.2. Portfolio Risk Limit Guidelines**

Portfolio limits facilitate: (1) adhering to policies and procedures, (2) quantifying risk tolerance levels for risk monitoring, reporting and control, and (3) reducing operational risks.

Portfolio limits must take into account:

- Load and resource balance variability – monthly and seasonal variation;
- Load and resource balance uncertainty – confidence intervals around expected values;
- Minimum feasible wholesale transaction size – Approved Products are traded in large discrete package sizes; and
- Operational flexibility and constraints – customer responsiveness, system reliability.

Risk limits shall be reviewed and updated by the Middle Office and Front Office in conjunction with development of the long-term power supply forecast, as part of the annual budget process, or more frequently as deemed necessary.

### 9.3. Net Position Guidelines

**Purpose:** Net position guidelines specify the physical load and resource balance tolerance levels within which EBCE staff shall recommend transactions to comply with these Regulations, and to ensure that Approved Products are transacted to meet physical and financial load and resource balance requirements.

**Applicability:** Net position guidelines apply to Approved Product transactions that are one month in duration or longer. These transactions include all must-take, fixed-priced contracts, index-priced contracts<sup>1</sup>, fixed-priced Call Options, supply from generating resources, and the long-term contracts.

For all other transactions:

1. Option transactions shall be excluded from the Net Position guidelines until exercised, but shall be included in transaction reporting to the ROC. Options to transact Approved Products that have been exercised, or any other transaction that commits EBCE to take delivery or commit resources, shall be included in the Net Position guidelines.
2. Put options that have not been exercised are not included in the Net Position guidelines as they reflect a potential short position and would understate the Net Position. Put option transactions shall be included in transaction reporting to the ROC.
3. Within-the-month Approved Product transactions are operational in nature, and require flexibility to balance hourly, daily, and weekly, and balance-of-month load variations.

<sup>1</sup> A transaction priced based on an index rate that is directly offset with a matching transaction priced at the same index rate (e.g., a sales transaction that is directly offset with a like purchase transaction) shall be excluded from the calculation of net position.



Net Position Limits guidelines do not apply to within-the-month transactions, but they are included in transaction reporting and total deliveries reported to the ROC.

4. Resource Adequacy capacity, GHG Compliance Instruments, transmission, transportation, ancillary services, basis, and storage requirements are set by reliability based technical standards, regulatory requirements, or maximum potential usage in order to reliably meet real-time and peak demand. Net Position guidelines do not apply to these Approved Products, but staff shall inform the ROC of the criteria used for estimating EBCE's needs.
5. Transactions of surplus or excess Approved Products made available through existing physical assets or contracts (e.g. due to hydro conditions) shall not constitute Speculation, but shall be reported to the ROC.

The net changes in physical position due to buy-sell transactions executed to offset positions with a counterparty, effect transportation or transmission transactions, or other approved purpose shall be included in the Net Position guidelines.

## **10.Risk Control Structure**

### **10.1. Control Principles**

EBCE will strive to conduct its energy risk management activities in accordance with best practices of the wholesale electric industry, but implementing such practices must be justified and balanced as to their costs and benefits. Processes and control systems must be in place that allow EBCE to identify, measure, monitor, control and track its risk exposures. These processes and control systems shall be consistent with the following risk management control principles:

- Appropriate segregation of duties and internal controls;
- Appropriate systems to ensure accurate and effective management reporting;
- Necessary resources in place to achieve management objectives;
- Attract and retain skilled and trained personnel;
- Cross-train and provide cross-coverage;
- Employees conducting Energy transactions who are free of conflicts of interest;
- Authority and approval delegation that is commensurate with accountability and capability;
- Performance measurement and reporting incorporate risk and return measures; and
- Ongoing monitoring of control effectiveness.

### **10.2. Functional Responsibilities**

EBCE has integrated but segregated responsibilities to control risks in a manner consistent with the above control principles by means of clearly defined roles and responsibilities for the Front Office, Middle Office, and Back Office. Oversight functions are performed at an operational level by these

offices, and managed at an executive level by the Board, Executive Director, and ROC. These functional responsibilities are described in detail in Section 4 of these Regulations. EBCE may utilize the services of its Wholesale Energy Services Provider for performing such functions.

### **10.3. Transaction Capture Process**

All transactions<sup>2</sup> of Approved Products must be formally and officially documented by EBCE. Transaction capture procedures shall address all of the following elements:

- Authorization/Approval (e.g., participant authorization form as used in the market purchase program agreement);
- Competitive bidding;
- Commitment to the transaction;
- Recording the transaction;
- Confirming the validity of the transaction with the counterparty;
- Inputting the transaction into the deal capture system;
- Actual product delivery; and
- Billing and settlement.

#### **10.3.1. Authorization/Approval**

The appropriate authorizations and approvals must be obtained by Front Office staff prior to transacting Approved Products. Such authorizations may be in the form of predefined contractual authorizations, or as defined in the ERMP or these Regulations. EBCE shall develop protocols to address when the volume and/or VAR limits are not in compliance. If the limits are violated by a certain to-be-determined amount EBCE shall assemble the ROC for an emergency meeting. The ROC can choose to be flexible on the limits (within certain parameters) or require action. If it exceeds a certain amount it goes higher in the organization and to EBCE's board. Front Office staff shall obtain approval from duly authorized personnel (supervisor or higher) with specified *dollar and volume* limits as specified in Appendices 3, 4 and 5 before consummating any transactions for Approved Products.

#### **10.3.2. Competitive Bidding**

For Approved Product transactions scheduled for delivery further than one (1) week in advance, quotes for forward commitments, with the exception of exchange traded transactions, must be obtained competitively from available and approved counterparties, consistent with the size and type of transaction and counterparty. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc. Front Office staff must obtain quotes from at least two (2) qualified suppliers, if two (2) approved counterparties are available. Alternatives are to be evaluated on an equivalent basis (similar quality, volume, duration and options), adjusted for such factors as transmission, losses, etc.

<sup>2</sup> Transaction for a term of balance-of-month or shorter are not subject to certain elements of the transaction capture process, as further described in the respective transaction procedures.

Transactions occurring for delivery of product within one week or less, or exchange traded (e.g. NYMEX, ISO, ICE, etc.) transactions, do not require formal written documentation that two (2) quotes were obtained beyond what is entered in the deal capture system.

### **10.3.3. Commitment to the Transaction**

A commitment is a legally binding contract between EBCE and a counterparty. The Front Office must be the point of commitment for all Approved Product transactions. Final price commitments may only be made by authorized EBCE transacting personnel. Commitments shall be made verbally or electronically in the case of an electronic exchange. Transacting personnel shall only transact with counterparties who are listed on the Approved Counterparties List.

### **10.3.4. Recording the Transaction**

All transactions must be recorded.<sup>3</sup> Verbal commitments must be executed on a recorded telephone line when available, and shall be stored and maintained in accordance with EBCE's records retention policy. Electronic commitments must have an electronic audit trail. All transactions must be evidenced by a deal control system entry prepared in a timely manner. All transaction information shall be time and date stamped at the time of commitment.

### **10.3.5. Confirmation**

A confirmation is a written document evidencing a verbal or electronic commitment made by EBCE transaction personnel. All confirmations must agree with the transacting person's commitments, as evidenced by phone records, deal capture system entries or other supporting documentation. All confirmations must be reviewed and confirmed by Back Office personnel for accuracy. The Front Office shall generate a written confirmation, when required, in any case where the counterparty does not provide or require a written confirmation. Any transaction that is not confirmed by the counterparty and approved by authorized personnel within five (5) business days after the transaction has been executed will be subjected to review and identification by the Middle Office. Using the confirmation, the Back Office staff shall review and confirm the consistency and accuracy of the deal capture system entry made by the Front Office staff. All written transaction confirmation shall be stored by EBCE consistent with EBCE's records retention policies. Written confirmations are not required for any transaction with a duration of less than seven (7) calendar days.

### **10.3.6. System Input**

All transactions must be entered into the deal capture system, and the transaction information shall be maintained in accordance with EBCE's record retention policy. All transactions shall be entered into the

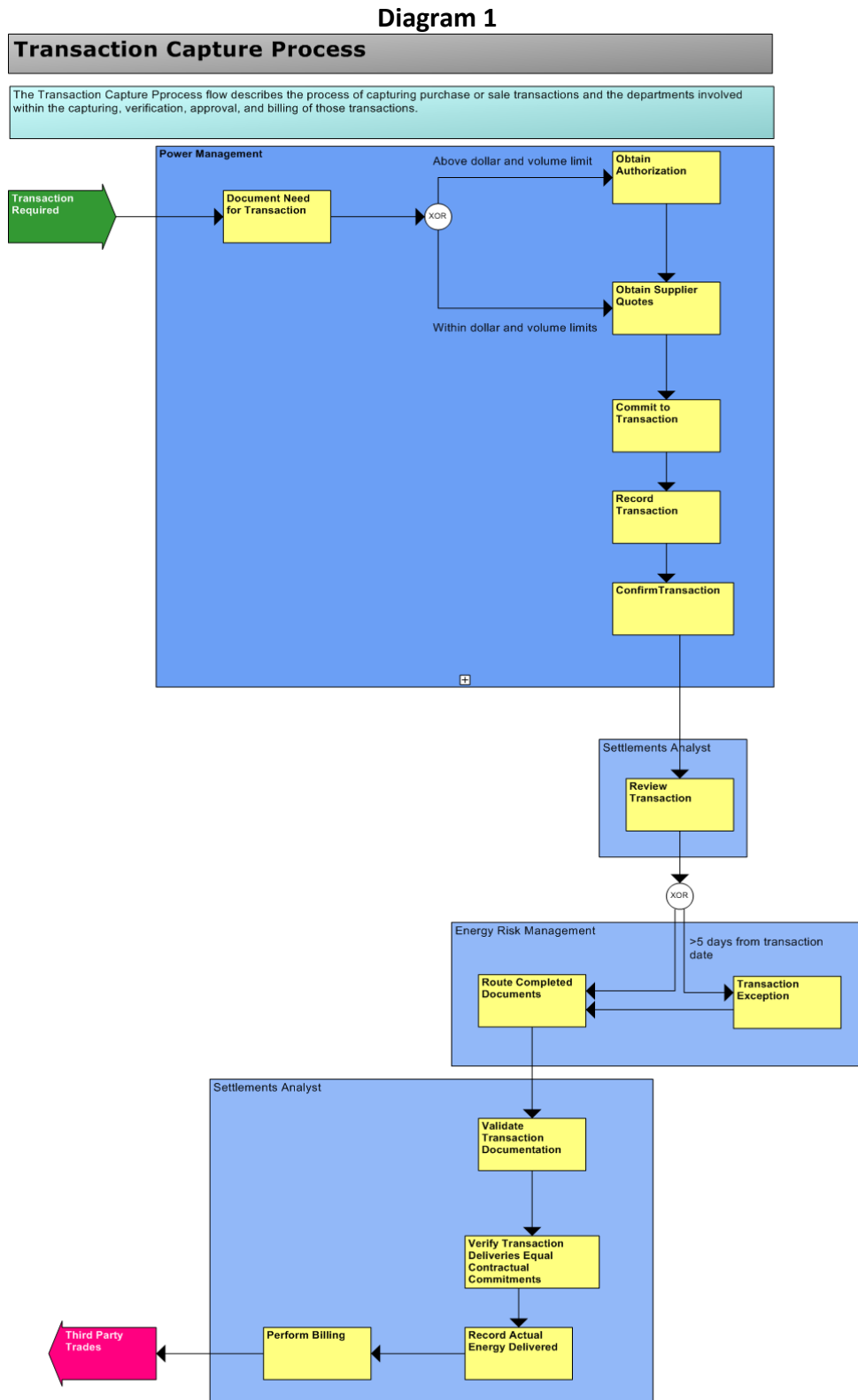
<sup>3</sup> Real-time verbal and electronic commitment dates and times are recorded in the dispatch log. GHG Compliance Instruments are recorded in the CITTs system maintained by the California Air Resources Board.

deal capture system by Front Office personnel. Deal capture system input shall be performed no later than the first business day after the deal was confirmed. Once a transaction is entered into the deal capture system, Back Office staff shall review the deal entry to confirm that the information entered into the deal capture system is consistent with the transaction confirmation, if required. If the data entry is found to be correct by Back Office staff, the deal shall be approved for accuracy. If the data entry is found to be inconsistent with the deal confirmation, Back Office staff shall notify Front Office staff to make the necessary corrections to the data entry stored in the deal capture system.

#### **10.3.7. Billing and Settlement**

Back Office staff ensures that bills are issued to counterparties with outstanding accounts receivable, and reviews bills for transactions to verify that the bills match the terms of the contract and the amount of product actually delivered (this process is generally referred to as the “checkout process”).

Diagram 1 below is a representation of the transaction capture process:



#### **10.4. Management Reporting Framework**

The key to energy risk management is monitoring of risks. Accurate and timely information must be provided to all parties involved in any aspect of energy risk management, to allow them to perform their functions appropriately. Reports can be categorized into three main areas:

1. Risk Monitoring – illustrate risks that are faced ahead;
2. Oversight – show compliance with policies, authorities or risk limits; and
3. Performance – compares actual past and present performance of the portfolios to appropriate budget and market benchmarks.

A complete list of management reports for each level of oversight is provided in Appendix 7 of these Regulations. These reports shall be prepared on a frequency as indicated in Appendix 7. New reports, or changes to existing report formats, may be recommended and approved by the ROC.

#### **10.5. Internal Controls**

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to prevent errors and improprieties, ensure accurate and timely reporting of results of operations, provide information pertinent to management and facilitate attainment of business objectives.

The required controls shall include the following:

- Segregation of duties between initiation, confirmation, monitoring and settlement transactions;
- Delegation of authority that is commensurate with responsibility and capability;
- Complete and precise capture of transaction and other data, with standardization of electronic and hard copy documentation;
- Meaningful summarization and accurate reporting of transactions and other activity at regular intervals;
- Regular independent compliance review to ensure that the ERMP and these Regulations are adhered to; and
- Active participation of senior management in the risk management process.

### **11. Conflict of Interest**

All EBCE employees who are engaged in Approved Product transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the EBCE Conflict of Interest Code are required to complete annual conflict of interest filings on FPPC Form 700, and disclose investments as required by that Code. They are required by that Code to abstain from participating in or attempting to influence any decisions that foreseeably would have a material

financial effect on any such investment.

In addition to the foregoing disclosure requirement, EBCE employees engaged in Approved Product transactions, counterparty credit evaluation, or oversight of the foregoing are barred from direct investment in any company with whom EBCE has consummated any Approved Product transaction within the last two (2) years. Further, such employees must divest existing direct investments in Approved Product counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size (\$2,000) to require disclosure on FPPC Form 700. As used in this section, a “direct” investment means an investment which, if of sufficient size, is of a nature that would constitute an “investment” pursuant to the California Political Reform Act.

EBCE employees supervising staff who are subject to this policy are responsible for routinely reviewing the most recent Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. Updated copies of Form 700 shall be given to the supervisor/manager by the EBCE Conflict of Interest Filing Officer designated in the EBCE Conflict of Interest Code. The EBCE legal counsel will assist in reviewing these forms and providing legal advice in connection with such reviews on request.<sup>4</sup>

## **12. Policy Review**

Prudence is required in implementing any and all policies and procedures. Market and industry conditions, technology and risk tolerances tend to change over time. Therefore, the ERMP and these Regulations should be reviewed annually, or as necessary, in order to make adjustments in response to changes in business objectives and/or industry conditions. All recommended amendments to the ERMP are to be reviewed by the ROC and presented to the Board for final review and approval. Changes to these Regulations shall be reviewed and approved by the ROC.

<sup>4</sup> Non-staff ROC members shall not be subject to the requirements of Section 11 since their oversight functions are generally not transactional and company specific. Non-staff ROC members may be subject to conflict of interest compliance requirements at each of their own organizations.

## **Part II: Counterparty Risk Management**

### **13. Organizational Philosophy Toward Counterparty Risk**

#### **13.1. Objective and General Risk Policy**

EBCE's wholesale energy market activities are directed toward the goal of providing Energy, capacity, transmission and related services to its Participating Members at the lowest possible cost consistent with an acceptable level of risk. EBCE fulfills its supply obligations by using generating assets, or by contracting with counterparties for the purchase or sale of such assets on a long-term or short-term basis. Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with Approved Product transactions in the Energy wholesale markets. The objective of the wholesale counterparty risk policy is to preserve EBCE's capital, liquidity and supply reliability by limiting counterparty credit risk and counterparty concentration to acceptable levels.

#### **13.2. Expectations of the EBCE Board**

Analytical procedures for granting open lines of credit and managing counterparty exposures are required. However, EBCE recognizes that the models used in managing credit risk are not predictive; they are explanatory. Credit risk management models cannot predict individual credit events or collective credit events. The Finance and Administrative Services Department is expected to manage counterparty risks to acceptable levels established by the ROC and approved by the Board. The Board recognizes that EBCE is generally a net buyer of Energy. Exposure to wholesale counterparty credit risk will normally be greater in periods of rising market prices due to higher replacement costs in a rising market. On the other hand, in high hydrological conditions, where excess generation may be available for sale on the wholesale market, EBCE is exposed to greater counterparty credit risk if counterparties fail to take delivery, or if they fail to pay for power delivered.

### **14. Counterparty Risk Definitions**

#### **14.1. Counterparty Risk**

Counterparty risk is defined as the exposure to economic loss resulting from default by another party to a contract. Such risk exists in all financial and commodity markets and can be distinguished from other financial risks such as market risk, operational risk and regulatory risk.

Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. Contractual payments can result from purchases or sales. Under a sale, the counterparty owes cash and a receivable is created. The holder of the receivable is at risk of financial loss if the receivable is ultimately uncollectible. Under a purchase, the counterparty is obligated to deliver a



product. However, the counterparty may also be required to reimburse the purchasing party for financial loss in the event of delivery failure. Therefore, the purchasing party is at risk of financial loss if the counterparty is unwilling or unable to reimburse for financial losses.

The ERMP states that for all fixed price Approved Product transactions, the counterparty must possess a public credit rating of at least a BBB- (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). EBCE staff may consider counterparties with a rating below investment grade or counterparties with no NRSRO rating on a case-by-case basis with the approval of the ROC. If ratings differ between NRSRO's, the lowest available rating will be used for underwriting purposes.

## **14.2. Credit Risk**

For the purchaser of an Energy related product, credit risk is defined as the difference between the contracted price and current market price of a contracted product. If the current market price is greater than the contracted price, a positive MTM exists, thus exposing the purchaser to credit risk in the event of supplier default.

If the current market price is less than the contracted price, a negative MTM exists. The purchaser has credit exposure with a negative MTM if the deal is subject to termination or MTM damages. There is no credit exposure with negative MTM if the deal is subject to one-way liquidating damages and the purchaser is not the defaulting party.

If the seller has a positive MTM position in a transaction, the seller is exposed to profit risk in the event the counterparty defaults, where the seller would lose its opportunity to above market revenue. In contrast, if the seller has a negative MTM position in a transaction, the seller is exposed to liquidity risk and may be subject to margin calls if the MTM exceeds established credit limits.

## **15. Underwriting Standards**

All transacting counterparties shall be reviewed for creditworthiness. This review shall include:

- A search of public debt and implied unsecured credit ratings as published by a NRSRO such as Standard & Poor's, Moody's Investor Services and Fitch;
- Review of at least the two (2) most recent years audited financial statements receiving an unqualified opinion from a certified public accounting firm; and
- Other information, as available, from news services, trade publications, financial websites, etc.

For transacting counterparties without NRSRO ratings, EBCE credit staff shall determine an implied rating according to EBCE's internally-developed methodology and rating scale. Transacting for all counterparties shall require an implied "investment grade" rating of BBB- or its equivalent, at a minimum. EBCE credit staff may consider counterparties with a rating below BBB- or its equivalent on a

case-by-case basis. All sub-investment grade rated counterparties require ROC approval before transacting and may require credit assurances or other consideration.

## **16.Credit Risk Measurement**

Credit risk exposure should be measured as: (1) current exposure, and (2) potential exposure. Current credit risk exposure to a single counterparty is defined as the sum of: (1) the dollar value of all amounts invoiced and unpaid, and (2) the dollar amount of all uninvoiced deliveries. Potential credit exposure is the MTM value of all forward contracts from today forward, as reported by the business unit.

Total credit risk exposure is the sum of the variables shown in the formula below, less all offsetting amounts that are supported by legally binding netting agreements or available collateral. EBCE's credit exposure measurement is defined by the following formula:

$$\text{Credit Exposure} = \text{Current and Prior Month Sales (Net Sales}^5) + \text{MTM} - \text{Credit Enhancements}$$

In addition, potential credit risk exposure is captured by the CVaR statistic. The CVaR statistic represents the maximum dollar loss at a 95% confidence level within a certain time, due to volatility in market prices if the counterparty defaults. CVaR is a dollar estimate of the risk that potential changes in market price would result in increased credit exposure for all forward contracts. CVaR shall be presented as supplementary information for credit benchmarking. EBCE's CVaR calculation methodologies are documented in Appendix 8 of these Regulations.

## **17.Credit Enhancements**

Customers or counterparties that do not meet the minimum requirements for an extension of an open line of credit, as set forth in Section 15 of these Regulations, must post at least one (1) of the following types of security prior to the execution of transactions:

### **17.1. Guarantees and Surety Bonds**

Counterparties may provide a guarantee from a third party, or parties, which meets the creditworthiness requirements set forth in Section 15 of these Regulations. If a counterparty provides a guarantee, the amount of any open line of credit will be determined through an analysis of the financial strength of the guarantor. The guarantor will be considered secondarily liable for the obligations of the counterparty. In the event a surety bond is provided, EBCE will consider the surety bond as primarily liable for the obligations of the counterparty. All guarantees must be approved as to content and form by EBCE's legal counsel.

Preferred terms for guarantees include, but are not limited to:

- A statement that the guarantee is one of payment and not of collection;

<sup>5</sup> Provided there is a netting agreement with the counterparty. Otherwise, it will be the receivable portion only.

- A statement that the guarantor agrees to pay the guaranteed obligations on the date due;
- A statement that the guarantor's obligations under the guarantee rank pari passu with its senior unsecured debt obligations;
- A statement restricting the guarantor's right to terminate the guarantee, and any termination must still guarantee existing exposures as they may exist;
- A statement that the guaranteed obligations are unconditional, irrespective of value, genuineness, validity, waiver, release, alteration, amendment, and enforceability of the guaranteed obligations, and a statement that the guarantor waives the right of set-off, counterclaim, etc;
- A statement that the guarantee reinstates if any guaranteed payment made by the primary obligor is recaptured as a result of the primary obligor's bankruptcy or insolvency;
- A statement that the guarantor waives its right to subrogation until the guaranteed obligations are paid in full;
- A statement that the guarantee is binding on successors of the guarantor and a statement that EBCE is a beneficiary of the guarantee;
- A statement that the guarantee will be interpreted under either New York or California law; and
- A statement that the guarantor has subjected itself to jurisdiction and service of process in the jurisdiction in which the guarantee is to be performed (i.e., State of California).

Exceptions to the above concepts and/or acceptance of guarantees from entities domiciled outside the U.S. or Canada require ROC approval.

### **17.2. Letter of Credit**

Counterparties may provide an irrevocable Letter of Credit in an amount sufficient to cover the amount in excess of the credit limit approved by EBCE at the date the transactions are entered into (e.g., MTM in excess of credit limit). Letters of Credit must have a term of at least 45 days past the term of the transactions. Letters of Credit must be issued by a domestic bank (or domestic branch of a foreign bank) that has a senior debt rating of at least "A" or its equivalent from a NRSRO. Approved Banks should be monitored for any potential Letter of Credit concentration between EBCE and various counterparties.

Exposure to any single institution will be limited to 20% of EBCE's total credit exposure, unless exposure is derived from a few transactions whereby demanding Letter of Credits from several institutions would be unreasonable for the counterparty. If credit risk exposure is derived over the entire portfolio of transactions, the 20% rule will apply. Any exposures greater than 20% must be approved by the ROC. All Letters of Credit must be approved as to content and form by EBCE's legal counsel.

### **17.3. Prepayments**

Counterparties may provide a prepayment or cash margin deposit in an amount that is sufficient to

cover the related transactions. Discounts for prepayment, consistent with industry standards, may be applied to the sum owed as authorized by the Executive Director.

**18. Quality Assessment**

**18.1. Counterparty and Credit Analysis**

Middle Office staff are responsible for ensuring a standardized credit screening process for all counterparties. All counterparties must be reviewed for financial creditworthiness according to these guidelines.

Middle Office staff will submit a credit review report to the appropriate approval authority, depending on the level of credit requested, for consideration and action. For agency-rated counterparties, Middle Office staff may elect a rating similar to one derived by a NRSRO, and waive initial review requirements, if the counterparty is recognized and established in the industry. As a result, a more stringent review process should be followed for those entities that do not possess a NRSRO rating and/or have marginal financial capacity.

All counterparty credit lines and credit reviews will be submitted to the appropriate authority level as authorized in Section 19 of these Regulations. ROC actions can result in the approval or rejection of a proposed counterparty, or in an amendment to credit limits approved under delegated approval authorities. Approved counterparties will be grouped into three tiers. A counterparty’s tier status will be based on the credit evaluation matrix found in Table 1. More frequent monitoring may be required if a counterparty is subject to the possibility of a credit event (e.g., if their credit rating falls one full letter grade or greater, or if their credit rating falls below investment grade), or if industry factors dictate.

**Table 1  
Credit Evaluation Matrix**

	Tier 1	Tier 2	Tier 3
Criteria	Bilateral master agreement or transactions of one (1) month or longer within past two (2) years	No greater than prompt month transactions within past two (2) years	No transactions in past two (2) years
Type of Trading	All	Prompt month or less	Day-ahead (Prescheduling time frame)/Real-time

Credit Evaluation Requirement	At least annually	At least biennially, or as needed	None
External credit and EDF ratings checked	For RFPs and at least annually	Annually	Annually
Credit Limit	See Section 19	\$500,000	\$100,000
Event Monitoring	On-going	On-going	On-going

## 18.2. Credit Limits

Once a counterparty has been determined to be creditworthy, a credit limit will be proposed. An open line of credit may be extended up to the lesser of 5% of the counterparty's adjusted tangible net worth<sup>6</sup> or EBCE's maximum counterparty credit limits. In the case of municipal or public organizations, an open line of credit may be extended up to 10% of average free cash flow<sup>7</sup> for the prior two (2) years not to exceed EBCE's maximum counterparty credit limits.

### NRSRO/EBCE Internal Rating

### Maximum Counterparty Credit Limits

AA- and above	\$ 35 million
A+ to A-	\$ 25 million
BBB+	\$ 15 million
BBB	\$ 10 million
BBB-	\$ 5 million
BB+ and below	\$100,000 per Section 19.3

For example, if a municipal counterparty qualifies for a credit limit of \$10,000,000 based on the cash flow test (e.g., 10% of avg. free cash flow for past two (2) years), but only qualifies for an EBCE rating of BBB-, then the maximum policy limit allowed would be \$5,000,000.

Although a counterparty may qualify for a certain maximum credit limit, anticipated transaction volumes and other business factors may prompt the selection of a lower limit that is considered more appropriate. As a result, the credit limit methodology provides limit ceilings while allowing flexibility in response to normal business activities.

<sup>6</sup> Tangible Net Worth (TNW) = shareholder equity – goodwill – intangible assets – receivables from officers – investments in other trading companies – off-balance sheet liabilities, etc.

<sup>7</sup> Free Cash Flow = net income + non-cash charges such as depreciation + or - changes in accounts receivable, inventory, prepaid expenses, accounts payable, and accrued liabilities – cash dividends (general fund transfer) + net borrowing – capital expenditure.

### **18.3. Concentration Limits**

In addition to maintaining credit limits, EBCE staff shall strive to diversify transactions among counterparties. EBCE staff shall document the business reasons (e.g. differences in bid price, lack of other qualified suppliers, etc.) for awarding contracts to counterparties with high concentrations of credit exposure.

## **19. Approval Authorities**

### **19.1. Credit Authorization**

Approval authorities are based on the level of business experienced by EBCE on a historical and current basis within limits allowed under the Regulations. Authority to establish credit limits is segregated as follows:

Director of Procurement, Finance or Administrative Services:	Up to \$ 20Million
Executive Director	Up to \$ 50 Million
ROC:	Up to \$ 60 Million
Board:	\$ 60 Million +

The maximum amount of any open line of credit to be extended to any customer or counterparty shall not exceed \$50 million unless authorized by the ROC. If credit lines exceeding \$60 million are anticipated, approval by the Board is required.

### **19.2. Increases to Wholesale Counterparty Limits**

Any increase to an existing open line of credit must have the written approval of the Director of Finance and Administrative Services, the Executive Director or the ROC, within the authorized limits stated in Section 19.1. A sign off sheet shall be used to ensure written approval according to the limits authorized by this Regulations.

### **19.3. Credit Review Exceptions**

Wholesale counterparties not subject to the above credit review criteria include those associated with day-ahead and current day purchases where risk associated with market movements is minimal. Sales transactions within the day-ahead and current day can be consummated with a counterparty that has not been assigned a pre-approved credit limit if the counterparty maintains at least a BBB-/Baa3/BBB-rating from an NRSRO. Such transactions may not exceed \$250,000 per counterparty.

If a counterparty or guarantor does not maintain any NRSRO rating, and if a counterparty credit review has not been performed in the past 24 months, a policy limit of \$100,000 in aggregate net receivables per counterparty may be authorized, with the approval of the Executive Director, until a formal review

can be completed. These individual non-rated counterparty limits are subject to a total net receivable portfolio limit not to exceed \$1,000,000, in aggregate.

## **20. Wholesale Credit / Counterparty Management**

### **20.1. Monitoring and Reporting Exposures**

Middle Office staff are responsible for monitoring and reporting on the risk management program. A list of reports, which document trade positions, risk exposure, authorization and policy compliance, may be found in Appendix 7 of these Regulations. The credit exposure for each customer or counterparty described in these Regulations may be monitored according to concentration in the following areas: credit rating, counterparty, region, contract type, contract term and MTM exposure.

Middle Office staff are also responsible for communicating this information to management under the timelines outlined in Appendix 7 of these Regulations, and for establishing a violation reporting process to document exceptions to the ERMP or these Regulations. Exception Reports will document the nature of exception, and the actions taken to correct exceptions.

The credit risk reporting system should be integrated with the transaction processing system. This is generally an extension of the concept that credit risk assessment and reporting should be supported by the normal transaction processing system. The credit system, should be integrated with the deal capture system and should not be a stand-alone system, or an add-on with manual interface.

### **20.2. Master Enabling Agreements**

The use of master enabling agreements<sup>8</sup> to document trading relationships with counterparties is considered to be the preferred practice and should be followed whenever reasonably possible. The general form of such master enabling agreements shall be approved by the Board upon recommendation of the ROC before any such master enabling agreement is used for any individual counterparty transaction. Transactions entered into under such contracts and agreements are subject to the requirements of these Regulations, and limited to Approved Products. The department managers are responsible for ensuring that master enabling agreements are developed in conjunction with legal counsel review, approved by the Board and used for the following transactions:

- The Western Systems Power Pool (“WSPP”) Agreement may be used as the master agreement for transacting Approved Products with WSPP members. The WSPP Agreement applies to all transactions between WSPP members unless the parties to a transaction expressly opt out of the WSPP Agreement.
- The Edison Electric Institute (“EEI”) Agreement, or its equivalent, as modified by a set of Board approved special provisions, may be used as the master agreement for transacting Approved Products. The EEI Agreement provides for an array of reciprocal credit and collateral requirements for each party, and includes negotiated provisions as specified on a

<sup>8</sup> The form and content of each master agreement must be approved by the Board.

“Cover Sheet”. The EEI Agreement can also be supplemented with specific annexes (e.g., Credit Annex, Collateral Annex, REC Annex).

- Transmission transactions shall be consummated under an Open Access Transmission Tariff or Board approved bilateral agreement.
- Master The International Swap Dealers Association (“ISDA”) Agreement, or its equivalent, may be used as the master agreement for transacting financial based Approved Products.

A master enabling agreement executed by EBCE and a counterparty provides the general terms and conditions for all transactions entered into with that counterparty. All master enabling agreements are to be executed and entered into in accordance with the ERMP and these Regulations, and with applicable EBCE policy and procedures.

Netting agreements should be incorporated into all counterparty agreements and transactions.

### **20.3. Premium Surcharge on Counterparties Without Master Enabling Agreement**

Master enabling agreements require credit and performance assurances from a counterparty that provide protection against counterparty credit risk. In the event EBCE desires to transact with a counterparty without such assurances, a premium surcharge shall be imposed on the counterparty’s bid to compensate for its increased credit risk and allow for comparison of the relative prices, taking into account the varying credit risks which might be incurred. The following formula shall be used in calculating the surcharge:

$$\text{Premium Surcharge} = Edf * Fwd * 1.645 * \sigma$$

Where: (i) *Edf* is the expected default frequency of the counterparty, (ii) *Fwd* is the current forward price, (iii)  $\sigma$  is the market implied volatility (or standard deviation) of the commodity price, and (iv) 1.645 represents the number standard deviations where the price falls at a 95% confidence level.

#### **Example of Premium Surcharge Calculation**

A counterparty with a master enabling agreement where EBCE has accepted changes to its preferred terms, is bidding on EBCE’s RFP for a NP-15 peak Energy product for the 3<sup>rd</sup> quarter. The current market forward price for the product is \$50/MWh, market implied volatility is 40%, and the expected default frequency for this counterparty is 0.55%. Therefore, a premium of \$0.18/MWh ( $0.0055 * 50 * 1.645 * 0.4$ ) should be added to the counterparty’s bid price for comparison with other bids.

### **20.4. Margin Calls**

If a counterparty has exceeded a credit limit, the Middle Office is responsible for initiating a margin call if such action is authorized under the applicable master enabling agreement. Calling margin may include a request for cash collateral or other credit enhancement (i.e., letter of credit, etc.). A margin call is necessary when counterparty credit exposure exceeds an established credit limit. The appropriate timing of a margin call is not dictated by these Regulations. However, factors such as



counterparty financial capacity, volume of business, overall portfolio concentration and market conditions should be considered. A margin call should be considered necessary if credit exposure exceeds the counterparty's limit by more than one ratings notch<sup>9</sup>. The same would apply if the counterparty suffers a ratings downgrade.

EBCE as a buyer or seller may be exposed to margin calls from counterparties. Middle Office staff must be aware of collateral thresholds assigned to EBCE by counterparties, and monitor these limits no less than monthly, and shall keep the Executive Director informed in the event of market volatility. EBCE may be exposed to margin calls if a significant level of purchases or sales is reached.

### **20.5. Transaction Authority**

No new transactions are to be entered into with counterparties that have exceeded their credit limits unless: (1) the new transactions are used to mitigate (offset) existing exposure, and (2) if those transactions have prior approval of the Executive Director, or ROC within authorized limits as established in this Regulations.

### **21. Segregation of Duties**

Controls over counterparty inputs and systems operations are of particular importance in ensuring the integrity of data used in counterparty risk control and management. In all cases the Middle Office will be responsible for managing the counterparty review and ratings process and all counterparty reporting. Front Office staff is responsible for recommending new counterparties to the Middle Office for review and approval.

<sup>9</sup> Notch as referenced by Nationally Recognized Statistical Rating Organization (e.g., from BBB to BBB+ represents one notch).

# APPENDIX 1

## DEFINITIONS

### 1. Definitions

Whenever used in these Regulations, the following terms shall have the following respective meanings, provided, capitalized terms used in these Regulations that are not defined in this Appendix 1 shall have the meaning indicated in Appendix A Master Definition Supplement of the CAISO Tariff:

- 1.1. “Approved Counterparty List” is a list of the active trading counterparties that have been authorized for trading, and that have been assigned an approved credit limit by the Middle Office or ROC.
- 1.2. “Approved Product” means transactions types or products that are authorized pursuant to these Regulations, as specifically identified in Appendix 6.
- 1.3. “Balance-of-Month Transaction” means a purchase or sale of electric Energy, capacity and/or other related attributes for a term not greater than one month to be performed or delivered within the current or next succeeding calendar month.
- 1.4. “California Independent System Operator Corporation” or “CAISO” means the non-profit public benefit corporation responsible for the provision of fair and open transmission access, and maintaining reliable and efficient operation of that portion of the electric grid contained within its defined balancing authority area, pursuant to the California Public Utilities Code, or its successor entity.
- 1.5. “CAISO Tariff” means the CAISO FERC Electric Tariff.
- 1.6. “Call Option” means an option that gives the buyer (holder) the right, but not the obligation, to buy a futures contract (enter into a long futures position) for a specified price within a specified period of time in exchange for a one-time premium payment. It obligates the seller (writer) of an option to sell the underlying futures contract (enter into a short futures position) at the designated price, should the option be exercised at that price.
- 1.7. “Cap and Trade Program” means CARB’s Regulation for the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms as set forth in title 17, California Code of Regulations, chapter 1, subchapter 10, article 5 (commencing with section 95800), as such may be amended from time to time, or  
(ii) other GHG compliance obligations, including but not limited to, federal, regional, state, or local jurisdictions.
- 1.8. “CARB” means the California Air Resources Board, or its regulatory successor.

- 1.9. "CARB Offset Credit" means a tradable compliance instrument issued by CARB that represents a GHG reduction of GHG removal enhancement of one metric ton of carbon dioxide equivalent.
- 1.10. "Commercial Compliance Policy" means the Commercial Compliance Policy adopted by the Board, as such may be amended from time to time.
- 1.11. "Congestion Revenue Right" or "CRR" means a financial instruments made available through the CAISO's CRR Allocations and Auctions. CRRs are acquired primarily for the purpose of offsetting integrated forward market transmission congestion costs that are incurred in the day-ahead market on CAISO managed transmission paths.
- 1.12. "Cost of Value at Risk" or "Cost VaR" means a calculation that summarizes the expected maximum "cost" exposure over a target horizon within a given confidence level.
- 1.13. "Counterparty" means a party on either side of a transaction (i.e., purchasing counterparty as opposed to a selling counterparty).
- 1.14. "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.15. "CRR Allocation" means the process of allocating CRR source-to-sink combinations, both annually and monthly, based on nominations by registered Candidate CRR Holders.
- 1.16. "CRR Auction" means the awarding of bids for CRR source-to-sink combinations, by the CAISO, made by Candidate CRR Holders based on criteria established by the CAISO.
- 1.17. "CVaR" means credit value at risk.
- 1.18. "Board of Directors" of "Board" means the EBCE Board of Directors, which is made up of an elected official from each of the participating jurisdictions and one representative from the EBCE Community Advisory Committee.
- 1.19. "EBCE" means East Bay Community Energy.
- 1.20. "Emission Allowance" means a limited tradable authorization to emit up to one metric ton of carbon dioxide equivalent.

- 1.21. "Energy" means an electric charge that lets work be accomplished.
- 1.22. "ERMP" means the Energy Risk Management Policy.
- 1.23. "FERC" means the Federal Energy Regulatory Board, or its regulatory successor.
- 1.24. "Forward Power Transaction" means an Energy transaction that starts beyond the Balance-of-Month.
- 1.25. "Executive Director" means the Executive Director of EBCE.
- 1.26. "Greenhouse Gas" or "GHG" includes, but is not limited to, carbon dioxide ("CO<sub>2</sub>"), methane ("CH<sub>4</sub>"), nitrous oxide ("N<sub>2</sub>O"), sulfur hexafluoride ("SF<sub>6</sub>"), hydro fluorocarbons ("HFCs"), perfluorocarbons ("PFCs"), and other fluorinated gasses.
- 1.27. "GHG Compliance Instrument" means any instrument, including but not limited to, Emission Allowance, CARB Offset Credit, or Sector-Based Offset Credit that can be used to fulfill a GHG emissions compliance obligation.
- 1.28. "Letter of Credit" means a document, typically from a bank, assuring that a seller will receive payment up to the amount of the letter of credit, as long as certain documentary delivery conditions have been met.
- 1.29. "Long Term Transaction" means a purchase or sale of natural gas, electric power, capacity, transmission and/or other related attributes to be performed or delivered for a duration longer than a Balance of Month Transaction.
- 1.30. "MTM" means Mark-to-Market. MTM is a measure of the fair value of accounts that can change over time, such as assets and liabilities. MTM aims to provide a realistic appraisal of an institution's or company's current financial situation. The accounting act of recording the price or value of a security, portfolio or account to reflect its current market value rather than its book value.
- 1.31. "Natural Gas" means a flammable gas, consisting largely of methane and other hydrocarbons, occurring naturally underground (often in association with petroleum) and used as fuel.
- 1.32. "NRSRO" means nationally recognized statistical rating organization.
- 1.33. "Participating Member" means a participating jurisdiction within the East Bay Community Energy program, and which receives certain wholesale and retail services from EBCE.

- 1.34. "Prompt month" means the next full calendar month beyond the current month.
- 1.35. "Put Option" means an option that gives the buyer, or holder, the right, but not the obligation, to sell a futures contract at a specific price within a specific period of time in exchange for a one-time premium payment. It obligates the seller, or writer, of the option to buy the underlying futures contract at the designated price, should an option be exercised at that price.
- 1.36. "Regulations" means these Energy and Counterparty Risk Management Regulations.
- 1.37. "Renewable Energy Credit" or "REC" is the (i) right to the environmental benefits from generating electricity from renewable Energy sources that can be sold and traded and the owner of the REC can legally claim to have purchased renewable Energy, or (ii) as set forth in California Public Utilities Code §399.12, as such can be amended from time to time.
- 1.38. "Renewable Energy Products" means any combination of Energy, capacity, RECs, or other environmental attributes produced by a generation facility or resource that is eligible to satisfy applicable renewable Energy mandates as defined by federal, state, or local jurisdictions.
- 1.39. "Resource Adequacy" means the resource adequacy requirements established for load serving entities by the their respective governing body having jurisdiction.
- 1.40. "ROC" mean the Risk Oversight Committee.
- 1.41. "Sector-Based Offset Credit" means a credit issued from a sector-based crediting program once the crediting baseline for a sector has been reached.
- 1.42. "Speculation" means the practice of engaging in risky financial transactions in an attempt to profit from fluctuations in the market value of a tradable good such as a financial instrument. Speculation can in principle involve any tradable good or financial instrument.
- 1.43. "Transmission" means the bulk transfer of electrical Energy, from generating power plants to electrical substations located near demand centers. This is distinct from the local wiring between high-voltage substations and customers, which is typically referred to as electric power distribution.
- 1.44. "Wholesale Energy Services Provider" means the Northern California Power Agency ("NCPA").

## **APPENDIX 2**

### **RISK OVERSIGHT COMMITTEE**

#### **1. Roles and Responsibilities**

##### **1.1. ROC Members**

All members of the ROC have the following responsibilities:

- Oversee implementation of risk strategy of EBCE as such pertains to transaction activities;
- Advise the Executive Director on educational needs on risk management at all levels within EBCE;
- Review proposed changes to the ERMP and these Regulations by other ROC members;
- Attend all ROC meetings or ensure that fully-briefed alternates attend, including meetings requested by a member requiring ROC approval in a timely fashion; and
- Monitor key activities of the Front Office, Middle Office and Back Office as such pertain to transaction activities.

##### **1.2. ROC Advisors**

EBCE's legal counsel has the following responsibilities:

- Reviewing and approving all forms of contracts used by EBCE to consummate transactions of Approved Products;
- Determining what legal documentation is required, and proposing monitoring and review procedures to ensure legal and regulatory compliance with the ERMP and these Regulations; and
- Reviewing processes and procedures associated with transaction activities to ensure legal compliance with all local, state and federal laws and regulations.

ROC members' and all advisors' roles and responsibilities are detailed in the Table 2 below:

**Table 2**  
**Roles and Responsibilities**

<b>Responsibility</b>	<b>Executive Director</b>	<b>Director Admin. Services</b>	<b>Director Power Resources</b>	<b>Middle Office</b>	<b>Legal Counsel</b>
Oversee implementation of EBCE's risk strategy.	✓	✓	✓	✓	
Verify to ROC that rules related to transacting authority and speculations are complied with by Front Office.				✓	
Verify to the ROC that all adopted Regulations are consistent with applicable law.					✓
Verify that Front Office and Back Office staff are in compliance with all policies and regulations.				✓	
Verify that the ROC is provided the most accurate forecast possible of market trends and a summary of stress testing and sensitivity analysis.				✓	
Ensure to the ROC that operational performance of the Front, Middle and Back Offices are in conformance with policies approved by the Board.	✓			✓	
Verify to the Executive Director that operational performance of the Front, Middle and Back Offices are in conformance with the ERMP and these Regulations.		✓	✓	✓	
Verify that the ROC is provided with an accurate report on Front Office operations.			✓	✓	
Ensure to the ROC that the Middle Office reporting is accurate and in compliance with Middle Office policies.		✓		✓	
Verify that the ROC is provided an accurate reporting of all transactions.				✓	
Ensure that the ROC is provided accurate reporting of risk measures and performance monitoring (including MTM, Cost VaR, CVaR) and compliance (limits, transaction authority, transaction type, instrument type).				✓	
Verify to the ROC that all approved contracts and enabling agreements have followed a process that is consistent with applicable law.					✓

Ensure that the ROC is provided with an accurate report on all Middle Office operations, especially with regard to market and credit exposure.		✓		✓	
Ensure that the ROC is provided with accurate reports on any transactions which exceeded limits, and proposed actions on strengthening compliance procedures and recommendations for corrective action.				✓	
Ensure that the ROC is provided with reporting that is consistent with the ERMP and these Regulations.	✓	✓	✓	✓	
Provide accurate reports to the ROC on any discrepancies between the Back Office settlement and reconciliation with the deal capture system.		✓			
Provide accurate reports on the risk management program to the Board.	✓	✓	✓	✓	
Provide timely support and legal advice to the Front, Middle and Back Office operations and to the ROC.					✓
Provide accurate reports on trading operations and all transactions carried out since last ROC meeting and summary of current and future transaction strategies.			✓		
Provide accurate reports on operational performance of Front and Back Offices with strategic objectives and provide solutions for violations.				✓	
Review proposed changes to ERMP by other ROC members.	✓	✓	✓	✓	✓
Advise ROC on analysis of potential enabling agreements with regard to Front and Back Office operations.	✓	✓	✓		
Advise ROC on consideration of pending enabling agreements and large contracts with regard to market and credit risk.			✓	✓	
Advise ROC on proposed portfolio and trader limits.	✓	✓	✓	✓	
Attend all ROC meetings or ensure that a fully briefed delegated representative is present.	✓	✓	✓	✓	✓
Advise ROC on proposed changes to Middle Office procedures.		✓		✓	



Provide ROC with “market view” of future market conditions and results of market models.			✓		
Provide ROC with “market view” of financial market conditions and implications on an as needed basis.		✓			
Monitor key activities of Front, Middle and Back Offices.		✓	✓	✓	
Present ROC-approved recommendations for changes to ERMP for consideration by the Board.	✓				
Brief the ROC on transaction operations with special regard to transacting authority and speculation issues.		✓	✓		
Advise ROC on education needs on risk management at all levels within EBCE.	✓	✓	✓	✓	✓
Serve as Chairperson for ROC.	✓				
Serve as official spokesperson for the ROC reports to the Board.	✓				
Determine documentation and legal review requirements to all processes are consistent with applicable law.					✓
Ensure Front and Middle Offices, and Legal Counsel participate on new product or transaction type development team.		✓	✓	✓	✓
Propose change to Front and Back Office Regulations.	✓	✓	✓	✓	✓

## **APPENDIX 3**

### **AUTHORIZED CRR TRANSACTING GUIDELINES**

#### **1. Congestion Revenue Rights Transacting Guidelines**

Congestion Revenue Rights are used by CAISO market participants to hedge against the cost of congestion associated with delivering resources to serve load obligations within a locational marginal price (LMP) market.

##### **1.1. CRR Allocation Process**

EBCE staff will participate in the CRR Allocation and Auction markets as follows:

EBCE staff nominates its CRRs during the allocation process in general conformance with the following methodology:

- CRR nominations are limited by the seasonal/monthly eligible quantities.
- CRR valuation of source/sink combinations are based upon the historical congestion component of the LMP. If access to an Integrated Forward Market (IFM) pricing model becomes available, simulated prices may be used in the CRR valuation process.

CRRs that have EBCE generation or scheduling points as sources, and the DLAP\_PGAE-APND pricing node as the sink, are nominated first when the expected average congestion is statistically greater than zero, and no one historical period exhibited large negative congestion. Nominated amounts are equal to or less than expected generation in order to create a perfect or partial hedge. When expected congestion is low, nominated amounts are low and increase as expected congestion increases.

- After exhausting possible EBCE source/sink pairs, then nominations may be made from non-EBCE source/sink combinations that statistically have positive average congestion across historical periods with, no substantial negative congestion, as follows:
  - Rank the CRRs by congestion value.
  - Nominate the highest valued CRRs first, working down the possible Source-Sink combinations until the seasonal/month eligible quantities are exhausted.
  - Avoid large positions at any one non-EBCE sourced CRR.
  - Avoid clustered CRRs (e.g., source CRRs in the same geographic area that would expect to have the same or similar congestion component price).
- Avoid nominating both EBCE and non-EBCE sourced CRRs when data and experience shows that the CRR will not clear the allocation feasibility test.
- Once the above selection criteria results in a nomination portfolio, and prior to final submission, EBCE stress tests the portfolio on historical data for any large negative single period positions and if found removes that position prior to submission.

## **1.2. CRR Auction Process**

EBCE staff bids into the CRR Auction in general conformance with the following methodology:

- Bids are made only to unwind CRRs obtained in the allocation process that are non-hedged, or are expected to have a negative value due to operational changes.
- Prices on the bid curves start at zero and go negative.
- Bids that clear in the auction result in revenue to EBCE and reduce overall risk by unwinding existing un-hedged allocation portfolio positions.
- Auction revenue is left in the EBCE CRR collateral account until the monthly/seasonal period is over.

## **APPENDIX 4**

### **AUTHORIZED APPROVED PRODUCT TRANSACTION LIMITS**

#### **1. Approved Product Transaction Limits**

##### **1.1. Executive Director**

The Executive Director is assigned the following primary responsibilities and transactions limits:

- Developing and approving all long-term supply strategies. Approval authority for long-term strategic plans and modeling parameters is not limited by fiscal constraints.
- Approval of financial authority limits associated with Approved Product transactions as recommended by the ROC.
- Authority for individual transactions as authorized under Board approved agreements or resolutions.
- Approval authority for Approved Product transactions up to, but not greater than, 115% of a Participating Member's annual load forecast, including executed fuel transactions that have been made to support generation operations up to 115% of load.
- All optimization strategies, statistical/procedural risk management methods (including risk tolerances), and resulting exposures.
- Approval of premiums and terms associated with the use of financial instruments on a case-by-case basis.

##### **1.2. Director of Power Resources**

The Director of Power Resources is assigned the following primary responsibilities and transaction limits:

- Approval authority for Approved Product transactions up to, but not greater than, 115% of a Participating Member's annual load forecast, including executed fuel transactions that have been made to support generation operations up to 115% of load.
- Authority to enter individual transactions with a term not to exceed 24 cumulative months, and not to extend past 60 consecutive months from the calendar month following the date of the transaction.

##### **1.3. Scheduler and Planner (EBCE's Wholesale Energy Services Provider)**

- Planning functions to determine the appropriate transactions necessary to maintain load/resource balance from day-ahead to Balance-of-Month in duration, and prompt month beginning 10 days prior to the conclusion of the current month.

- Approval authority for Approved Product transactions up to, but not greater than, the hourly peak load forecast, including executed fuel transactions that have been made to support generation operations, or to support economic optimization of generation assets.
- Authority to enter individual transactions with a term not to exceed balance-of-month, and prompt month beginning 10 days prior to the conclusion of the current month. Transacting is limited to variability between supply requirements and available resources.

**Approved Product Transaction Limits Summary**

	<b>Executive Director</b>	<b>Director of Power Resources</b>	<b>Scheduler / Planner EBCE Wholesale Energy Services Provider</b>
<b>Transaction Term Limits:</b>	As authorized under Board approved resolutions, programs or project agreements.	Transactions for a term up to 24 cumulative months, within the next 60 consecutive months.	Day-ahead to balance-of-month. Prompt month beginning 10 days prior to conclusion of current month.
<b>Transaction Volume Limits:</b>	Approved Product volume limits up to 115% of annual load forecast.	Approved Product volume limits up to 115% of annual load forecast.	<ol style="list-style-type: none"> <li>1. Approved Product volume limits up to Hourly peak load forecast.</li> <li>2. Transacting limited to variability between load requirements and available resources.</li> <li>3. Fuel transactions for power plant consumption limited to volumes necessary to support generation operations up to 115% of load.</li> </ol>

## **APPENDIX 5**

### **NEW PRODUCT DEVELOPMENT PROCEDURES**

#### **1. New Product Development**

When the Front Office staff request to transact a new product type, instrument or strategy, several control processes must take place to ensure EBCE can identify, manage, control and report on the risks from the new transaction.

The process for submitting a request for a new Approved Product type is as follows:

1. The Front Office staff notifies Middle Office staff of his/her desire to enter into a new type of transaction. The Front Office staff are responsible for reviewing the transaction details, including all the key risk, pricing and operational elements of the transactions with Middle Office staff. Middle Office staff assume responsibility for undertaking all the risk and processing implications of the proposed transaction.
2. The Front Office staff is responsible for preparing a new product report for review and consideration by Middle Office staff. This report requires the Front Office staff to document all of the risk attributes of the transaction, and how they will be controlled (primarily focusing on market and credit risk).
3. Middle Office staff will review the new product report and begin the process of determining EBCE's ability to record, process and manage the transaction.
4. Middle Office staff first ascertains if the Front Office staff has the ability to accurately price the transaction. Secondly, Middle Office staff determines whether the risk of the transaction can be accurately measured. In either case, if the Front Office staff does not have the capability to price or measure the risk of the transaction, the Front Office staff is notified, and the Front Office staff must discuss the model development or purchase options with the Middle Office staff before the transaction can be authorized.
5. If the Front Office staff can price and model the risk of the new product, then the Middle Office staff will evaluate the Front Office's operational readiness to execute the transaction. The Middle Office staff will also evaluate the Middle Office's and Back Office's readiness to transact the new product. If any outstanding issues or concerns are identified by the Middle Office staff as part of the review, the issues or concerns identified must be resolved prior to transacting the new product.
6. The Middle Office staff then gathers all of the new product report summaries, and prepares a written recommendation to the ROC for consideration and approval. This written recommendation will consider whether or not the risks and potential control considerations, if any, warrant entering into the new product type.

## New Product Approval Checklist

Risk/Task to be Completed During the Analysis	Primary Accountability
<b>Business Strategy</b>	
Sponsor new strategy	Front Office
Understand and document the economics of the new strategy	Front Office
Define the resource requirements for the new product	Front Office
<b>Regulatory and Legal Risks</b>	
Identify applicable California and local regulatory restrictions for product or business	Legal Counsel
Verify counterparty power and authority to enter into activity	Legal Counsel
Determine what legal documentation is required	Legal Counsel
Propose monitoring and review procedures to ensure legal/regulatory compliance	Legal Counsel
Designate the supervisor responsible to ensure that the product is sold only to counterparties for which it is suitable	Front Office
Determine if sufficient resources are available to support regulatory and legal requirements	Front Office
<b>Market Risks</b>	
Identify and analyze market risk	Front Office/Middle Office
Specify management's intention (Hold positions, actively trade or hedge)	Front Office
Propose fair market value and risk measurement methodology	Middle Office
Determine hedging approach	Front Office
Establish product trading limits	Middle Office
Determine impact on total position limits	Middle Office
Establish special interim limits on control the new product expansion in a measured, granular manner	Middle Office
Define and recommend management reporting requirements	Middle Office
Present report format for communication of positions on a timely basis	Front Office
Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items	Middle Office
<b>Credit Risks</b>	
Identify and analyze credit risk of product	Middle Office
Develop methodology for capturing facilities and counterparties in the credit reporting system and measuring credit risk and concentration exposures	Middle Office
Define procedure for monitoring credit exposure	Middle Office
Identify target counterparties, determine suitability and request credit facilities	Middle Office
Determine proper procedure for perfecting collateral, netting agreements	Middle Office
Recommend maximum credit exposure limits for counterparties	Middle Office
Develop capability to report daily/weekly credit limit compliance	Middle Office
Check if the new product involves commitments, guarantees, contingencies or any other off-balance sheet items	Middle Office
<b>Operational Risks</b>	
Verify consistency with ERMP	Front Office/Middle Office
Define transaction tracking plan and procedures	Middle Office
Develop required deal sheet modifications	Front Office
Settlement procedures – how will transaction payment/billing be handled?	Back Office
Authorizations/approvals – what approval levels or delegation of authority is required?	Front Office/Middle Office
Develop procedure for transacting from start to finish	Front Office/Middle

	Office/Back Office
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Note: Advice services in areas such as valuation, market/credit risk management, legal review, accounting/tax may also be sought and presented as part of this process.



## APPENDIX 6 APPROVED PRODUCTS

### 1. Approved Products

The Energy and Energy related products that EBCE is authorized to transact are as follows:

Approved Products	Pre-Approved Examples	Authorization
<b>1. Long Term Transactions for Energy</b>	<ul style="list-style-type: none"> <li>• Purchases of Energy to cover the forecasted supply shortage of the Participating Members</li> <li>• Sales of Energy amounts that are forecasted to be surplus to a Participating Member’s need</li> <li>• Liquidating “in the money” and “out of the money” transactions for optimization in accordance to a dual volume-VAR framework.</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>2. Balance-of-Month Transaction for Energy</b>	<ul style="list-style-type: none"> <li>• Energy purchases/sales within defined term and volume limits</li> <li>• Loss of generation</li> <li>• Loss of transmission</li> <li>• Forecasting errors</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>3. Day-Ahead and Real-Time Power Transactions Through a BAA (e.g., CAISO)</b>	<ul style="list-style-type: none"> <li>• Purchasing Energy from the CAISO day-ahead and/or real-time market to serve load</li> <li>• Selling Energy into the CAISO day-ahead and/or real-time market from generation resources</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>4. Purchase/Sale of Capacity</b>	<ul style="list-style-type: none"> <li>• Short-term or forward purchases of capacity products (e.g., Ancillary Services and Resource Adequacy products)</li> <li>• Short-term or forward sales of capacity products (e.g., Ancillary Services and Resource Adequacy products)</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>5. Purchase/Sale of Physical Call Options</b>	<ul style="list-style-type: none"> <li>• To cover potential supply deficiency due to unpredictable weather conditions (e.g., hydrological forecast error)</li> <li>• To balance load and resources in an illiquid market</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>

	<ul style="list-style-type: none"> <li>• To provide a hedge against a Participating Member's net open position</li> <li>• Sale of a hedged (with physical plant) call option</li> </ul>	
<b>6. Purchase/Sale of Physical Put Options</b>	<ul style="list-style-type: none"> <li>• To hedge a surplus resource position</li> <li>• Sale of an option for the sole purpose of unwinding a purchase if economically advantageous</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>7. Transmission</b>	<ul style="list-style-type: none"> <li>• Purchases/sales of firm and non-firm transmission capacity required for the delivery Energy</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>8. GHG Compliance Instruments</b>	<ul style="list-style-type: none"> <li>• Purchases of Emission Allowances from bilateral trades, and from the CARB administered Cap and Trade Program auctions and reserve auctions to satisfy actual and/or forecasted GHG emissions compliance obligations attributed to EBCE generation and scheduling activities (e.g. imports)</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>
<b>9. Renewable Energy Products</b>	<ul style="list-style-type: none"> <li>• Purchases of Renewable Energy Products to satisfy any requirement for such products under applicable law; Bilateral purchases are to be consummated under approved contract forms, follow approved credit risk limit procedures, and all other applicable risk management practices defined in this regulation</li> <li>• Sales of Renewable Energy Products for the sole purpose of eliminating a surplus</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> </ul>

<p><b>10. Congestion Revenue Rights</b></p>	<ul style="list-style-type: none"> <li>• Participation in the CRR Allocation and CRR Auction processes through the submission of nominations and/or bids in the Annual and/or Monthly Congestion Revenue Right Allocation and Auction processes administered by the CAISO</li> </ul>	<ul style="list-style-type: none"> <li>• Authorized in accordance with the limits as set forth in these Regulations.</li> <li>• See Appendix 3 to these Regulations</li> </ul>
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## APPENDIX 7 MANAGEMENT REPORTS

### 1. Management Reports

The following energy risk management reports shall be developed and presented as further described in the following table:

	Primary Responsibility			Report Frequency			
	Front	Middle	Back	Weekly	Monthly	Quarterly	Annual
<b>Management Report</b>							
Load and Resource Balance	X					X	
Portfolio Performance		X				X	
Portfolio Risk Exposure (Open Position Cost VaR)		X				X	
Exceptions Report		X				X	
Master Agreements	X						X
Policies Update		X					X
Transaction Position Detail		X			X		
MTM		X		X			
Credit Limit Status by Counterparty		X		X			
Trading Strategy	X				X		
Scenario Planning	X						X
Pending Agreements	X					X	
Energy Transaction Summary	X				X		
Non-Energy Transaction Summary	X				X		
Market Forecast	X				X		
Performance to Budget			X			X	
Procedure Exceptions			X		X		

#### 1.1. Description of Management Reports

- **Load and Resource Balance:** Front Office report detailing total resources by source as compared to total load. Report shows supply surpluses and shortages. The Load Resource Balance report is developed weekly and presented to the ROC quarterly.
- **Portfolio Performance:** Middle Office report comparing the cost of the portfolio of contracts, to the market value of the portfolio (tracking what we paid for it to what it's worth now). This is the counterpart to the risk exposure report. The Portfolio Performance report is developed weekly and presented to the ROC quarterly.

- Portfolio Risk Exposure (Open Position Cost VaR): Middle Office report showing portfolio exposures by month due to price volatility. The Portfolio Risk Exposure report is developed weekly and presented to the ROC.
- Exception Report: Middle Office report summarizing current exception and violation reports. The Exception Report is developed quarterly presented to the ROC.
- Master Agreements: Front Office report summarizing the current set of approved master agreements by approved counterparty. The Master Agreements report is developed quarterly presented to the ROC.
- Policies Update: Middle Office report providing annual review of risk management policies and procedures and recommendations for updates. The Policies Update report is presented to the ROC.
- Transaction Position Detail: Middle Office report showing detail of Portfolio Performance report. Individual deal details showing MWh under contract and total dollars sorted by counterparty in support of the Portfolio Performance report are included in this report. The Transaction Position Detail report is presented to the ROC.
- MTM: Middle Office report showing MTM for life of deals by counterparty. The MTM report is developed weekly presented to Front Office and Back Office staff quarterly
- Credit Limit Status by Counterparty: Middle Office report showing counterparty credit limits, credit used and credit remaining. Special flagging of counterparties nearing their credit limits should also be shown. The Credit Limit Status by Counterparty report is presented to Front Office and Back Office staff weekly.
- Trading Strategy: Front Office report detailing trading strategies for various periods (e.g., daily, monthly, quarterly, future years). The Trading Strategy report is presented to the ROC quarterly.
- Scenario Planning: Front Office report detailing potential scenarios, expected result and probabilities. The Scenario Planning report is presented to the ROC quarterly.
- Pending Agreements: Front Office report detailing status of negotiations with potential counterparties on enabling agreements. The Pending Agreements report is developed weekly and presented to the ROC quarterly
- Energy Transaction Summary: Front Office report summarizing, by counterparty, Energy related transactions, both completed and contracted, involving Energy delivery. The Energy Transaction Summary report is developed weekly and presented to the ROC quarterly

- Non-Energy Transaction Summary: Front Office report summarizing, by counterparty, non-CAISO market Energy related transactions (puts, calls, options, RECs, GHG Compliance Instruments and etc.) which do not involve (or are not specifically reliant on) Energy delivery. The Non-Energy Transaction Summary report is developed monthly presented to the ROC quarterly
- Market Forecast: Front Office report detailing forecast of market for periods (e.g. monthly, quarterly, future years). The Market Forecast report is presented to the ROC.
- Performance to Budget: Back Office report comparing incurred Energy costs to budgeted costs and existing contracts and uncovered exposure at market prices to remainder of budget. The Performance to Budget report is developed for EBCE staff weekly and presented to the ROC quarterly
- Procedures Exceptions: Back Office report noting any procedure exceptions. The Procedures Exceptions report is presented to the ROC quarterly

## **APPENDIX 8**

### **RISK ASSESSMENT METHODOLOGIES**

#### **1. Risk Assessment Methodologies**

##### **1.1. CRR Valuation and Risk Assessment**

CRR valuation is based upon historical data. EBCE values its CRR holdings individually and as a portfolio. Along with the average valuation, EBCE calculates the fifth (5<sup>th</sup>) percentile and 95<sup>th</sup> percentile position of each CRR Source/Sink combination.

EBCE performs a stress test on its CRR nominations. The stress test identifies the minimum, maximum and expected revenue for each available seasonal/monthly historical period.

The highest risk to EBCE's CRR allocation and auction portfolios is a collateral call. The CAISO does not net the portfolios, so the risk is a result of the separate collateral requirements for each portfolio. The expected value of EBCE's allocated CRR portfolio is positive. EBCE's auction portfolio consists only of unwound allocated CRR; as such, the expected value is negative. A collateral call could occur if an event increased the expected negative value of the auction portfolio even though the actual day-ahead market position would be offset by an increase in the expected value of the allocation portfolio.

EBCE mitigates this risk by leaving all its auction revenue in the CRR collateral account at the CAISO. EBCE's initial deposits of \$500,000 for the annual auction, and \$100,000 for the monthly also remain in the collateral account.

EBCE will only request a return of its auction revenue after the end of each monthly/ seasonal period, thereby maintaining usable secured available credit well in excess of its required collateral.

##### **1.2. Mark-to-Market Methodology**

The MTM calculation is a method to value future or forward open trading or hedge positions on an on-going basis to track market price changes. Once a position is taken in the market for some future delivery period, the value of that position must be monitored and managed on a routine basis. The volatility and volume of activity for a particular traded product will dictate how often it is necessary to update the MTM valuation of such product. EBCE will "mark" all open positions on no less than a MONTHLY basis, or as necessary, given market dynamics.

Long Term Transactions for future delivery or receipt of Energy. Several trading hubs host the majority of physically traded contracts such as Palo Verde (PV), California Oregon Border (COB), Mid-Columbia (Mid-C), California South (SP15), and California North (NP15). There are also several emerging hubs in the desert southwest and rocky-mountain areas. Publications such as *Megawatt Daily* and *Energy*

*Market Report* list the daily prices traded at more heavily traded hubs. Information sources such as McGraw Hill publishing report broker trades for forward contracts at the most active trading points. For illiquid products or trading points, the MTM may be applied less frequently than daily. In these circumstances a weekly or monthly mark may be appropriate. However, periodic market inquiries, as appropriate, should be made to capture any market movement.

The following information sources, or their equivalents as approved by the Middle Office and Front Office, are to be used to mark open positions for the traded products and hubs listed below:

- **WSPP Contracts for Liquid Products and Trading Hubs:** The standard forward traded electricity products as reported in the *Energy Market Report, published by Insight Research, Inc.*, or other relevant broker/trade reporting system. This source may be replaced at such time that EBCE has available an information service such as the Intercontinental Exchange (“ICE”), *Reuters North America Power* or other reliable source.
- **WSPP Illiquid Products and Trading Points:** these products are likely to change value less often than the more standard products. Periodic (weekly or bimonthly) probing of the market may be necessary to obtain current valuation. It may be possible to identify basis relationships between the liquid and illiquid trading points resulting in an approximate valuation.

### 1.3. Cost Value at Risk Calculation Methodology

In its most literal sense, Value at Risk (VaR) refers to a particular *amount of money*, the maximum amount likely to be spent or lost over some period, at some specific confidence level. EBCE has defined its supply management activity as a cost hedging activity. Therefore, for purposes of power resources management, Cost VaR is defined as a single, summary statistical measure of possible costs that are in excess of, expected costs.<sup>10</sup>

Traditional VaR methodology (as practiced in the financial sector) has two important characteristics. The first is that it provides a common consistent measure of risk across different positions and risk factors. The other characteristic of VaR is that it takes account of the correlations between different risk factors. If two risks offset each other, the VaR allows for this offset and tells us that the overall risk is fairly low. If the same two risks don't offset each other, the VaR takes this into account as well and gives us a higher risk estimate.

Since Cost VaR tells us about EBCE's maximum cost exposure, management can use it to determine

<sup>10</sup> Specifically, standard, or traditional, VaR is a measure of cash flow exposure due to “normal” market movements; traditional VaR would be used when monitoring hedge positions initiated with financial derivatives. Costs or losses greater than VaR estimates are suffered only with a specified small probability (e.g., 5% of the time, etc.). However, VaR is not a stress test – it will not indicate what a maximum loss may be 5% of the time.



internal capital allocation. Cost VaR can be used to determine capital requirements at the senior management level of the organization, and also down the line to the level of the individual transaction decision. The higher the risk associated with the transaction, the higher the VaR and the greater the capital requirement. Cost VaR can also be used to assess the risks associated with different transaction opportunities and the implications of various risk tolerance thresholds. Cost VaR can also be used to evaluate the performance of divisions.

## 1. Methodology

The two (2) principal components of the traditional VaR calculation are the:

- Market
- Portfolio

The “Market” involves understanding and estimating how the particular market parameters behave over a specified holding period. This is captured by performing market parameter modeling. The “Portfolio” involves understanding and quantifying how the portfolio’s value varies according to estimated changes in market parameters. This is captured by revaluation. The standards applied to market parameter modeling and revaluations are described below. These two components are illustrated as follows:

**Market** > **Market Parameter Modeling** >

- Distribution assumptions
- Correlation assumptions
- Parameter assumptions

### **VaR Calculation**

**Portfolio** > **Revaluation** >

- Historical Simulation
- Monte Carlo Simulation
- Full revaluation
- Analytic (Covariance/Variance Method)
- Sensitivities  
*or any reasonable*
- Sensitivity Analysis  
*combination of these*

## 2. Market Parameter Modeling

During market parameter modeling, various assumptions are made in relation to the distributions and

correlations between assets, or products in the case of electricity, within the same risk category, or hub jurisdiction (i.e., SP15 vs. COB, etc.). In addition, various estimations are made with respect to the level of commodity prices and their implied volatilities.

Market parameters should be modeled on the basis of the following:

- Distribution assumptions for the market parameters are normal (this is a primary assumption for Cost VaR);
- Parameters are usually estimated on the following:
  - a one (1) month holding period, which is consistent with the frequency of revaluation of all financial trading positions.
  - the historic time period of one (1) calendar year or 252 days, unweighted, should be used to calculate historic volatilities and correlations.

Although distribution assumptions are assumed normal, management recognizes that actual power price distributions have displayed a skewed distribution. Traditional VaR methodology is not currently appropriate for the electric power industry. However, it may be appropriate for measuring positions in natural gas, whether physical or financial. Cost VaR, in the context of electricity portfolios, is not concerned with duration or term parameters (such as holding periods, etc.) since electricity products currently have predefined terms (e.g., hourly product, month product, quarterly product, etc.)

For modeling purposes, the Cost VaR is taken from the 95.0% quartile of the distribution of changes in the hourly chronological simulation of loads and resources (1.645 standard deviations).

### **3. Portfolio Revaluation**

Revaluation is the calculation of the changes in portfolio costs resulting from a change in specific model assumptions (i.e., price, risk tolerance, volatility, etc.).

Two revaluation techniques are permitted:

- Full revaluation: Full revaluation occurs where the transactions in the portfolio, or positions, are all individually marked to market value for each market rate scenario generated. This is also true for Cost VaR applications.
- Delta approximation: Delta refers to the change in one variable given a change in another variable. A sensitivity analysis is an *approximation* of the change in net present value for various sensitivities of the portfolio. Sensitivity analysis may be used only for linear approximation. For linear approximation the sensitivity of the rate of change of the price of the transaction to a small change in the market rate is calculated. This is more applicable to traditional VaR where linear relationships and correlations may exist between financial instruments. On a more simplified level, Cost VaR considers delta approximation when adjustments are made to parameters such as risk tolerance, price, and volatility.

For purposes of traditional VaR, the range should cover at least 1.645 standard deviations in either full revaluation or delta approximation. Any reasonable combination of the above is also permitted. For example, a combination of the above might be used for large portfolios which contain both complex and simple instruments and for which different revaluation techniques are appropriate.

The risk measurement methodology must take the current mark-to-market value supplied and apply revaluation techniques to calculate the potential loss or VaR, which may arise from the future changes in market.

**Note:** Sensitivity analysis is appropriate for individually measuring risks which may not otherwise be measured on a full portfolio basis such as location or spread risks. Sensitivity analysis is not appropriate for products with non-linear price behavior. In particular, option portfolios contain a high degree of non-linearity. This means that the change in the portfolio value has a non-linear relationship with changes in the underlying asset price. In this case, a sensitivity analysis is no longer valid.

#### **4. VaR Calculation**

Monte Carlo simulation is the preferred approach to VaR calculation for all portfolios. This is also true for Cost VaR when simulating loads and resources. However, the Analytic Method (Variance/Covariance) will be used if EBCE does not have the computing power necessary to generate a Monte Carlo simulation. EBCE recognizes that the Analytic Method is inappropriate for portfolios with non-linear characteristics (i.e., optionality) and will make the necessary adjustments when portfolio non-linearity becomes significant.

##### Monte Carlo Simulation Method:

Monte Carlo simulation estimates Cost VaR from a simulated distribution that is derived by assuming particular theoretical market processes and simulating large numbers of random paths that prices, or other parameters, could follow. The method proposes that if we take a sufficiently large number of simulations, they will produce a simulated distribution that will converge to the unknown true distribution of portfolio values. VaR and Cost VaR can be inferred from the simulated distribution. The steps required in a Monte Carlo simulation are as follows:

- Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
- Generate an appropriate distribution of random variables;
- Perform the simulation by applying the covariance to the random numbers to generate a set of correlated market parameter scenarios; and
- Apply market parameter scenarios to the portfolio and, using revaluation method set, generate a distribution of portfolio values.

##### Analytic Method (Variance/Covariance):

The Analytic Method is based on the same distribution assumptions for market parameter modeling as the Monte Carlo method but restricts the portfolio to linear risk components only. This allows the analyst to assume that the portfolio changes are normally distributed.

The steps required in the analytic VaR calculation are:

- Perform market parameter modeling by estimating the parameters of the distribution (e.g., volatilities and correlations) using a historical time series of market parameters;
- Calculate the vector of sensitivities with respect to the underlying spot rates;
- A first order approximation is used to calculate changes in portfolio value. Given the normality assumption, the distribution parameters can then be calculated analytically using the sensitivities determined in step 2 above.

The VaR is defined as 1.645 the standard deviation of the change in portfolio value which equals – under the assumption of zero mean – a confidence level of 95%.

#### **1.4. Cost VaR Stress Testing Methodologies and Procedures**

In broad terms, there are two (2) main approaches to Cost VaR stress testing. The first of these focuses on the impact of particular specified scenarios – typically a fairly limited number of such scenarios – that are fed into an analytical process. This approach to stress testing is usually known as scenario analysis. The term “stress testing” is used here to apply to any procedures that attempt to evaluate the impact of hypothetical future events on EBCE’s hedging and/or transacting portfolios.

The term “scenario analysis” is used to apply to that type of stress testing that focuses on particular specified *scenarios*, as distinct from the second type of stress testing that specifies classes of mathematical or *statistical possibilities* and then works through these possibilities in a mechanical way. Note that scenario analysis only indicates what EBCE stands to “spend” in a particular circumstance, and does not indicate (and is not designed to indicate) how likely any particular circumstance is to occur. Scenario analysis is therefore a natural complement to Cost VaR approaches that indicate something about the probability of a clearly defined event, but do not as such identify what EBCE would spend if the event actually occurred.

The Cost VaR stress testing methods approved for use by the ROC include 1) worst-case scenario analysis, and 2) extreme value analysis.

##### Worst-Case Scenario Analysis (WCSA):

WCSA allows an examination of the worst case that is *expected to occur* (Boudoukh, Richardson and Whitelaw, 1995). This approach is useful when there is concern about maximum possible costs over a particular horizon period (e.g., one month, one year, etc.) and an expectation of some savings or cost over each sub-period (e.g., each day or month). The worst-case scenario is the cost associated with the most adverse daily outcome. If each outcome is a random variable  $Z_i$ , and there are  $n$  sub-periods in our horizon, then the worst-case scenario is:

- $\text{Min}[Z_1, Z_2, \dots, Z_n]$

The actual worst-case scenario can now be estimated by running simulations of the random  $Z$  variables.

#### Extreme Value Analysis (EVA):

This approach starts from the premise that the extreme values of the cost distribution are what we are mostly concerned about, and then uses the statistical theory of extreme values to determine maximum extreme costs with a determined degree of confidence.

In practice the distribution of extreme values is not known, but the key insight of EVA theory is that this distribution converges in large samples to a limiting distribution of a particular known form. An analytic solution for the Cost VaR can then be found from this distribution once a desired confidence level is specified. The important parameter is the tail index, which gives the thickness of the tails (e.g., for a  $t$ -distribution, this is the number of degrees of freedom).

The Extreme Value Analysis approach has various attractions: (1) It deals directly with the extreme values typical of the electric Energy market. (2) It provides a firm methodological basis for the estimation of Cost VaR. (3) It does not impose any particular form on the underlying price distribution, but instead allows this distribution to take any well-behaved form, including an asymmetric (i.e., skewed) one. (4) It produces a simple analytical formula for Cost VaR. (5) The approach is robust, flexible and easy to use.

**Note:** Standard VaR methodology will be used to evaluate exposures resulting from activity in financial instruments. Currently, the electric power industry has not developed a highly liquid market in financial instruments. However, the natural gas market is relatively mature and offers opportunities in the use of financial instruments for the purpose of cost hedging. Standard VaR methods can be utilized more appropriately with natural gas as market performance generally follows a normal distribution.

#### Backtesting:

The purpose of a backtest is to compare the expected cost (at the then forward price) with actual cost (at the spot price), and implied volatility with actual volatilities, to determine if EBCE's cost VaR is adequate (conservative enough) to capture the potential market exposure.

To serve such purpose, staff may use the same open position number forecast 12 months ago and apply the DA spot market price in the past 12 months. This number would be the "actual cost" of the open position had it stayed unchanged and filled in the DA market. Comparing the difference between the two numbers will provide guidance as to whether the variance falls within the 95% cost VaR boundary and identify whether EBCE would have been better off leaving the position open or covering it 12 months ago.

EBCE has performed backtesting of the Cost VaR measures during the in-house model development

and validation phase. The backtesting results revealed adequacies in the Cost VaR measures (given the statistical confidence intervals used or various parameters).

## APPENDIX 9

### Recommended Coverage

The following Time-Price Coverage Matrix will be used as a guide for EBCE’s short term and long term procurement strategies. The objective of the Time-Price Coverage Matrix is to develop a procurement strategy focused on hedging against the risk of open load positions, as measured over time, and to mitigate EBCE’s exposure to market price volatility and other pricing risk. EBCE will strive to further develop this matrix based on (1) EBCE’s wholesale price risk and (2) appropriate limits for these risks. The actual covered positions taken by EBCE, reflected as a percentage of forecasted load, may deviate from the following Time-Price Coverage Matrix based upon EBCE’s staff evaluation of current market conditions and other applicable requirements (e.g., regulatory requirements).

Months to Delivery		Price Matrix Percentile						
		>60%	60%	50%	40%	25%	10%	<10%
		Covered Position as a % of Forecasted Load						
0+	3	80%	80%	85%	85%	90%	90%	100%
3+	6	70%	70%	75%	80%	80%	90%	100%
6+	9	70%	70%	75%	80%	80%	80%	90%
9+	12	60%	60%	70%	80%	80%	80%	90%
12+		60%	60%	70%	80%	80%	80%	90%

#### Cost-at-Risk Metrics

*RESERVED / TO BE DEVELOPED*



**Energy Risk Management Policy**  
**Version 1.0**

Approved  
**DATE**



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## **1. Philosophy, Objectives and Scope**

This Energy Risk Management Policy (ERMP) outlines the philosophies and objectives of East Bay Community Energy (EBCE) Board of Directors (Board). The Energy Risk Management Regulations (ERMR) also adopted by EBCE expand on the roles, strategies, controls and authorities authorized in this policy to form a comprehensive energy risk management program. The ERMR shall be read in conjunction with this ERMP.

### **1.1. Risk Philosophy**

The overall goal of this ERMP is to:

- Serve the participating jurisdictions' needs subject to Board approved risk tolerance limits;
- Provide as much energy supply (generation and capacity) cost certainty for EBCE's customers as possible while maintaining a least cost supply portfolio; and
- Enhance the value of EBCE's assets to meet the financial goals and requirements of the participating jurisdictions.

As a joint powers authority, EBCE is in the business of generation, transmission and procurement of energy for the benefit of its participating jurisdictions. EBCE's objective is to develop the least cost supply portfolio to meet load requirements of its customers, while maximizing revenues from sales of surplus energy, capacity and other wholesale energy and transmission services (e.g. resource optimization). However, unlike a private-sector entity, EBCE's primary purpose in the power supply business is to serve its customers. EBCE's goal is to be a cost hedger for its participating jurisdictions' load and, is therefore, precluded by this policy from engaging in speculative activities typical to many organizations orientated toward profit maximization.

EBCE management recognizes that certain risks are incidental to normal power supply operations and hedging activities. EBCE's goal is to avoid unnecessary risk and to limit, to the extent practicable, any risks associated with normal cost-hedging activities. This document serves as a vehicle to describe and define the limits for activities considered as appropriate for EBCE in a normal course of business.

### **1.2. Business Activities**

A primary part of EBCE's main business is to procure or produce power supplies, capacity, and reserves to meet its customer load requirements. The resource (capacity/energy) supply portfolio may consist of physical assets, such as power plants and distributed energy resources, fixed and variable priced supply contracts of varying lengths, and agreements for other related supplies and services needed to ensure reliable delivery of electricity to EBCE's customers.

### **1.3. Transacting Objectives**

EBCE's overall transacting objective is to meet the load requirements of its customers with an optimized resource supply portfolio. EBCE's objectives when transacting on behalf of its customers for the procurement of energy and energy related supplies and services are as follows:

- Meet customer load requirements including energy, capacity and reserves;
- Provide stable rates for the participating jurisdictions;
- Obtain the best available price for power supply while complying with the requirements of this policy and other objectives established by the Board (e.g. renewable energy policy goals);
- Manage EBCE's assets to optimize value;
- Act to limit exposure to extreme market system changes;
- Follow effective wholesale counterparty credit management procedures; and
- Develop and maintain EBCE's investment grade credit rating.

### **1.4. Scope of Policy**

This ERMP addresses risks arising from EBCE's participation in the wholesale energy markets, and applies to all energy and energy related transactions made by EBCE. This ERMP does not address the following types of general property and casualty business risk: fire, accident and casualty; health, safety, and workers' compensation; general liability; and other such typically insurable perils. The term "risk management," as used herein, is therefore understood to refer solely to risks related to participation in wholesale energy markets as herein defined.

EBCE is exposed to three quantifiable risks: load and resource variability (volumetric), cost variability (price), and counterparty credit risk. From the perspective of risk mitigation, EBCE's primary objective is to cover load and optimize the value of assets. Taking risks in order to arbitrage market opportunities, or risks unrelated to EBCE's normal power supply business activities, is not permitted.

EBCE is also exposed to regulatory and operational risks. However, these exposures are not quantifiable as they affect structural change. As a result, these risk categories are managed as separate enterprise risk exposures and are not directly governed by this ERMP.

This ERMP prescribes the management organization, authority and processes to monitor, measure and control the risks to which EBCE is exposed in the normal course of business. Specific methodologies used to measure, monitor and control these risks shall be established by the Executive Director's Risk Oversight Committee (ROC), in accordance with sound utility practices and included in the ERMR.

## **1.5. Applicability**

This ERMP is effective immediately upon its adoption by the Board. It applies to EBCE's wholesale supply operations, long-term contracting for energy/capacity and services, acquisition of generation resources, credit risk management and other related ancillary activities undertaken by EBCE.

## **1.6. Policy Review and Amendments**

Prudence is required in implementing any and all policies and procedures. Market and industry norms, technology and risk tolerances tend to change over time. Therefore, this policy should be reviewed as needed, in order to make adjustments in response to changes in business objectives and/or industry norms. Amendments to this ERMP shall be done only by approved Resolution of the Board.

## **2. Risk Strategy & Parameters**

An important aspect of implementing an overall energy risk management policy is the development of related strategies to mitigate all of the related risks associated with energy transacting activities. The key strategies of EBCE are outlined below.

### **2.1. Counterparty Risk Management**

Counterparty risk is defined as the exposure to economic loss resulting from default by a party to a contract (e.g., a *counterparty*). Counterparty risk affects both contracts requiring physical settlement and those specifying monetary settlement. For all fixed price energy transactions, the counterparty must possess at least a BBB- (or equivalent investment grade rating) by a nationally recognized statistical rating organization (NRSRO). EBCE staff may consider counterparties with a rating below investment grade, or a counterparty without a NRSRO rating on a case-by-case basis, with the approval of the ROC.

Effective wholesale counterparty management and credit analysis is essential to mitigate the counterparty risks associated with commodity transactions in the energy markets. The objective is to preserve EBCE's capital, liquidity, and supply reliability by limiting counterparty credit risk and supplier concentration to acceptable levels. Methodologies to achieve this objective are set forth in the ERM.

### **2.2. Balanced Load**

EBCE shall maintain an integrated and balanced portfolio of resources to cover its customer load within a dual volume and cost-at-risk framework.

### **2.3. Minimum Coverage Requirements**

EBCE shall establish minimum coverage requirements, combined with defined cost-at-risk metrics, for capacity and energy as determined by the ROC and outlined in the ERM.

#### **2.4. Diversification of Portfolio**

EBCE shall strive to develop a resource portfolio that includes diversification in fuel type, contract duration, geographic location, counterparty, pricing terms, cash reserves and types of products.

#### **2.5. Purchase to Cover Load Serving Obligations - No Speculation**

As discussed in Section 1.3, EBCE's overall objective for energy procurement activities is to cover the load serving obligations of its customers. In the course of performing these activities, EBCE shall not engage in activities that expose its participating jurisdictions to speculative transactional risks, and shall only utilize approved transaction parameters as determined by the ROC and outlined in the ERM.

#### **2.6. Use of Derivatives and Financial Transactions**

Use of financial derivatives or transactions (as opposed to physical or "embedded" options) is allowed in limited circumstances by EBCE. These include transactions used to set price caps and floors, or hedge against load/price volatility. Examples include:

- Exchange traded Puts and Calls;
- Electric Futures;
- Electric Options; and
- Weather Derivatives.

Use of certain types of financial derivatives is necessary in order to mitigate various risks outlined in this policy while optimizing the resource portfolio. Such types of allowable financial derivatives or transactions (but not individual transactions) must be approved by the ROC as outlined in the ERM as developed by the ROC in accordance with this policy.

### **3. Risk Controls**

#### **3.1. Control Principles**

EBCE will strive to conduct its energy risk management activities in accordance with best practices of the energy industry, but implementing such practices must be cost justified and balanced between costs and benefits. Processes and control systems must be in place that allow EBCE to identify, measure, monitor, control and track its risk exposures. These processes and control systems shall include the following risk management control principles:

- Appropriate segregation of duties and internal controls will be used;
- Appropriate systems to ensure accurate and effective management reporting;
- Necessary resources in place to achieve management objectives;
- Attract and retain skilled and trained personnel;
- Cross-train and provide cross coverage;
- Employees conducting energy transactions are free of conflicts of interest;
- Authority and approval delegation is commensurate with accountability and capability;
- Performance measurement and reporting incorporate risk and return measures; and
- Ongoing monitoring of control effectiveness.

### **3.2. Internal Controls**

Internal controls shall be based on proven principles that meet the stringent requirements of generally accepted auditing standards (GAAS), financial institutions and credit rating agencies. The required controls shall include all customary and usual business practices designed to 1) prevent errors and improprieties, 2) ensure accurate and timely reporting of results of operations and other information pertinent to management, and 3) facilitate attainment of business objectives.

### **3.3. Segregation of Duties**

Responsibilities related to energy transacting shall be segregated in a manner consistent with the control principles listed above by means of clearly defined roles and responsibilities for the Front Office, Middle Office and Back Office operations. Such roles and responsibilities can also be provided by a qualified third party services provider. Specific roles, responsibilities and organizational structure of these functions are outlined in Section 4 of the ERMP.

These controls shall be fully integrated into all business activities of EBCE, and there shall be active participation by senior management in risk management processes.

### **3.4. Conflicts of Interest**

All EBCE employees who are engaged in energy supply resource transactions, counterparty credit evaluation, or oversight of the foregoing and are employed in any job classification listed in the EBCE Conflict of Interest Code are required to complete annual conflict of interest filings on FPPC Form 700 and disclose investments as required by that code.

In addition to the foregoing disclosure requirement, EBCE employees engaged in energy supply resource transactions, counterparty credit evaluation or oversight of the foregoing, are barred from investing in any company with whom EBCE has consummated energy or related purchases or sales within the last two years.

Such employees must divest existing direct holdings in energy counterparties prior to engaging in any negotiating, evaluating, transacting or oversight functions. The ban on investment and requirement for divestment applies regardless of whether or not the investment would be of sufficient size (\$2,000) to require disclosure on FPPC Form 700.

EBCE employees supervising staff who are subject to this policy are responsible for routinely reviewing Form 700 of each such staff member for the purpose of identifying potential financial conflicts of interest. General Counsel will assist in reviewing these forms and providing legal advice in connection with such reviews upon request.

## **4. Roles, Responsibilities, & Organization**

This section of the ERMP defines the overall roles and responsibilities for implementation of this ERMP. The coordinated efforts of personnel across several divisions are required to successfully implement EBCE's risk management program. Section 4 of the ERMP outlines the basic roles and responsibilities of each organizational function. Specific details and the specific roles and responsibilities of the oversight and operational divisions within the energy risk management program structure at EBCE are outlined in the ERMR, as developed by the ROC and revised from time to time.

### **4.1. EBCE Board of Directors**

The Board has the ultimate oversight over EBCE operations and is responsible for establishing an organizational-wide framework for risk management and ensuring that risk management results are achieved as planned. The Board shall approve and establish organizational policies for risk management and delegate to the Executive Director the responsibility for implementing the ERMP. With responsibility for the ultimate oversight over EBCE operations, the Board shall be responsible to insure the risk management results are achieved in accordance with the ERMP.

### **4.2. Executive Director**

The Executive Director has overall responsibility for implementing the ERMP and for communicating risk management issues to the Board. The Executive Director shall be responsible for delegating specific duties for carrying out the policy and insuring compliance with it by all affected EBCE employees or contractors. The Board acknowledges that the Executive Director shall established the ROC as a member/staff function and may delegated certain functions to the ROC, which delegation is ratified by this ERMP.

### **4.3. Risk Oversight Committee**

The Risk Oversight Committee (ROC) is responsible for overseeing compliance with risk management policies within EBCE. The ROC serves as the highest level of organizational risk management reporting to the Executive Director. The ROC shall consist of EBCE Management,

participating jurisdictional representatives and EBCE's legal counsel, as designated by the Executive Director from time to time. A quorum for the ROC to do business shall be not less than three Committee members (including not less than one participating jurisdictional representative) or their designees.

The two participating jurisdictional representatives shall be appointed to the ROC by the Executive Director. These participating jurisdictional representatives shall reflect the diversity of EBCE's customers (including larger and smaller jurisdictions). The participating jurisdictions may nominate potential ROC members. The Executive Director shall select ROC representatives based on those recommendations.

Each ROC member shall have one vote, and may appoint a voting alternate with the approval of the Executive Director. Participating jurisdictions not represented on the ROC may send representatives to attend ROC meetings and participate in ROC discussions; however, these non-ROC participants will have no voting rights.

The ROC will meet at least quarterly, to act on the responsibilities mentioned above. Individual participating jurisdictions may request the ROC to convene in a timely fashion if ROC approval is required for any transaction affecting EBCE. Minutes to each meeting will be maintained according to EBCE policy.

The ROC shall make regular reports to the Board regarding business transacted by the ROC at such intervals as the Board shall direct.

The ROC shall have the responsibility for ensuring that business is conducted in accordance with the ERMP. The ROC shall adopt and keep current "Energy Risk Management Regulations," which shall define in detail the internal controls, strategies and processes for managing risks covered under the ERMP. Specific ROC responsibilities are outlined in detail in the ERMR.

#### **4.4. Front Office (Planning and Procurement)**

The Front Office is responsible for resource planning and procuring resources to meet the physical, financial and contractual requirements of EBCE, with load/resource balancing provisions and such other arrangements as may be approved by the Board in the future. The function includes contract administration, managing the risk assumptions for electricity transactions, including physical and financial needs analyses, energy purchases and sales, procurements of capacity, ancillary services and coordinating energy delivery scheduling. The Front Office is responsible to ensure that the procedures and processes needed to transact business within the ERMP are in place and they perform all duties related to actual transacting in the wholesale energy markets. The Front Office is the primary interface with potential wholesale transacting counterparties. The Executive Director and Director of Power Resources are responsible for managing the Front Office, and can be supported by qualified third party suppliers. Front Office activities and detailed responsibilities are outlined in the ERMR.



#### **4.5. Middle Office Controls and Reporting**

The duties of the Middle Office will be conducted by the Finance and Administrative Services Department, and/or are supported by a qualified third party supplier. Its primary purpose is to manage risk oversight and controls. The Middle Office provides independent oversight of the risks assumed by the Front Office in the course of transacting energy products and services. The Middle Office must be independent from the Front Office functions. The Director of Finance and Administrative Services is responsible for managing the Middle Office. Detailed responsibilities of the Middle Office are described in the ERMR.

#### **4.6. Back Office (Settlements and Recording)**

The Back Office is primarily responsible for settlement of bills, recording transactions, bookkeeping and accounting, and contract compliance. It is responsible for providing assurance of accurate transaction records and settlements. Back Office functions are conducted by personnel in the Finance and Administrative Services Department, and/or are supported by a qualified third party supplier. Detailed responsibilities of the Back Office are described in the ERMR.

#### **4.7. Auxiliary Functions**

Additional issues impacting the overall power supply and risk management program include establishment of financial reserve requirements, which are generated by auxiliary support functions in the Finance and Administrative Services Department.

The Finance and Administrative Services Department is responsible for preparation of the budget and the calculation of rates used to bill customers for their related power supply usage. In addition, the Finance and Administrative Department is responsible for establishment of necessary reserve levels for the various projects owned by EBCE, if any, and for the EBCE in general. The Finance and Administrative Services Department is also responsible for establishment of reserves necessary for credit risks related to counterparty credit as mentioned in the ERMP, but as more clearly defined in the ERMR.

#### **4.8. Authorities, Delegations, Limits and Prohibitions**

All executed transactions shall conform to the policies set forth herein. It shall be the responsibility of the ROC, with approval of the Executive Director, to establish appropriate individual transacting authority limits for the various personnel involved in the Front Office function. All staff with designated responsibility for Middle Office or Back Office functions are strictly prohibited from executing any wholesale transactions. The Middle Office shall be responsible for informing counterparties of such approved authorizations, including transacting authority and restrictions, along with product types and/or term and dollar limits.

### **5. Policy Compliance**

### **5.1. Compliance Exceptions**

Compliance exceptions are actions which violate the authority limits or directives set forth herein or in the ERMR as developed and adopted pursuant hereto by the ROC.

### **5.2. Reporting of Exceptions**

The Executive Director shall notify the ROC of exceptions to mandated policies, procedures and regulations within 48 hours after they are identified, and ensure Front Office prepare a full report for review and discussion at the next ROC meeting.

### **5.3. Audit**

Compliance with this ERMP and with the specific ERMR requirements instituted pursuant to this ERMP, shall be subject to examination by EBCE's independent auditors or by such other reviewers that EBCE or ROC may appoint to evaluate the effectiveness of mandated controls.

### **5.4. Reserves**

The ROC and the Executive Director, or his/her designee, are responsible for ensuring adequate reserves for energy price exposure and credit losses are maintained by EBCE. The reserve estimate methodology, as established by the Finance and Administrative Services Department, shall be reviewed and approved as needed to ensure appropriate reserve levels are maintained and funded.

### **5.5. Systems, Tools and Training**

EBCE employees who are authorized to perform energy risk management functions on behalf of EBCE shall be provided with the necessary systems and tools to support all risk management processes.

Provision shall be made in the budgets submitted for each division which performs market risk management functions on behalf of EBCE for the acquisition and maintenance of computer systems, software, communications equipment, data services and other analytical, measurement and reporting tools.

Provision shall also be made in the budgets submitted for each EBCE division/department which performs market risk management functions on behalf of EBCE for managers and staff to attend seminars and courses in risk management on a regular basis.



## Staff Report Item 14

**TO:** East Bay Community Energy Board of Directors

**FROM:** Supria Ranade, Director of Power Resources

**SUBJECT:** Power Supply Procurement and Hedging

**DATE:** January 17, 2018

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### **Recommendation**

Receive update and provide feedback on EBCE Energy Supply and Hedging.

### **Summary**

East Bay Community Energy (EBCE) is scheduled to begin supplying clean, reliable and cost effective electric service to its customers in June 2018. Northern California Power Agency (NCPA) is actively working with EBCE to develop a power supply procurement and hedging strategy that will enable EBCE to accomplish the following goals: (i) provide cost effective electric service to its customer, (ii) optimize the value of its supply portfolio, (iii) satisfy various regulatory and content requirements (including Renewable Portfolio Standards (RPS) and carbon free hydropower), (iv) maintain reliable electric service for its customers, v) pursue procurement of local resources. Inherent in these goals is the need to manage risks related to transacting energy, capacity, and energy related products, based on the policies and requirements established by EBCE. Based on these considerations, among others, EBCE's Director of Power Resources and NCPA provides the following power supply procurement and hedging recommendations for your consideration.

### **Risk Management Strategies**

An important aspect of implementing a power supply procurement and hedging strategy is developing strategies to mitigate risks associated with market price volatility, counterparty risk, and risks inherent in energy product trading activities. The key strategies used by EBCE and NCPA to develop the recommendations contained herein are outlined below.

## Balanced Portfolio

EBCE and NCPA’s power supply procurement recommendations strive to develop and maintain an integrated and balanced power supply portfolio to cover EBCE’s load serving obligations and maintain the value of EBCE’s supply assets, while managing EBCE’s supply resources within its financial requirements and budget.

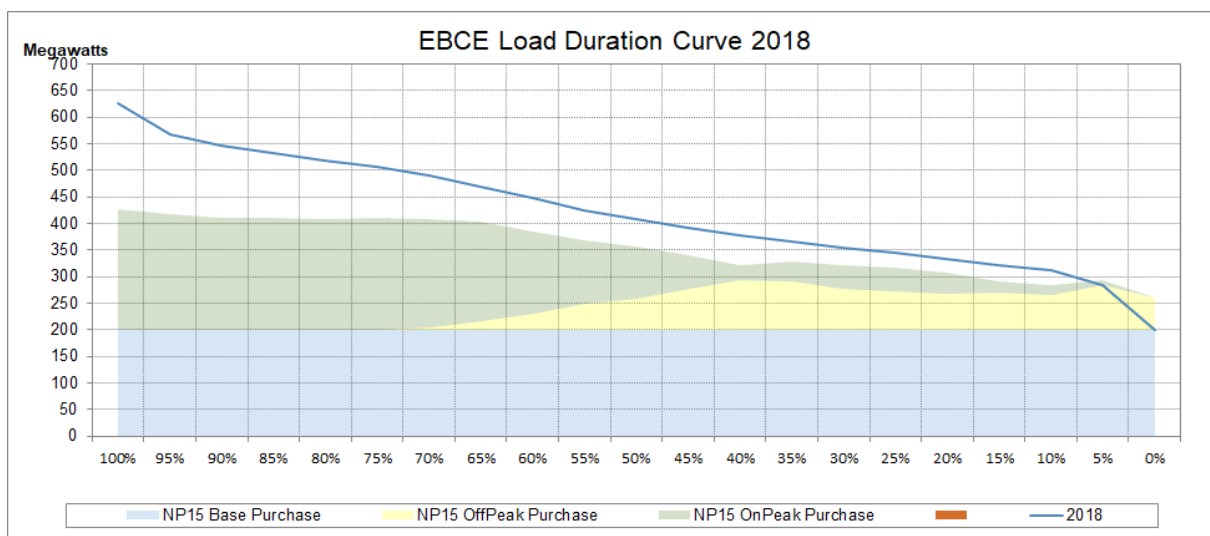
## Recommended Coverage Requirements

To mitigate EBCE’s exposure to market price volatility risk, EBCE NCPA’s power supply recommendations contained herein are based on the following recommended coverage requirements as well as determining the total ; whereby, NCPA recommends that EBCE procure sufficient power supply to manage its open energy positions in accordance with the recommended coverage ratios provided in Table 1 (Time-Price Coverage Matrix), coupled with a Cost Value at Risk (CVaR) metric to mitigate risk on a portfolio level.

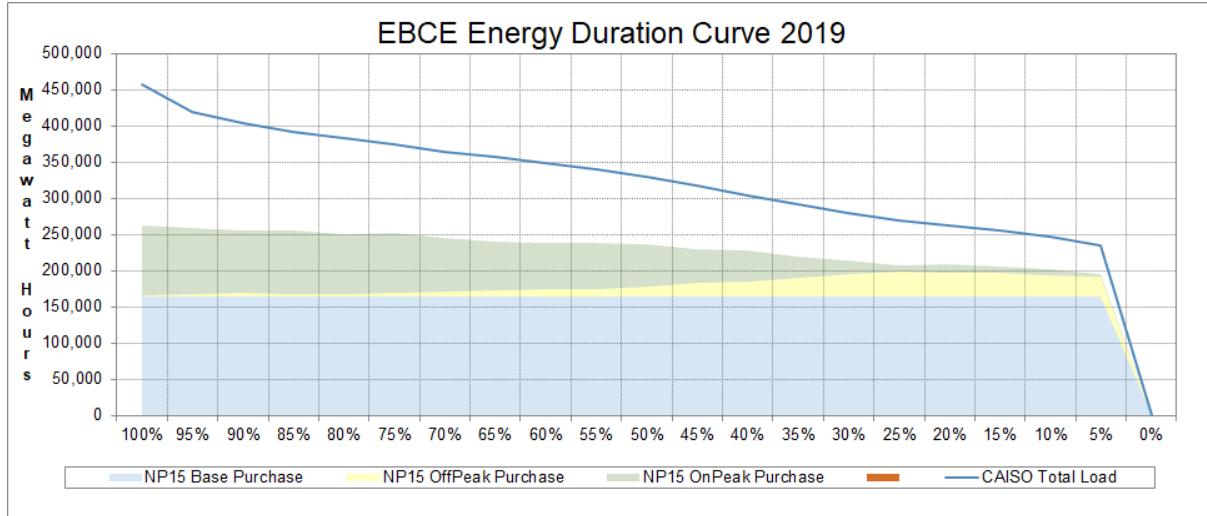
**TABLE 1**  
**Time-Price Coverage Matrix**

Months to Delivery		Price Matrix Percentile						
		>60%	60%	50%	40%	25%	10%	<10%
		Covered Position as a % of Forecasted Load						
0+	3	80%	80%	85%	85%	90%	90%	100%
3+	6	70%	70%	75%	80%	80%	90%	100%
6+	9	70%	70%	75%	80%	80%	80%	90%
9+	12	60%	60%	70%	80%	80%	80%	90%
12+		60%	60%	70%	80%	80%	80%	90%

**Chart 1**  
**Load Duration Curve - 2018**



**Chart 2**  
**Load Duration Curve - 2019**



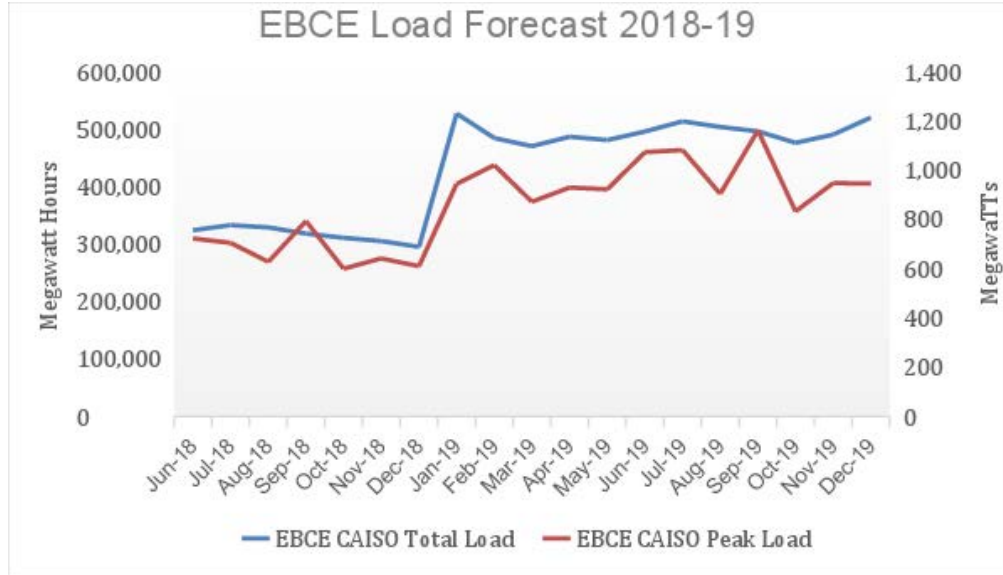
### Financial Requirements

The power supply recommendations contained herein are designed to create a power supply portfolio with an overall cost that is consistent with the financial requirements of EBCE’s adopted rate structure. Whereby, the total cost of energy, and energy related products, purchased by EBCE generates sufficient margin to fund EBCE’s cost of operations, as further set forth in EBCE’s budget.

### Load Forecast

The EBCE load forecast developed by NCPA for calendar year 2018 is based on actual load served by Pacific Gas and Electric Company (PG&E) in Alameda County during calendar year 2016 (source data supplied by PG&E). For calculating the load forecast used to determine EBCE’s supply needs. For future procurement recommendations developed by NCPA, NCPA staff will work to develop a more comprehensive forecasting model that will be used to calculate EBCE’s load serving requirements. As a result, NCPA and EBCE believe that the calendar year 2016 actual load data can be used as a reasonable proxy for the procurement recommendations herein. For ECBE, demand variability will be largely attributable to three factors: (1) changes in demand related to the weather, (2) changes in demand related to economic activity, and (3) changes in demand related to customers joining and exiting ECBE service. This third portion of demand uncertainty is unique to CCA’s and the risks associated with it need to be carefully considered when load forecasting. The calendar year 2018 load forecast upon which recommendations are based can be found in Table 2 below.

**Chart 3: EBCE Load Forecast 2018-19**



**Procurement Recommendations**

The following summarizes EBCE's power supply procurement recommendations for EBCE during the period of June 2018 through December 2019. The joint recommendations include purchasing the following energy and energy related products: (i) base load energy, (ii) shaped energy, (iii) renewable energy, (iv) carbon-free hydropower and (iv) Resource Adequacy capacity.

**Energy**

- ***Base Load Energy Supply***

EBCE recommends issuing solicitations (request for proposals), in coordination with NCPA, to purchase the base load energy volumes contained in Table 3 below. The base load energy volumes may be purchased from one or more eligible counterparties, and may be purchased in varying contract durations (e.g., annual product, quarterly product, monthly product).

**TABLE 2**  
**Base Load Energy**

*Note: The purchase costs contained in Table 3 are based on forward price curves that are dynamic and change over time; therefore, the actual purchase costs for the base load energy contained in Table 3 may be greater than or less than the costs represented in Table 3.*

Year	Month	Base Purchase	Base Contract Price	Base Purchase Costs
2018	6	144,000	\$ 33.75	\$ 4,859,959
2018	7	148,800	\$ 36.72	\$ 5,463,590
2018	8	148,800	\$ 38.84	\$ 5,779,454
2018	9	144,000	\$ 37.19	\$ 5,354,741
2018	10	148,800	\$ 37.49	\$ 5,579,208
2018	11	144,200	\$ 36.04	\$ 5,197,412
2018	12	148,800	\$ 37.14	\$ 5,526,371
	TOTAL	1,027,400	\$ 36.75	\$ 37,760,734

- **Shaped Energy Supply**

EBCE recommends issuing solicitations (request for proposals), in coordination with NCPA, to purchase the shaped energy volumes contained in Table 4 (Off Peak Supply), Table 5 (On Peak Supply), and Table 6 (Super Peak Supply) below. The shaped energy volumes may be purchased from one or more eligible counterparties, and may be purchased in varying contract durations (e.g., annual product, quarterly product, monthly product).

**TABLE 3**  
**Shaped Energy**  
**(On Peak & Off Peak Supply)**

OffPeak Purchase	OffPeak Contract Price	OffPeak Purchase Costs	OnPeak Purchase	OnPeak Contract Price	OnPeak Purchase Costs
42,560	\$ 29.81	\$ 1,268,850	104,000	\$ 36.63	\$ 3,809,146
41,280	\$ 31.99	\$ 1,320,349	92,000	\$ 40.79	\$ 3,752,459
34,320	\$ 33.86	\$ 1,162,027	95,040	\$ 42.44	\$ 4,033,346
36,960	\$ 33.45	\$ 1,236,153	92,160	\$ 40.46	\$ 3,728,628
21,840	\$ 33.71	\$ 736,261	77,760	\$ 40.23	\$ 3,128,044
22,470	\$ 32.45	\$ 729,149	76,000	\$ 38.93	\$ 2,958,422
20,640	\$ 33.14	\$ 683,946	68,000	\$ 40.58	\$ 2,759,569
2,435,451	\$ 3.98	\$ 9,684,423	2,187,231	\$ 11.47	\$ 25,077,063

*Note: The purchase costs contained in Table 4, Table 5 and Table 6 are based on forward price curves that are dynamic and change over time; therefore, the actual purchase costs for the base load energy contained in Table 4, Table 5 and Table 6 may be greater than or less than the costs represented in Table 4, Table 5 and Table 6.*

## **Lowering Environmental Impact of Energy Supply: EBCE's Comprehensive Approach**

To support Alameda County's renewable, climate, and low-cost energy goals, EBCE recommends developing a power mix which includes both renewable energy and carbon free resources which considers both the generation and lifecycle assessments of power generation. EBCE's Director of Power Resources will give a presentation detailing the benefits and costs of each resource mix to recommend three options towards a comprehensive energy strategy.

### **Renewable Energy**

Pursuant to the State of California Renewable Portfolio Standard Program (RPS), as codified at California Public Utilities Code Section 399.11, *et seq.*, EBCE is required to supply a defined amount of its retail sales with certified renewable energy resources. More specifically, for the current RPS compliance period, which ends in 2020, EBCE is required to service at least 33% of its retail sale from the following categories of renewable energy resources: at least 75% with Category 1, and no more than 10% Category 3. During the draft, it was determined that EBCE would not be procuring Category 3 RECs and instead meeting compliance with Category 1 and 2. EBCE will be placing a strong preference on local and in-state California resources to the extent available and cost effective.

### **Carbon-Free**

To support clean energy and climate action goals of Alameda County jurisdictions (**see Table 4 below**) and to maintain cost effective energy, EBCE recommends supplying a defined amount of its retail sales with carbon-free resources. For example, carbon-free hydropower in California and the greater WECC has significantly contributed to lowering the carbon intensity of electric power mix, being the largest non-nuclear carbon-free energy resource in the US (EIA, 2017). EBCE recommends the following procurement options for calendar year 2018 pending adoption of a defined renewable energy goals. EBCE will place a strong preference on in-state California resources to the extent available and cost effective.



**Table 4. Climate Goals of EBCE Alameda County Jurisdictions**

EBCE Jurisdiction	Climate Action Plan Goals	Citation
Alameda County	15% reduction of 2005 levels by 2020; 80% reduction by 2050	Alameda County (Unincorporated Areas) Community Climate Action Plan ( <i>Adopted Feb 2014</i> )
Albany	25% below 2005 levels by 2020; 60% by 2035 and net zero emissions by 2050	City of Albany Climate Action Plan ( <i>Adopted April 2010</i> )
Berkeley	33% below 2000 levels by 2020; 80% by 2050	City of Berkeley Climate Action Plan ( <i>Adopted June 2009</i> )
Dublin	15% below 2010 levels by 2020	City of Dublin Climate Action Plan ( <i>Adopted Nov 2010</i> )
Emeryville	40% below 2004 levels by 2030 and 80% by 2050	City of Emeryville Climate Action Plan 2.0 ( <i>Adopted Nov 2016</i> )
Fremont	25% by below 2005 levels by 2020	City of Fremont Climate Action Plan ( <i>Adopted Nov 2008</i> )
Hayward	20% below 2005 baseline emissions levels by 2020; 62.7% by 2040; 82.5% by 2050	City of Hayward Climate Action Plan Policies & Programs ( <i>Adopted July 2014</i> )
Livermore	15% below 2008 levels by 2020	Livermore Action Plan ( <i>Adopted Nov 2012</i> )
Oakland	36% below 2005 levels by 2020	Oakland Energy and Climate Action Plan ( <i>Adopted Dec 2012</i> )
Piedmont	15% below 2005 baseline emissions levels by 2020 (v1); 40% below its 2005 baseline by 2030 and 80% by 2050 (v2)	Piedmont Climate Action Plan 2.0 ( <i>in progress</i> )
Union City	20% reduction below 2005 levels by 2020	Union City Climate Action Plan ( <i>Adopted Nov 2010</i> )

EBCE to provide pricing ranges for each example in memo attachments for the purpose of discussing current market pricing for renewable energy and carbon products.

- **Example 1: Total Clean Energy**  
55%; Renewable Energy (RPS): 35%;  
Carbon Free: 20%

Purchase a volume of California and WECC located Renewable Energy Products equal to EBCE’s renewable portfolio standard compliance products to meet 35% target; portfolio composition includes Category 1 and 2 products. Purchase a volume of California and WECC carbon free products to meet 20% goals for carbon free energy.

- **Example 2: Total Clean Energy:**  
65%; Renewable Energy (RPS): 40%;  
Carbon Free: 25%

Purchase a volume of California and WECC Renewable Energy Products equal to EBCE's renewable portfolio standard compliance products to meet 40% target; portfolio composition includes Category 1 and 2 products. Purchase a volume of California and WECC carbon free products to meet 25% goals for carbon free energy.

- **Example 3: Total Clean Energy**  
75%; Renewable Energy (RPS): 45%  
Carbon Free: 30%

Purchase a California and WECC Renewable Energy Products equal to EBCE's renewable portfolio standard compliance products to meet 45% target; portfolio composition includes Category 1 and 2 products. Purchase a volume of California and WECC carbon free products to meet 30% goals for carbon free energy.

- **Example 4: Total Clean Energy**  
100%; Renewable Energy (RPS): 50%  
Carbon Free: 50%

Purchase a California and WECC Renewable Energy Products equal to EBCE's renewable portfolio standard compliance products to meet 50% target; portfolio composition includes Category 1 and 2 products. Purchase a volume of California and WECC carbon free products to meet 50% goals for carbon free energy.

### **Energy Risk Management**

EBCE will then take the results of this pricing discussion and integrate in a more comprehensive discussion on portfolio risk management within EBCE's portfolio design parameters. EBCE's recommendation will be for EBCE and NCPA to develop a portfolio strategy path forward framed around risk management, in order to provide clean and low-cost electricity to Alameda County for the long-term.

## **Resource Adequacy Capacity**

EBCE, operating as a Load Serving Entity (LSE) in the California Independent System Operator (CAISO) Balancing Authority Area (BAA) is subject to Resource Adequacy requirements. Resource Adequacy requirements have been established for LSEs by the CPUC, or by other Governmental Bodies for competent jurisdiction. Resource Adequacy requirements including system capacity requirements, local capacity requirements, and flexible capacity requirements. Based on the Resource Adequacy requirements that are applicable to EBCE, NCPA recommends that EBCE purchase the Resource Adequacy capacity products contained in Table 8.

Upon execution of the energy supply recommendations contained herein, EBCE's forecasted load requirements for calendar year 2018 will be covered at the levels contained in memo attachments.

## **Total Power Supply Procurement Cost**

Based upon each of the procurement recommendations contained herein, the total cost of power supply for the coverage ratios recommended at this time is contained in memo attachments.

## **Procurement Schedule**

Upon confirmation of EBCE and NCPA's power supply procurement and hedging recommendations provided herein (or upon modification of such recommendations and subsequent confirmation of the revised recommendations), EBCE and NCPA proposed the following schedule to implement the final recommendations:

- Step 1 (January 2018) – Develop supporting material required to consummate the procurement recommendations
  - Develop & Finalize EEI Master Agreement, Confirmation
  - Develop & Finalize WSPP Agreements
- Step 2 (January 2018) – Discuss credit/collateral requirements with prospective suppliers
- Step 3 (March-April 2018) – Develop, issue, and process responses for Request for Proposals (RFP) for energy and capacity purchases
  - EBCE and NCPA to develop procurement strategy
  - Present offers received based on RFP process, submit recommendations for supplier selection to EBCE staff
  - Coordinate execution and processing of energy and capacity purchases

Attachments:

- A. Energy Supply Analysis presentation

# Energy Supply Analysis

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Attachment 14A

## **Item 14**

**January 17, 2018**

## **EBCE Board Meeting**

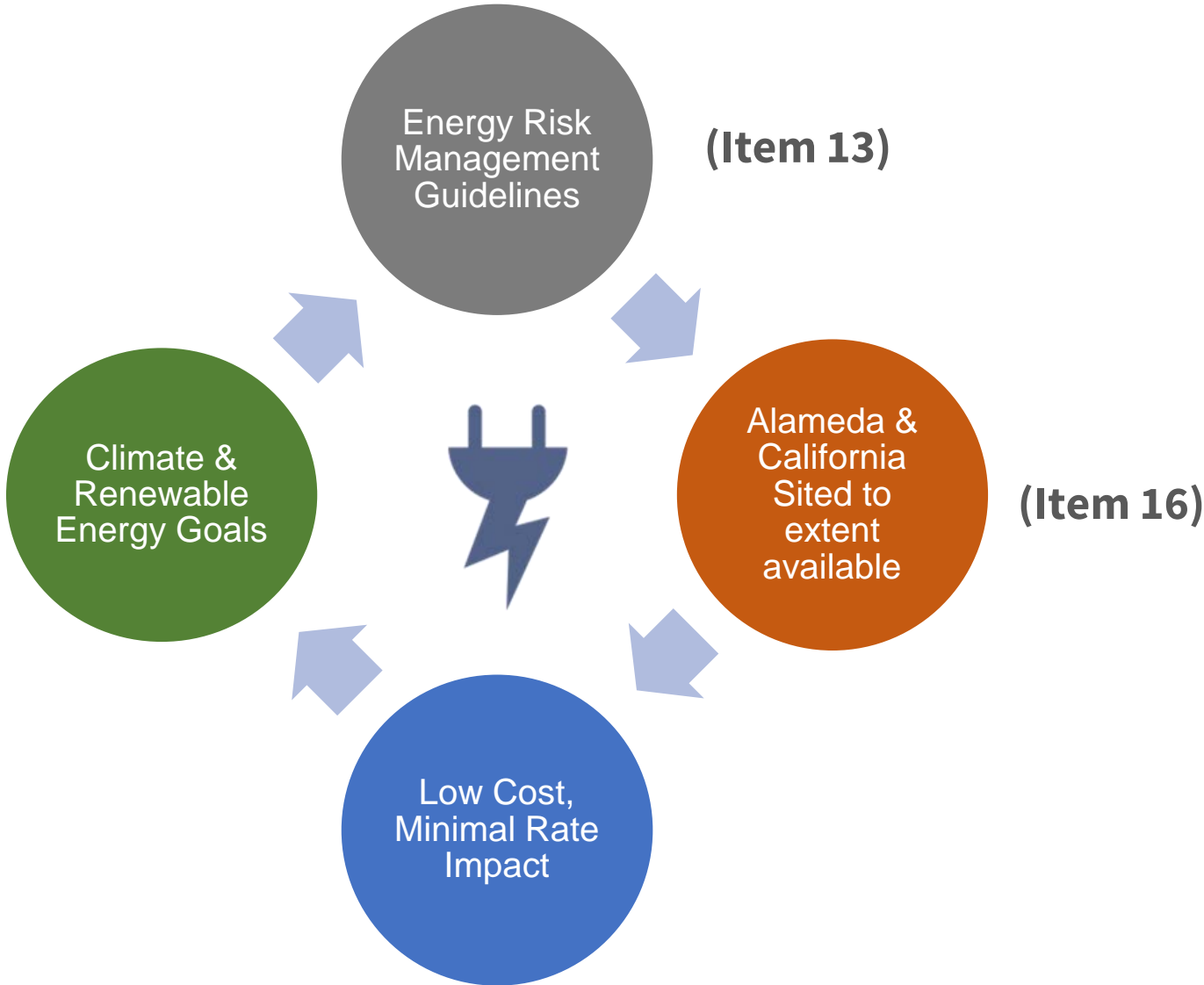
Supria Ranade

Director of Power Resources

East Bay Community Energy

# EBCE Power Resources Parameters

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# Climate & Renewable Energy Goals

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## Climate Goals

- All jurisdictions that EBCE will be serving have a Climate Action Plan, addressing lowering emissions by a certain % over time



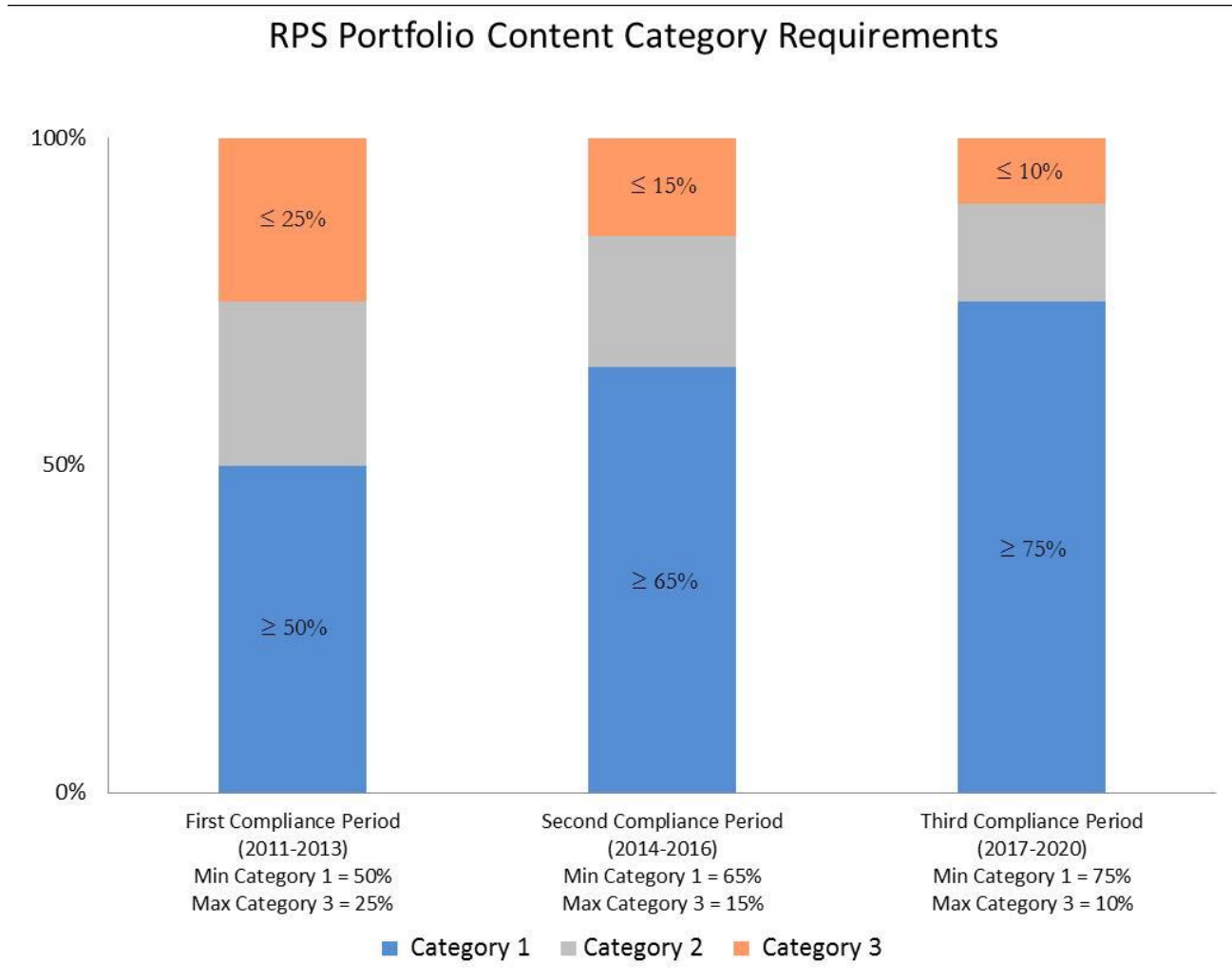
## Renewable Energy Goals

- EBCE and other CCAs strive to provide affordable renewable energy, at amounts that exceed the California renewable portfolio standard

# Alameda Climate Goals

EBCE Jurisdiction	Climate Action Plan Goals	Citation
Alameda County	15% reduction of 2005 levels by 2020; 80% reduction by 2050	Alameda County (Unincorporated Areas) Community Climate Action Plan (Adopted Feb 2014)
Albany	25% below 2005 levels by 2020; 60% by 2035 and net zero emissions by 2050	City of Albany Climate Action Plan (Adopted April 2010)
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Union City	20% reduction below 2005 levels by 2020	Union City Climate Action Plan (Adopted Nov 2010)

# California Renewable Portfolio Standard



**Source:** California Public Utilities Commission, RPS Procurement Rules



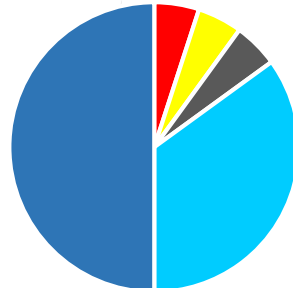
# General Supply Picture

## WECC vs CCA Resource Mix

## EBCE resides in WECC



Western Interconnection

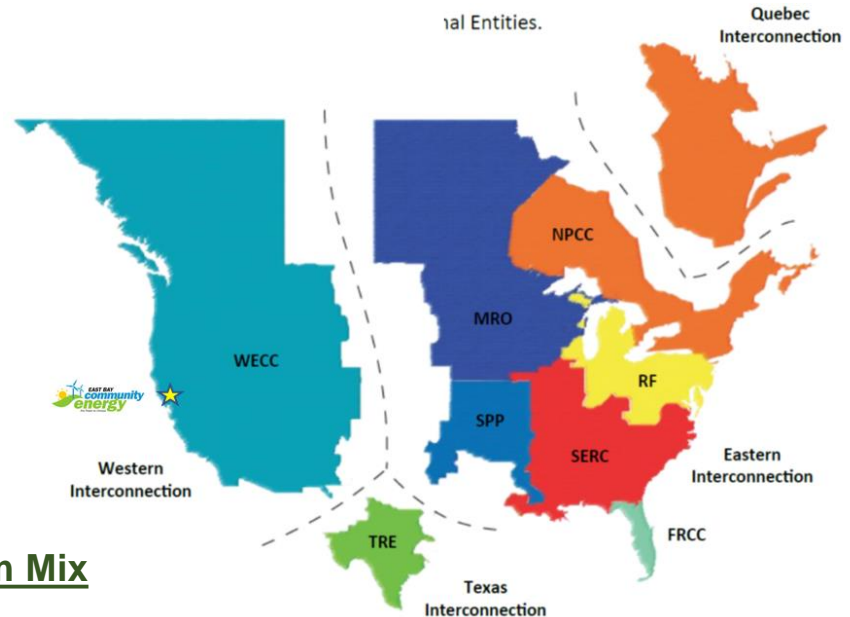


### Average WECC System Mix

Coal: 26%  
 Nuclear: 7%  
 Gas: 32%  
 Solar: 2%  
 Geothermal: 3%  
 Wind: 5%  
 Hydro: 23%  
 Unspecified: Ranges

### Average CCA System Mix

Coal: 0%  
 Nuclear: 0%  
 Gas: 13%  
 Solar: 5%  
 Geothermal: 4%  
 Wind: 41%  
 Hydro: 28%  
 Unspecified: Ranges



**Source:** 2016 State of the Interconnection, Western Electricity Coordinating Council

# EBCE 2018-19 Load Forecast

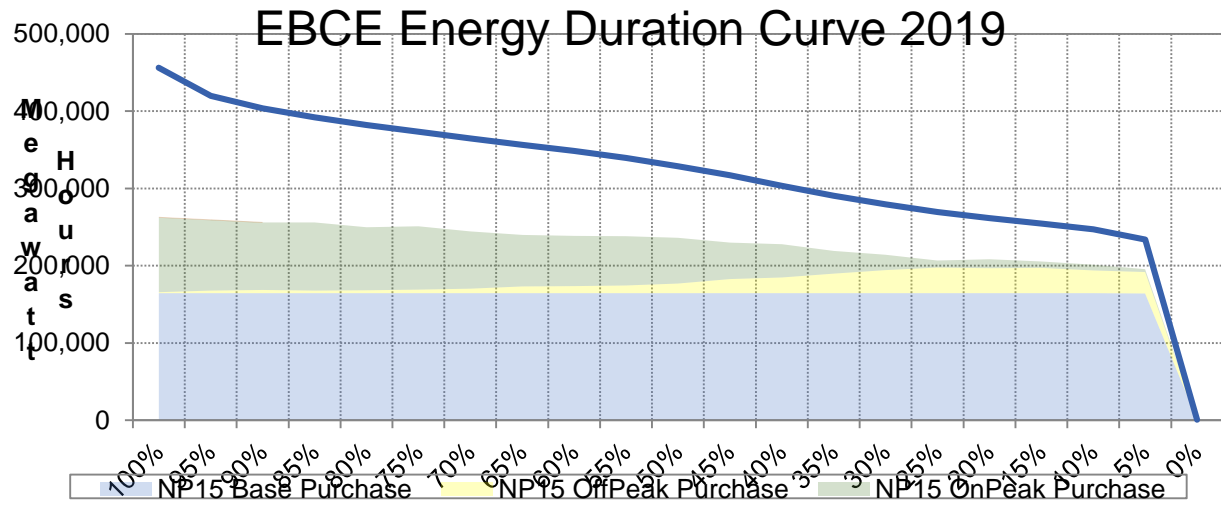
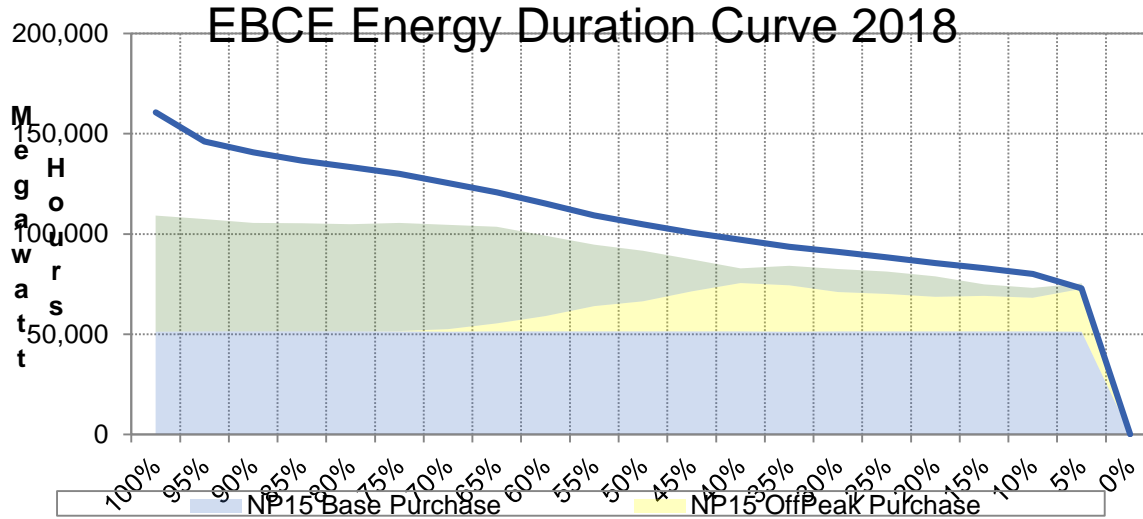
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<b>Year</b>	<b>Month</b>	<b>EBCE Residential Accounts</b>	<b>EBCE Non Residential Accounts</b>	<b>EBCE Retail Residential Load</b>	<b>EBCE Retail Non Residential Load</b>	<b>EBCE Retail Total Load</b>	<b>EBCE CAISO Total Load</b>	<b>EBCE CAISO Peak Load</b>
2018	6	2,765	55,028	1,452	307,179	308,631	324,062	723
2018	7	2,765	55,028	1,535	315,583	317,118	332,974	705
2018	8	2,765	55,028	1,555	311,737	313,292	328,957	628
2018	9	2,765	55,028	1,573	301,526	303,099	318,254	793
2018	10	2,765	55,028	1,533	294,514	296,047	310,850	600
2018	11	2,765	55,028	1,761	288,884	290,645	305,177	642
2018	12	2,765	55,028	2,035	279,019	281,054	295,107	610
2019	1	547,350	55,028	207,773	294,261	502,034	527,135	944
2019	2	547,350	55,028	175,448	285,959	461,407	484,477	1,021
2019	3	547,350	55,028	167,754	280,126	447,881	470,275	872
2019	4	547,350	55,028	163,618	299,957	463,575	486,754	930
2019	5	547,350	55,028	159,434	298,642	458,077	480,980	922
2019	6	547,350	55,028	167,973	304,275	472,248	495,860	1,073
2019	7	547,350	55,028	170,544	318,574	489,118	513,574	1,082

# EBCCE 2018-19 Energy Duration

Year	Load_Percentile	CAISO Total Load	Total Purchases	NP15 Base Purchase	NP15 OffPeak Purchase	NP15 OnPeak Purchase
2018	100.0%	160,609	109,200	51,200	0	58,000
2018	95.0%	146,098	107,500	51,400	0	56,100
2018	90.0%	140,659	105,520	51,400	0	54,120
2018	85.0%	136,650	105,340	51,400	0	53,940
2018	80.0%	133,329	104,840	51,400	0	53,440
2018	75.0%	130,067	105,520	51,400	230	53,890
2018	70.0%	125,417	104,570	51,200	1,370	52,000
2018	65.0%	120,737	103,650	51,400	4,010	48,240
2018	60.0%	115,227	99,180	51,400	7,700	40,080
2018	55.0%	109,360	94,690	51,400	12,680	30,610
2018	50.0%	104,791	91,590	51,400	15,120	25,070
2018	45.0%	100,599	87,280	51,400	19,930	15,950
2018	40.0%	97,101	82,870	51,400	24,210	7,260
2018	35.0%	93,652	84,130	51,200	23,290	9,640
2018	30.0%	91,029	82,590	51,400	19,640	11,550
2018	25.0%	88,405	81,260	51,400	18,640	11,220
2018	20.0%	85,496	78,940	51,400	17,270	10,270
2018	15.0%	82,944	74,940	51,400	17,740	5,800
2018	10.0%	80,075	73,160	51,400	16,770	4,990
2018	5.0%	72,936	75,400	51,200	21,410	2,790
2018	0.0%	199	260	200	60	0
2019	100.0%	456,190	262,420	164,250	1,430	96,740
2019	95.0%	419,527	259,130	164,250	3,550	91,330
2019	90.0%	403,491	256,020	164,250	4,500	87,270
2019	85.0%	392,020	255,860	164,250	3,470	88,140
2019	80.0%	382,192	249,630	164,250	3,770	81,610
2019	75.0%	373,451	251,040	164,250	4,560	82,230
2019	70.0%	364,510	244,350	164,250	5,880	74,220
2019	65.0%	356,550	239,970	164,250	8,760	66,960
2019	60.0%	348,647	238,640	164,250	9,330	65,060
2019	55.0%	339,393	237,990	164,250	9,990	63,750
2019	50.0%	328,664	236,150	164,250	12,750	59,150
2019	45.0%	317,005	229,850	164,250	18,470	47,130
2019	40.0%	303,377	227,830	164,250	20,580	43,000
2019	35.0%	290,645	219,090	164,250	25,470	29,370
2019	30.0%	279,476	214,240	164,250	29,900	20,090
2019	25.0%	269,413	206,520	164,250	33,340	8,930
2019	20.0%	261,571	208,490	164,250	32,380	11,860
2019	15.0%	254,693	205,410	164,250	33,040	8,120
2019	10.0%	247,239	201,290	164,250	29,490	7,550
2019	5.0%	233,883	195,395	163,875	27,710	3,810
2019	0.0%	425	455	375	80	0

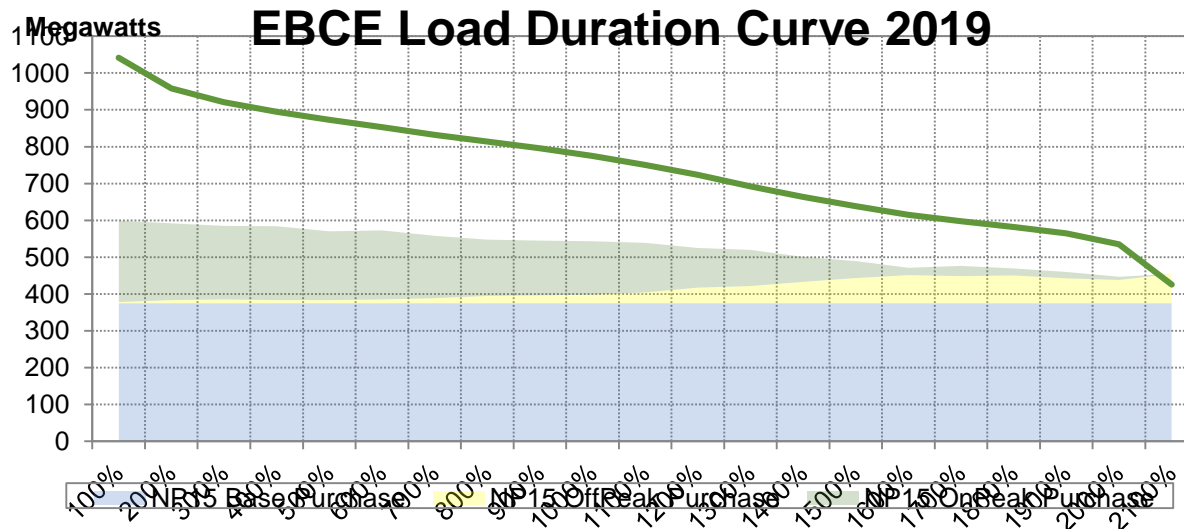
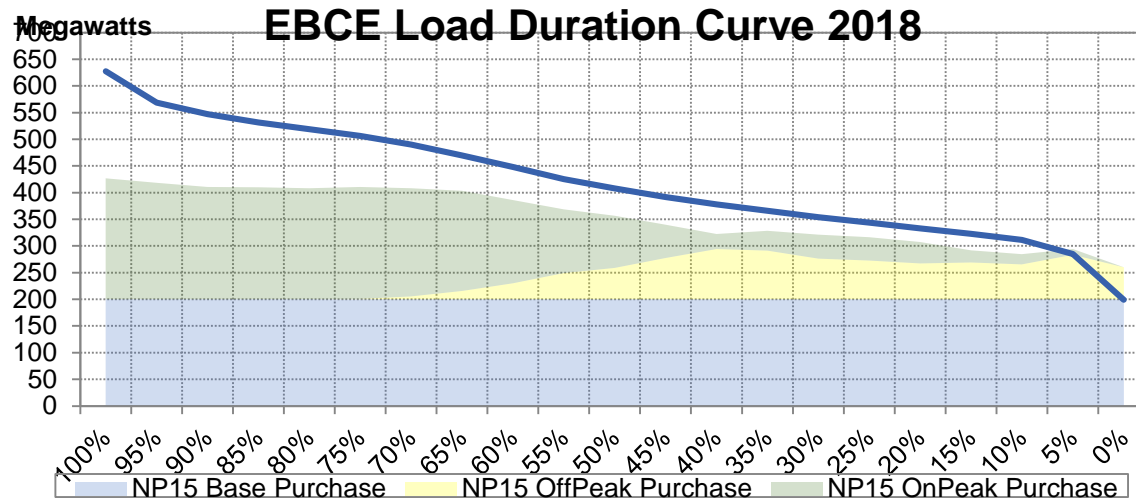
# EBCE 2018-19 Energy Duration



# EBCCE 2018-19 Load Duration

Year	Load_Percentile	CAISO Total Load	Total Purchases	NP15 Base Purchase	NP15 OffPeak Purchase	NP15 OnPeak Purchase
2018	100.0%	627	427	200	0	227
2018	95.0%	568	418	200	0	218
2018	90.0%	547	411	200	0	211
2018	85.0%	532	410	200	0	210
2018	80.0%	519	408	200	0	208
2018	75.0%	506	411	200	1	210
2018	70.0%	490	408	200	5	203
2018	65.0%	470	403	200	16	188
2018	60.0%	448	386	200	30	156
2018	55.0%	426	368	200	49	119
2018	50.0%	408	356	200	59	98
2018	45.0%	391	340	200	78	62
2018	40.0%	378	322	200	94	28
2018	35.0%	366	329	200	91	38
2018	30.0%	354	321	200	76	45
2018	25.0%	344	316	200	73	44
2018	20.0%	333	307	200	67	40
2018	15.0%	323	292	200	69	23
2018	10.0%	312	285	200	65	19
2018	5.0%	285	295	200	84	11
2018	0.0%	199	260	200	60	0
2019	100.0%	1042	599	375	3	221
2019	95.0%	958	592	375	8	209
2019	90.0%	921	585	375	10	199
2019	85.0%	895	584	375	8	201
2019	80.0%	873	570	375	9	186
2019	75.0%	853	573	375	10	188
2019	70.0%	832	558	375	13	169
2019	65.0%	814	548	375	20	153
2019	60.0%	796	545	375	21	149
2019	55.0%	775	543	375	23	146
2019	50.0%	750	539	375	29	135
2019	45.0%	724	525	375	42	108
2019	40.0%	693	520	375	47	98
2019	35.0%	664	500	375	58	67
2019	30.0%	638	489	375	68	46
2019	25.0%	615	472	375	76	20
2019	20.0%	597	476	375	74	27
2019	15.0%	581	469	375	75	19
2019	10.0%	564	460	375	67	17
2019	5.0%	535	447	375	63	9
2019	0.0%	425	455	375	80	0

# EBCE 2018-19 Load Duration

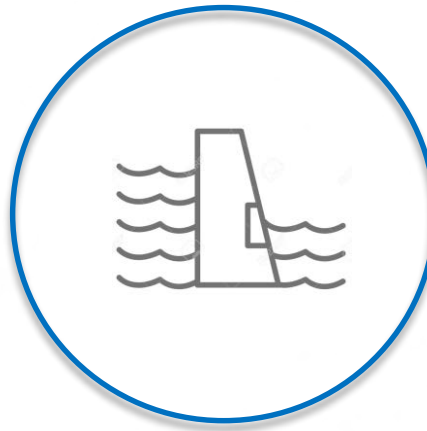


# EBCE Supply Options

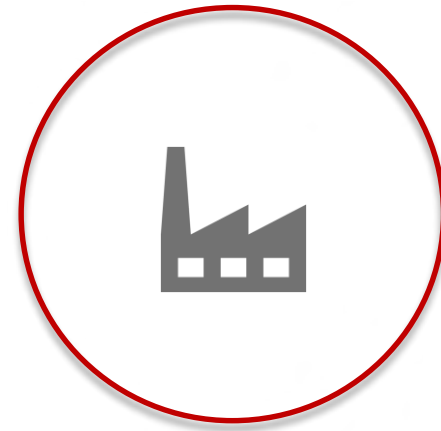
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**Renewable Energy**



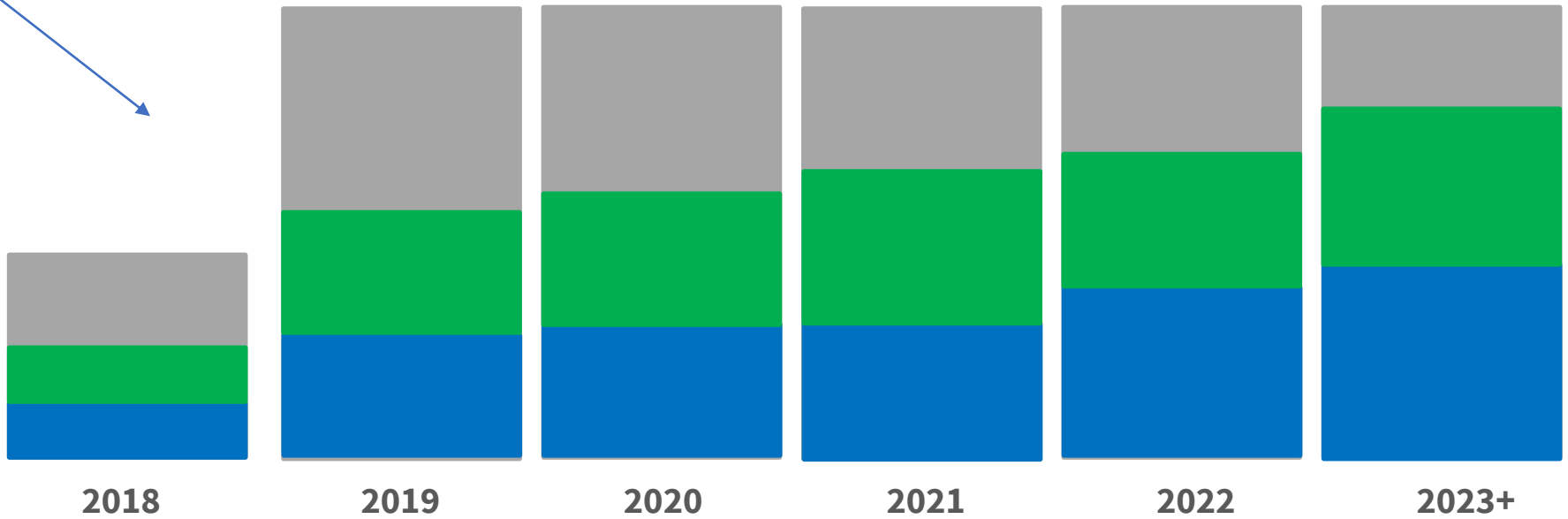
**Carbon-Free**



**System  
(no Nuclear, Coal)**

# EBCE Portfolio Design & Planning

EBCE Board to decide path forward on clean energy supply mix



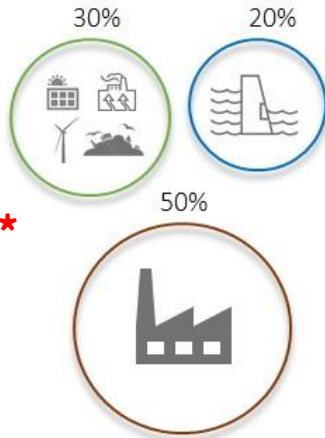
Upon approval of the Board on 1/17, EBCE will strive to meet and exceed clean energy content of the supply mix





# EBCCE All-In Energy Pricing Cost Options

Ex 1: 50% Clean Energy:  
30% RPS; 20% Carbon-free



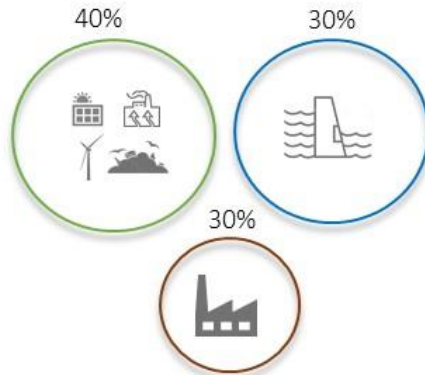
**\$49.00 -  
\$51.00/MWh\***

Ex.2: 60% Clean Energy:  
35% RPS; 25% Carbon-free



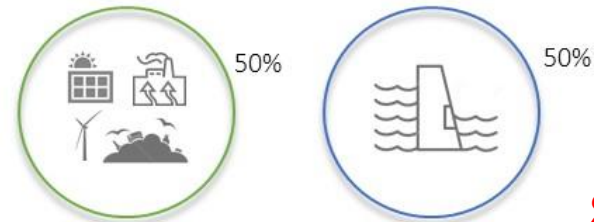
**\$51.00 -  
\$53.50/MWh\***

Ex. 3: 70% Clean Energy:  
40% RPS; 30% Carbon-free



**\$52.00 -  
\$54.00/MWh\***

Ex. 4: 100 Clean Energy:  
50% RPS; 50% Carbon-free



**\$53.00 -  
\$60.00/MWh\***

**\*\*Note: The purchase costs contained in this are based on this price curves that are dynamic and change over time; therefore, the actual purchase costs for the energy products contained here may be greater than or less than the costs represented.**

# Bringing back Item #13: Risk

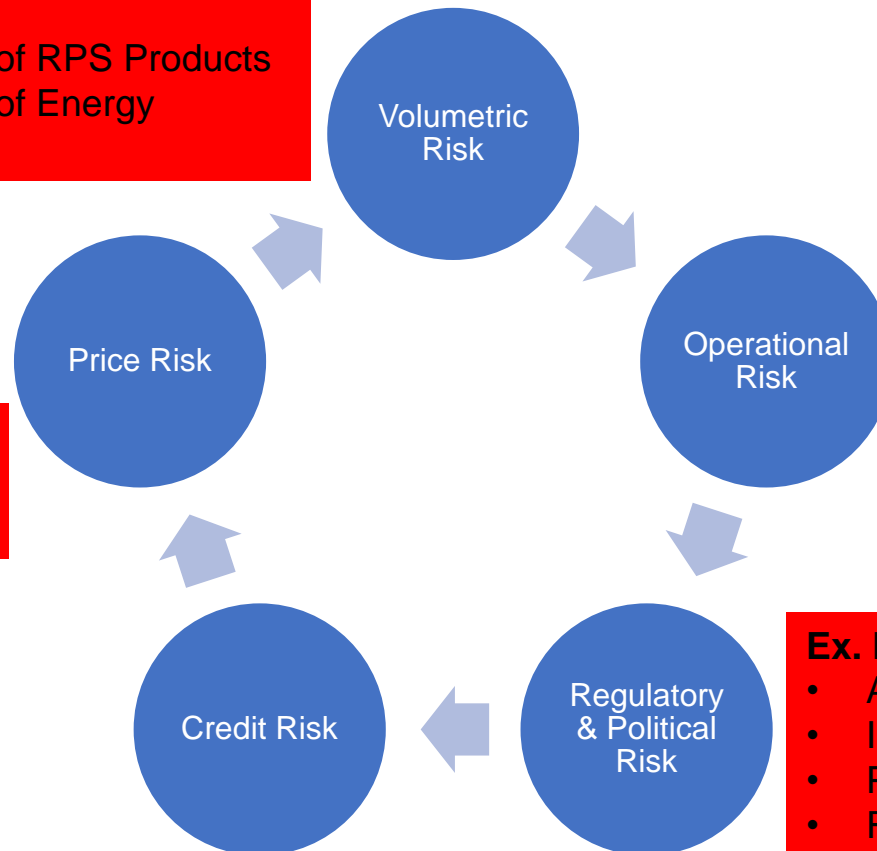
(Price is not the only determinant of true portfolio costs)

## Ex. Supply Risk:

- Supply/Demand of RPS Products
- Supply/Demand of Energy Products

## Ex. Shape Risk:

Duck Curve is getting “real and bigger” Source: Greentech Media



## Ex. PCC2 Risk:

- AB 1110
- IRP Proposed Decision
- PCIA
- Resource Adequacy

# 2019 Forward Purchasing Costs

EBCE, operating as a Load Serving Entity (LSE) in the California Independent System Operator (CAISO) Balancing Authority Area (BAA) is subject to Resource Adequacy requirements. Resource Adequacy requirements have been established for LSEs by the CPUC, or by other Governmental Bodies for competent jurisdiction.

Year	Month	CAISO Peak	RA Peak Load	RA System MW	RA System KW		RA Local MW	RA Local KW		RA Total Costs
		Load			Price	RA System Costs		Price	RA Local Costs	
2019	1	1,064	1,224	724.1	\$1.15	\$ 832,742	499.7	\$1.90	\$ 949,385	\$ 1,782,127
2019	2	1,141	1,312	812.1	\$1.15	\$ 933,942	499.7	\$1.90	\$ 949,385	\$ 1,883,327
2019	3	972	1,118	618.2	\$1.15	\$ 710,957	499.7	\$1.90	\$ 949,385	\$ 1,660,342
2019	4	1,027	1,181	681.4	\$1.15	\$ 783,637	499.7	\$1.90	\$ 949,385	\$ 1,733,022
2019	5	1,020	1,173	673.3	\$1.15	\$ 774,322	499.7	\$1.90	\$ 949,385	\$ 1,723,707
2019	6	1,179	1,355	855.6	\$1.15	\$ 983,967	499.7	\$1.90	\$ 949,385	\$ 1,933,352
2019	7	1,190	1,368	868.5	\$1.15	\$ 998,802	499.7	\$1.90	\$ 949,385	\$ 1,948,187
2019	8	998	1,147	647.7	\$1.15	\$ 744,882	499.7	\$1.90	\$ 949,385	\$ 1,694,267
2019	9	1,291	1,485	985.5	\$1.15	\$ 1,133,352	499.7	\$1.90	\$ 949,385	\$ 2,082,737
2019	10	934	1,074	574.4	\$1.15	\$ 660,587	499.7	\$1.90	\$ 949,385	\$ 1,609,972
2019	11	1,063	1,222	722.4	\$1.15	\$ 830,787	499.7	\$1.90	\$ 949,385	\$ 1,780,172
2019	12	1,064	1,223	723.5	\$1.15	\$ 832,052	499.7	\$1.90	\$ 949,385	\$ 1,781,437
		=====	=====	=====	=====	=====	=====	=====	=====	=====
		1,291	1,485	986	\$1.15	\$ 10,220,035	499.7	\$1.90	\$ 11,392,615	\$ 21,612,650

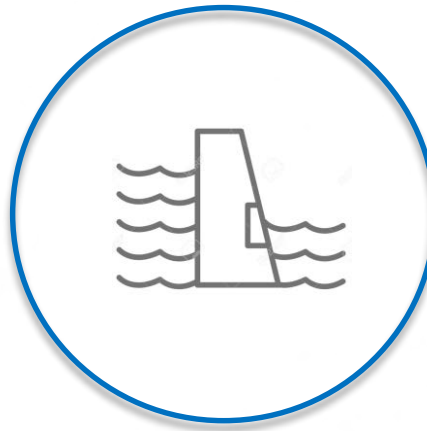
**Note: The purchase costs contained in this are based on forward price curves that are dynamic and change over time; therefore, the actual purchase costs for the energy products contained here may be greater than or less than the costs represented.**

# EBCE Supply Options

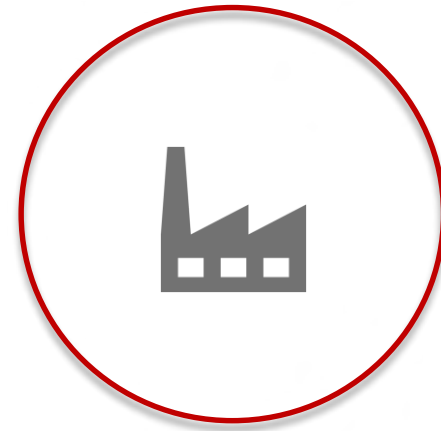
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**Renewable Energy**



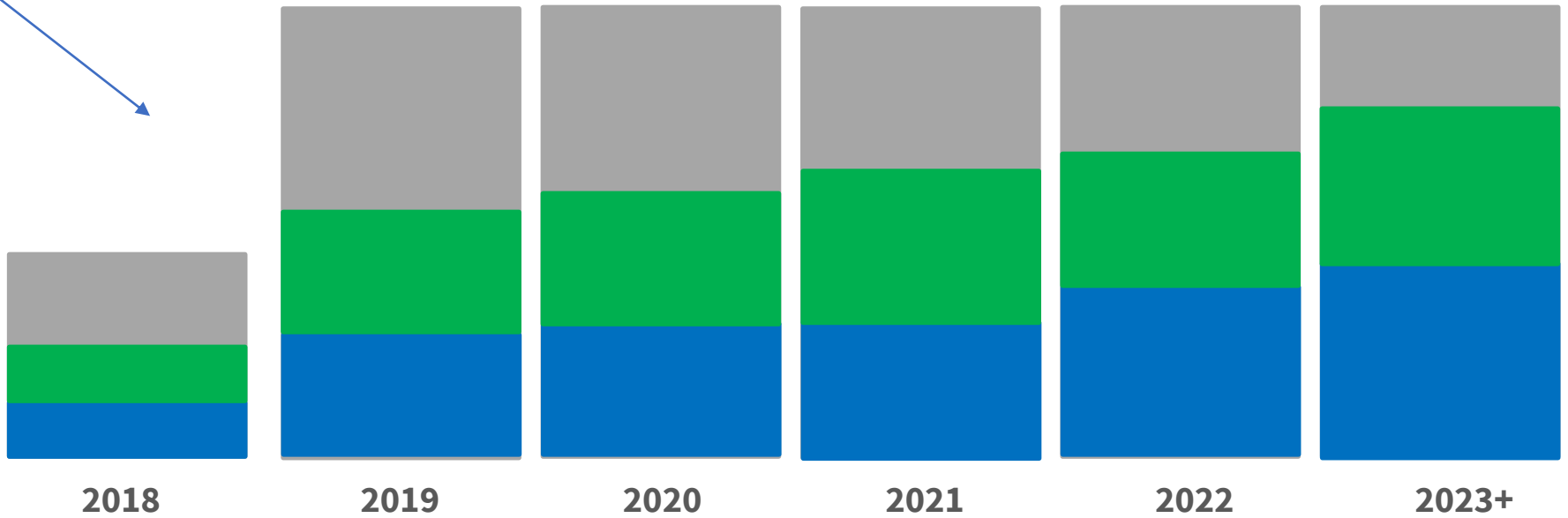
**Carbon-Free Hydro**



**System  
(no Nuclear, Coal)**

# EBCE Portfolio Design & Planning

EBCE Board to decide path forward on clean energy supply mix

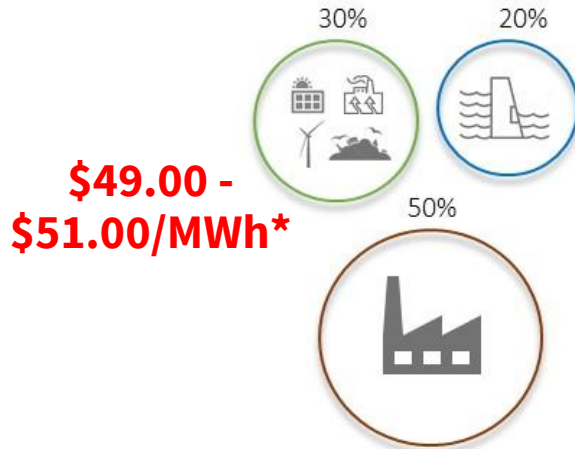


Upon approval of the Board on 1/17, EBCE will strive to meet and exceed clean energy content of the supply mix

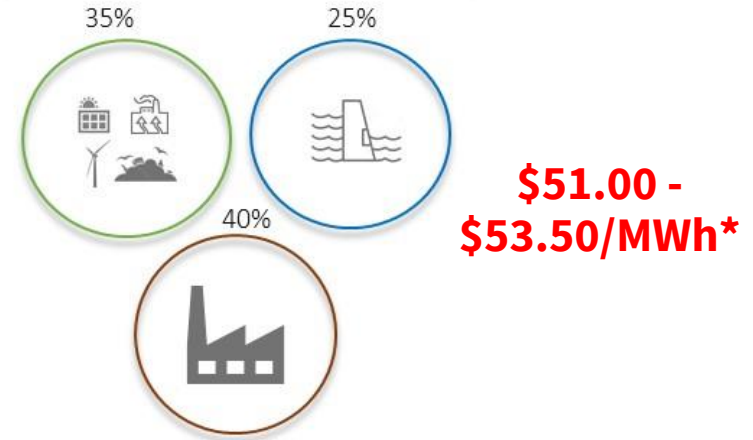


# EBCCE All-In Energy Pricing Cost Options

Ex 2: 50% Clean Energy:  
30% RPS; 20% Carbon-free



Ex.2: 60% Clean Energy:  
35% RPS; 25% Carbon-free



Ex. 3: 70% Clean Energy:  
40% RPS; 30% Carbon-free



Ex. 4: 100% Clean Energy:  
50% RPS; 50% Carbon-free



\*\*Note: The purchase costs contained in this are based on this price curves that are dynamic and change over time; therefore, the actual purchase costs for the energy products contained here may be greater than or less than the costs represented.

# Bringing back Item #13: Risk

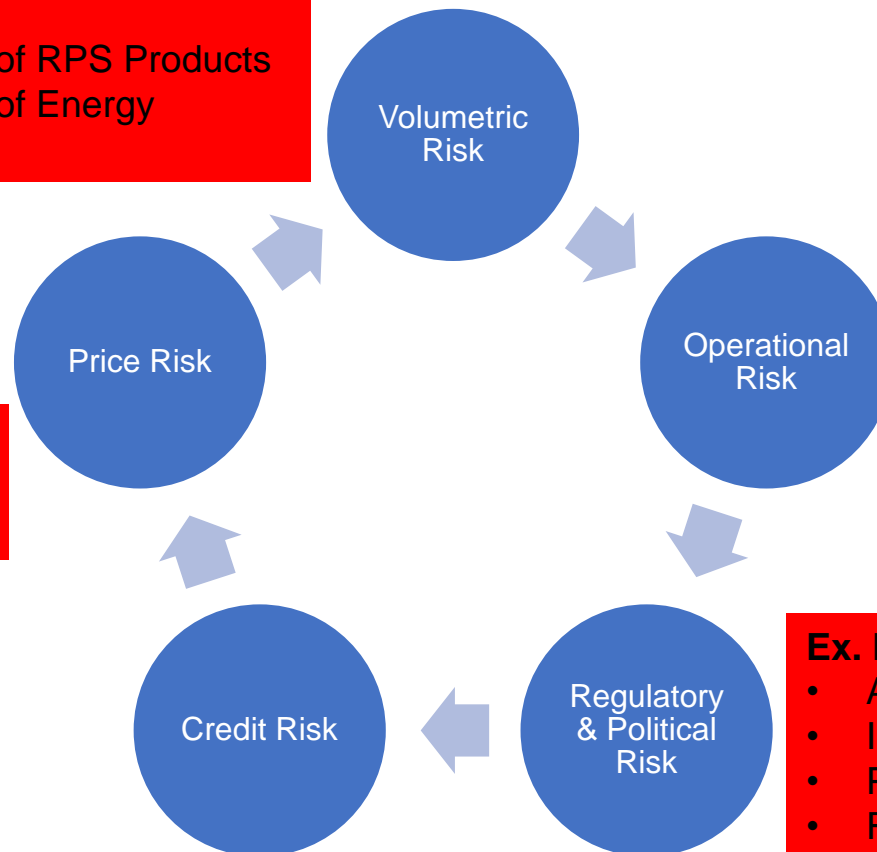
(Price is not the only determinant of true portfolio costs)

## Ex. Supply Risk:

- Supply/Demand of RPS Products
- Supply/Demand of Energy Products

## Ex. Shape Risk:

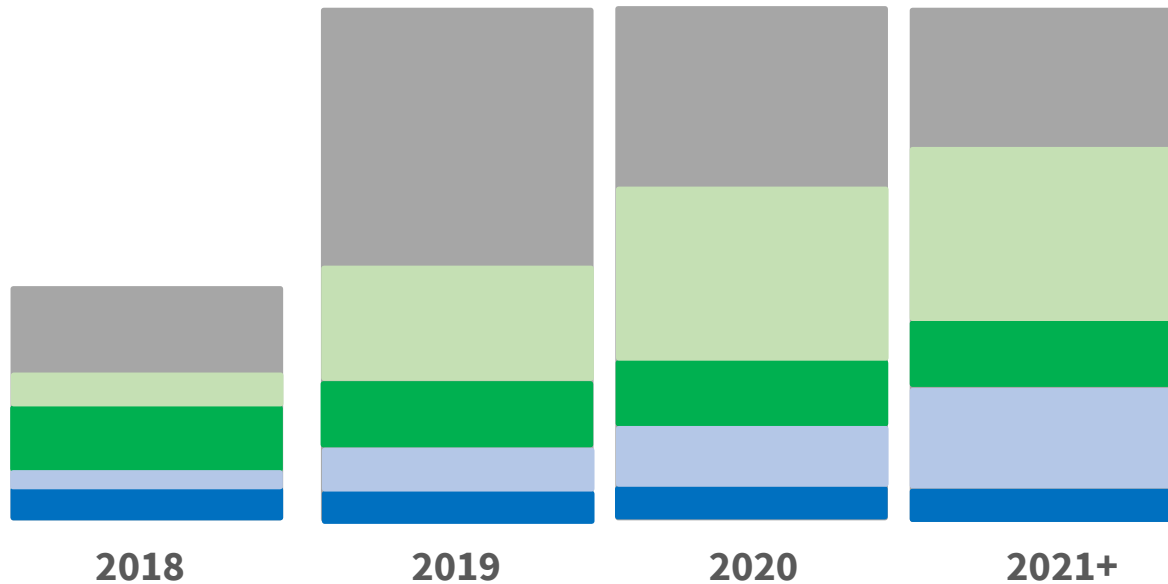
Duck Curve is getting “real and bigger” Source: Greentech Media



## Ex. PCC2 Risk:

- AB 1110
- IRP Proposed Decision
- PCIA
- Resource Adequacy

# EBCE Recommendation



Upon approval of the Board on 1/17, EBCE will develop targets to (1) meet and exceed the CA RPS and (2) support Alameda County's climate goals

Renewables Base

Renewables Goal

Carbon Free Base

Carbon Free Goal





## Staff Report Item 15

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nicolas Chaset, Chief Executive Officer  
Taj Ait-Laoussine, Vice President of Technology and Analysis

**SUBJECT:** Discuss EBCE Rate Options

**DATE:** January 17, 2018

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### **Recommendation**

Receive update and provide feedback on EBCE Rate Options

### **Background and Discussion**

As EBCE moves towards launch, setting rates and a target discount to PG&E generation rates is a high priority. To assess what the right rate discount for EBCE to offer its customers at launch, we first have to assess how different levels of discount impact EBCEs revenues requirement. The revenue requirement includes all program expenses forecast for the upcoming year, such as power supply, administrative, debt service, and reserves. As a starting point, we look at how EBCEs 2018 revenue requirement compares to EBCE expected revenue at multiple discount rates to assess their financial impact on EBCE, our customers and our ability to allocate resources to invest in local development.

When considering the appropriate discount to offer customers, it is critical that EBCE weigh costs and benefits of 1) customer bill savings and the associated impact on opt-out, 2) EBCE ability to pay down debt and establish adequate financial reserves, and 3) EBCE ability to fund local development initiatives. The purpose of this presentation is to illustrate these trade-offs, seek feedback on near term priorities and prepare the Board to set EBCEs target discount at the February 7th 2018 Board Meeting.

### **Attachment:**

A. Presentation EBCE Rate Discount Options

# Ratesetting Overview: EBCE Authorities

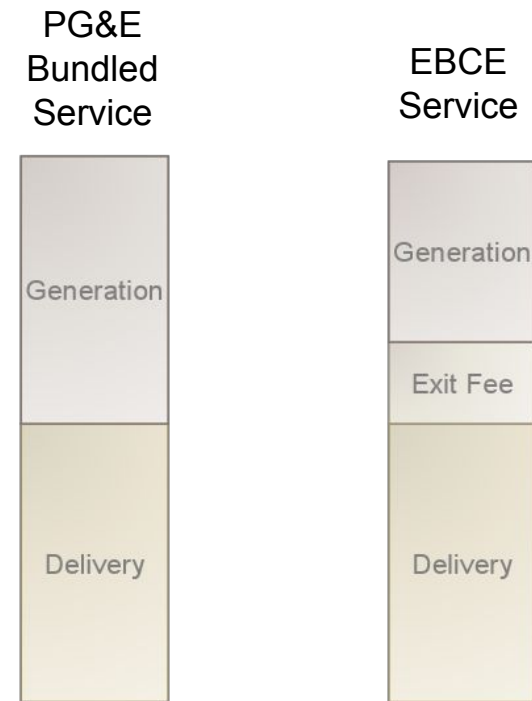
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- Customers enrolled in the EBCE program will pay a single electricity bill that includes EBCE generation charges and PG&E delivery charges – billing to be performed by PG&E.
- The EBCE Board of Directors is responsible for adopting EBCE generation rates.
- The California Public Utilities Commission is responsible for approving PG&E's generation and delivery rates.

# Ratesetting Overview: EBCE/PG&E Rate Design Comparison

- All similarly situated customers will pay equivalent delivery charges whether taking service from EBCE or PG&E.
- The primary basis for rate comparison/competition will be focused on generation charges and the PCIA.

- Generation – Fuel and purchased power costs as well as capital, operations and maintenance for owned power plants.
- Exit Fees – Applicable to customers no longer receiving generation services from PG&E:
  - *Power Charge Indifference Adjustment (PCIA)*: Assessed by PG&E for costs related to energy purchased prior to customers departing bundled utility service.
  - *Franchise Fee Surcharge (FFS)*: Relatively small fee to ensure no reduction in the revenues dedicated to PG&E's franchise fee payments to local governments.



# Ratesetting Overview: EBCE Rate Design

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EBCE Customers will be offered rates that are functionally the same as their current PG&E rates but with the added benefit of a % discount

Residential	E1	E-1, EM (E1M), EM TOU (E1MX), ES (E1S), ESR, ET (E1T), E-6, ETOUA, ETOUB, EVA, EVB; Also differentiated by L (CARE).
Small Light and Power	A1	A-1, A-6, A-15, TC-1; Also differentiated by X (TOU) and L (CARE).
Medium Light and Power	A10	A-10 (differentiated by Transmission, Primary or Secondary service voltage: designated as T, P or S); Also differentiated by X (TOU) and L (CARE).
Medium General Demand	E19	E-19 (differentiated by Transmission, Primary or Secondary service voltage: designated as T, P or S); Also designated V (Voluntary less than 500 kW), and L (CARE)
Large Light and Power	E20	E-20 (Transmission, Primary or Secondary service voltage: designated as T, P or S)
Street Lights	LS	LS-1, LS-2, LS-3, OL-1
Standby	STOU	STOU (Transmission, Primary or Secondary service voltage: designated as T, P or S)
Agriculture	AG1	AG-1 (A, B), AG-4 (A, B, C), AG-5 (A, B, C) AG-R (A, B), AG-V (A, B).

Calculating EBCE's Rates =

PG&E Generation Rate \* EBCE Discount - (PCIA + FFS)

# Ratesetting Overview: Setting EBCE's Rate Discount

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To assess what the right rate discount for EBCE to offer its customers at launch, we first have to assess how different levels of discount impact EBCEs revenue requirement

The revenue requirement includes all program expenses forecast for the upcoming year, such as power supply, administrative, debt service, and reserves

**Cost of Operations** (Energy + Services + Marketing + Staffing/Overhead)

**Debt Service** (AlCo start-up + Barclays working K)

**Contribution to Energy Reserves** (requirement in Energy Risk Management policy to establish reserves for energy market participation)

**EBCE Rates (revenues) > EBCE Rev Req**

# Ratesetting Overview: Setting EBCE's Rate Discount

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After ensuring that EBCE has adequate revenue to meet its revenue requirement, the next step is to prioritize the following:

- 1) **Customer bill savings (2%-3% discount):**
  - a) Avg Res: \$7-\$11 annual savings
  - b) Avg Sm Com: \$37-\$55 annual savings
  - c) Avg Lg Com: \$12,000-\$19,000 annual savings
  
- 2) **Reserves:** set aside additional levels of financial reserves to support faster pay down of debt, collateral for long-term renewables and 'rainy day' funds for changing energy market and regulatory environment
  
- 3) **Community Development:** setting aside funds for local development initiatives. A 10% surplus target for local development would net \$10m for Community Development annually

# Ratesetting Overview: Conclusions and Next Steps

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- For EBCE to achieve its goals it needs to find the right balance between offering a compelling value proposition to its customers, being able to build a strong balance sheet and delivering on the promise of local development
- At February 7th meeting, EBCE Staff will bring proposed target rate discount for C&I and Municipal customers



## FOR MORE INFORMATION



[EBCE.org](http://EBCE.org)



[/EastBayCommunityEnergy](https://www.facebook.com/EastBayCommunityEnergy)



[@PoweredbyEBCE](https://twitter.com/PoweredbyEBCE)



[info@ebce.org](mailto:info@ebce.org)





### Staff Report Item 16

**TO:** East Bay Community Energy Board of Directors

**FROM:** Supria Ranade, Director of Power Resources

**SUBJECT:** Alameda County Local Clean Energy Projects Request for Proposals

**DATE:** January 17, 2018

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#### **Recommendation**

Receive update, provide feedback on EBCE's planned Local Clean Energy Project Request for Proposals

#### **Background**

East Bay Community Energy (EBCE) is requesting board approval for soliciting competitive proposals for the sale and purchase of renewable and carbon free energy. For the purposes of the RFP, carbon free generation facilities. carbon free means any energy source, except for nuclear-powered generation assets, that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. For the purposes of the RFP, renewable energy generation facility must meet the California Energy Commission's definition as a Portfolio Content Category 1 Eligible Renewable Resource ("PCC1"). The goal of this RFP is for EBCE to each enter into one or more long-term Power Purchase and Sale Agreements (PPAs) to secure up to 150,000 MWh per year of energy, combined, from renewable and carbon free generation facilities. Through this RFP, EBCE seeks to purchase carbon free energy to meet a portion of its electric energy needs in 2019 and subsequent years, for terms of 5-20 years. EBCE is seeking to buy cost effective, carbon free energy pursuant to its Implementation Plan and California's energy and environmental objectives. EBCE's goal is to purchase electricity and attributes from eligible carbon free, PCC1 resources through this RFP starting as early as 2019 to:

- Support long-term low and stable operating costs; and
- Increase the renewable and carbon free energy content of its wholesale electricity portfolio

- Local workforce benefits to recognize the value of workers in existing jobs that support the energy infrastructure of Alameda County and Northern California, including guidance related to:
  - Stable and Skilled Workforce and Local Workforce Development
  - Opportunities for Disadvantaged Workers
  - Local Union Jobs

**FISCAL IMPACT**

EBCE will select projects based on a defined set of criteria with minimal rate impacts to EBCE customers.

**ATTACHMENTS**

- A. EBCE RFP Protocol



**DRAFT**

East Bay Community Energy

Request for Proposals

Alameda County Sited Clean Energy

Issuance Date: February 12, 2018

Response Deadline: March 9, 2018

## **Purpose**

East Bay Community Energy (“EBCE”) is soliciting competitive proposals for the sale and purchase of clean energy consistent with the terms and provisions in this Request for Proposals (“RFP”).

## **Background and Objectives**

EBCE is a Joint Powers Authority formed on December 1, 2016 pursuant to California Government Code §§ 6500 et. seq. by the County of Alameda, and each of the following cities incorporated therein: Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Oakland, Piedmont, San Leandro, and Union City. On August 10, 2017 EBCE filed its Community Choice Aggregator (“CCA”) Implementation Plan with the California Public Utilities Commission (“CPUC”). On September 7, 2017, the CPUC provided PG&E notice of the receipt of EBCE’s Implementation Plan, and on November 8, 2017, the CPUC certified EBCE’s Implementation Plan.

The goal of this RFP is for EBCE to identify and enter into one or more long-term Power Purchase and Sale Agreements (PPAs) to secure up to 150,000 MWh per year of energy and associated attributes, sourced from carbon free generation facilities. For the purposes of the RFP, carbon free generation facilities means any energy sources, except for nuclear-powered generation assets, that are considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations, and generation facilities that meet the standards required, pursuant to the California Energy Commission’s definitions, to be an eligible Portfolio Content Category 1 Eligible Renewable Resource (“PCC1”).

Currently, the Northern California Power Agency (“NCPA”), acting as EBCE’s scheduling coordinator (“SC”) will schedule the output purchased by EBCE into the California Independent System Operation (“CAISO”) system. Any transmission services required to deliver the contracted output to the applicable Point of Delivery on the CAISO transmission system shall be acquired and arranged for by the supplier, and delivery of the output to EBCE’s load (the PG&E Default Load Aggregation Point, or “DLAP”) shall be settled financially in the CAISO markets.

Through this RFP, EBCE seeks to purchase carbon free energy to meet a portion of its electric energy needs in 2019 and subsequent years, for terms of 5-20 years. EBCE is seeking to purchase cost effective, carbon free energy pursuant to its Implementation Plan and California’s energy and environmental objectives. EBCE’s goal is to purchase electricity and attributes from eligible carbon free, PCC1 resources through this RFP starting as early as 2019 to:

- Support long-term low and stable operating costs; and
- Increase the carbon free energy content of its wholesale electricity portfolio

This RFP will only consider projects that are physically located within the geographic boundaries of Alameda County, California.

EBCE seeks proposals that best meet the objectives stated herein, as well as other criteria specified below.

## **Evaluation/RFP Assistance**

EBCE and NCPA will be conducting the RFP process and potential contract negotiations with successful Bidders who respond to this RFP. EBCE may at times authorize NCPA to represent it during the RFP process. EBCE will notify Bidders in writing when such authorization has been granted or withdrawn.

**Products**

EBCE is seeking proposals for the sale and purchase of carbon free energy per the following terms:

<p align="center"><b>Product</b></p>	<p>The Product includes all the following:</p> <ul style="list-style-type: none"> <li>• As-available, unit contingent electric energy delivered via CAISO Day-ahead and Real-time scheduling procedures</li> <li>• Environmental attributes/Renewable Energy Credits</li> <li>• Capacity attributes (e.g., Resource Adequacy Capacity)</li> <li>• Ancillary services, and any other attributes similar to or associated with the foregoing that may be defined by the CAISO or other entities in the future.</li> </ul> <p>Note: Proposals where the Bidder retails some of the Product attributes described herein for multi-use service applications or other uses will be considered if economically advantageous to EBCE. Bidders should clearly outline the value proposition to EBCE if an alternative product definition is proposed.</p>
<p align="center"><b>Project Location</b></p>	<p>Alameda County (California).</p>
<p align="center"><b>Eligible Energy Resources</b></p>	<p>Projects must qualify as an eligible renewable resource as such is defined in PUC 399.12 and implemented by the California Energy Commission (“CEC”) pursuant to its RPS Eligibility Guidebook. Bidders must describe how the resource will qualify and meet the Portfolio Content Category One (“PCC1”) requirements. Note: Specifications for PCC1 are described in PUC 399.16, California Public Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.</p>
<p align="center"><b>Delivery Point (Settlement Point)</b></p>	<p>Bidders must include at least two pricing options for each bid, with one pricing proposal for each of the following Delivery Points: (1) Project Point of Delivery at the CAISO grid (i.e., Pnode), and (2) the PG&amp;E Default Load Aggregation Point (i.e., PG&amp;E DLAP).</p>
<p align="center"><b>Installed Capacity</b></p>	<p>Minimum two (2) MW.</p>
<p align="center"><b>Annual Generation Offered Volume</b></p>	<p>Between 2,000 – 250,000 MWh in the first contract year. Bidders are encouraged to submit offers for a range of capacities and generation volumes to support EBCE’s portfolio optimization.</p>
<p align="center"><b>Delivery Start Date</b></p>	<p>Between December 2018 – December 2020</p>
<p align="center"><b>Delivery Term</b></p>	<p>Minimum of 5 years, up to 25 years</p>
<p align="center"><b>Local Workforce Requirement</b></p>	<p>Proposals that include project development and/or maintenance activities that are completed by and/or utilize labor and other workforce resources sourced from Alameda County, California are preferred</p>

## **Additional Services Proposals**

EBCE appreciates that Bidders may be able to offer alternate pricing, structures, products, complementary services, or terms that may increase the attractiveness of a Bidder's proposal but differ from the terms described in the previous section of this RFP, or in the Term Sheet attached hereto as Exhibit C. In particular, EBCE is interested in proposals that address the following market risks:

1. Exposure to varied market conditions (e.g., negative market prices, constrained market events caused by ramping, etc.)
2. Mismatch between the renewable generation's delivery shape and EBCE's load profile (representative 8760 data is attached hereto as Exhibit E)
3. Uncertainty of intermittent product deliveries
4. Potential expansion of CAISO to a regional market

EBCE embraces creativity and encourages Bidders to present additional services or product offerings to mitigate these and any other risks to enhance the standard Product described above (including the potential ability for the project site to accommodate additional renewable capacity and/or co-located storage at a future date). Proposing unique contract provisions to address these risks is also welcome.

## **Notice of Intent to Bid**

By Monday February 26, 2017 at 5:00 PM Pacific Time ("PT"), Bidders shall return a completed Notice of Intent to Bid Form ("NOI"), which is attached hereto as Exhibit A, via email to [rfp@ebce.org](mailto:rfp@ebce.org). The subject line of the email shall be: "EBCE Local Energy RFP NOI."

## **Webinar**

EBCE and NCPA will conduct a webinar to present the RFP protocol, as well as answer some or all of Bidder questions, at EBCE's discretion. Instructions for joining the Webinar will be provided to all Bidders who submit the NOI by the NOI deadline. Webinar attendance is encouraged but not required. The Webinar is scheduled for Wednesday February 28<sup>th</sup>, 2018 at XXXX.

## **Bidder Questions**

To promote accuracy and consistency of information provided to all participants, Bidders are encouraged to submit questions in writing to EBCE. Questions will only be accepted via email submitted to [rfp@ebce.org](mailto:rfp@ebce.org), and the subject line of the email shall be "EBCE Local Energy RFP Question." The deadline for submitting questions is Friday March 2, 2018 at 5:00 PM PT. Bidders are encouraged to submit questions as soon as possible, so that some or all of the questions may be addressed during the Webinar.

EBCE will provide a written response to the questions submitted via email by Wednesday March 7, 2017, to all Bidders who provided a complete NOI. EBCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions, at its sole discretion.

## **RFP Schedule**

The table below summarizes the RFP schedule, with details of each event provided further below. The RFP schedule is subject to change at EBCE's discretion, and such change(s) will be announced by email to all Bidders who provide a complete NOI by the NOI deadline.

<b>Event</b>	<b>Date</b>
Issuance of RFP	Monday, February 12, 2018
Deadline to submit Notice of Intent to Bid Form	Monday, February 26, 2018
Bidder Webinar	Wednesday, February 28, 2018
Deadline to submit questions	Friday, March 2, 2018
Responses to questions provided	Wednesday, March 7, 2018
Proposals Due to EBCE	Friday, March 9, 2018
Notification of final shortlisted Bidders	Friday, March 16, 2018
PPA negotiations	March, 2018
Final contract approval	April, 2018
Execution of PPA	May 2018

### **Issuance of RFP**

EBCE posted this RFP at [www.ebce.org](http://www.ebce.org) and is issuing this RFP to potential Bidders by email. EBCE reserves the right to distribute this RFP to additional prospective Bidders after the Issuance Date at its sole discretion. Such late distribution will not affect the remainder of the RFP schedule outlined herein.

### **Proposal Submittal**

Bidders must deliver their RFP response via email to [rfp@ebce.org](mailto:rfp@ebce.org) by the deadline listed above. The subject line of the email shall be: "EBCE Local Energy RFP Response." Proposals must provide all of the information requested in this RFP. In addition, each proposal must include a signed attestation by an authorized signatory of the Bidder that the Bidder has not and will not engage in collusion with other Bidders or other unlawful or unfair business practices in connection with this RFP. EBCE reserves the right to contact any Bidders to clarify submitted proposals. EBCE will consider all complete proposals submitted by the deadline listed above. Incomplete proposals may be accepted, supplemented, or disqualified at EBCE's sole discretion. Bidder will promptly notify EBCE of any material change in circumstances that may affect the Bidder's ability to fulfill the terms of its proposal at any time from proposal submission until the earliest of execution of a definitive agreement, EBCE's rejection of the proposal, or Bidder's withdrawal of the proposal.

EBCE shall not be responsible for any costs incurred by Bidder to prepare, submit, negotiate, contract, or participate in this RFP process.

### **Bidder Shortlist**

EBCE intends to select a shortlist of proposals for further due diligence and potential Bidder interviews. After such due diligence and evaluation, successful candidate Bidder(s) will be determined with which to enter into contract negotiations.

### **Contract Negotiation and Execution**

A Bidder that successfully moves through the due diligence process will enter PPA negotiations with EBCE. EBCE may seek commercial advice from NCPA or another party during this RFP process. Additionally, EBCE may at times authorize NCPA or another party to represent it in due diligence activities, or during negotiations and will notify Bidders when such authority has been granted or withdrawn.

EBCE will be required to obtain approval of the EBCE Board of Directors prior to execution of any negotiated PPA. Until a definitive agreement is negotiated, approved by EBCE, and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other way.

## **Proposal Requirements**

All proposals must be submitted by the deadlines listed in the RFP schedule included herein.

EBCE desires to contract with renewable energy projects that can most economically and reliably serve its energy needs. All proposals must include the following sections:

1. Executive Summary
2. Developer Background
3. Proposed Transaction
4. Pricing
5. Project Overview
  - i. Site Control
  - ii. Description of Energy Resource
  - iii. Development Plan
  - iv. Interconnection and Deliverability Status
  - v. Permitting Status and Other Environmental Requirements
  - vi. Financing
  - vii. Local Workforce Development
  - viii. Construction & Equipment
  - ix. Operations and Maintenance

Each of these sections and the content sought is described below.

### **1. Executive Summary**

Bidder shall (i) provide a high-level overview of each proposal (no longer than one page), and (ii) populate the "Bidder Information Template," attached hereto as Exhibit B.

### **2. Developer Background**

Bidder shall describe its experience developing, building, financing, and operating renewable energy projects of similar size and technology to that being proposed. Please summarize the Bidder's portfolio of projects in operation, under contract, under construction and in late stage development, highlighting those facilities located in the state hosting the proposed project. Additionally, Bidder shall detail its corporate finance structure, credit rating and access to capital.

### **3. Proposed Transaction**

The Bidder shall describe the proposed transaction. At a minimum, Bidder must provide a base offer that conforms to the terms and conditions specified in the Term Sheet, attached hereto as Exhibit C. Bidder may also



propose alternative terms that result in a more attractive opportunity to EBCE. Bidder should clearly identify any elements of bid variants that are mutually exclusive.

#### **4. Pricing**

Prices and costs must be “all in” and include (i) all costs to deliver energy to the specified Delivery Point and RECs via the Western Renewable Energy Generation Information System (“WREGIS”) (or any successor system) during the entire contract term, and (ii) all costs required by law and any relevant CAISO market rules and other regulations. EBCE shall not be responsible for any costs or fees associated with the delivery of the product other than the specified power purchase price.

All Bidders must provide, for each project, two pricing options as part of a successful Bid. The two pricing options are: i) Delivery Point at the project Pnode (i.e. the CAISO pricing node assigned to the generator), and ii) Delivery Point at the PG&E Default Load Aggregation Point. Bidder may optionally include pricing for other Delivery Point locations for EBCE’s consideration (in its discretion), but pricing must include a separate price for both of the foregoing Delivery Points.

If the proposal involves a price that escalates or de-escalates over time, the escalation or de-escalation rate must be explicitly stated. EBCE prefers certain pricing (i.e. non-index based) though not necessarily flat pricing, and encourages Bidders to provide a price schedule for the duration of the PPA term to clearly define the annual contract price.

Bidders are encouraged to optionally include a pre-payment pricing structure but in all cases, must also provide pricing without a pre-payment pricing structure.

#### **5. Project Overview**

##### **Site Control**

Bidder shall detail the type of site control (i.e. option to lease, lease, option to purchase, ownership) and the current status of such site control (i.e. complete or the percentage of needed land currently contracted and expected timing for full site control). If the site is leased, describe the remaining term of the lease and any material conditions related to the lease. Additionally, please comment on the status of site control for the interconnection path.

Minimum Requirement: 100% site control for project site and interconnection path 18 months prior to the proposed commercial operation date (“COD”) of the project.

##### **Description of Energy Resource**

Provide a fully completed 8,760 Generation Profile Template as an Excel file (attached hereto as Exhibit D), as well a description of how such profile was generated and the data that was used to generate the profile.

##### **Development Plan**

Bidder shall detail a credible plan to achieve the proposed COD. Please provide a schedule of key milestones and their expected achievement date, including a guaranteed COD.

##### **Interconnection and Deliverability Status**

Each proposal must describe the interconnection and deliverability status of the project, including, for projects interconnecting within the CAISO, whether the project requested Full Capacity Deliverability Status, the status of any deliverability allocation to the project, and identification of the Local Capacity Area applicable to the project

(if any). No studies or interconnection agreements need to be submitted with the proposal, but this section should describe (as applicable): (i) the project's status in the interconnection process, (ii) the results of any studies performed during the interconnection process (or applicable studies conducted by consultants), including the expected timing and costs of interconnection for the project if no interconnection agreement has been executed, and, if applicable, (iii) the terms of any interconnection agreements, including timing and costs of interconnection for the project. Preference will be given to projects with more certain paths to interconnection with regard to timing and costs. In addition, the project's progress in the interconnection process must support the proposed COD. If a Bidder is shortlisted, additional documentation may be required. Bidders are encouraged to include third-party congestion and curtailment analysis as well.

Minimum Requirement: Must have submitted an application with the applicable entity for the interconnection agreement for the specific project.

### **Permitting Status and Other Environmental Requirements**

Bidder shall describe all of the studies and permits required for construction and operation (e.g. Conditional Use Permit, Notice of Determination, Environmental Impact Report, etc.), the status of each and the expected timing for obtaining any outstanding permits. Preference will be given to projects with more certain paths to final permitting with regard to timing. In addition, the project's progress in the permitting process must support the proposed COD.

Minimum Requirement: Must have commenced the process of obtaining the applicable key discretionary permit for the project.

### **Financing**

Detail the financial capability of the company to meet its obligations under the proposed PPA, including the planned approach for financing project development and construction. Identify the entity that will be the project's long-term controlling owner.

### **Local Workforce Development**

Proposals shall describe how Bidder may utilize local workforce resource and labor, suppliers and/or other services specific to Alameda County, California during the development and operational phases of the projects.

### **Construction & Equipment**

Describe and confirm the Bidder's ability to procure Engineering, Procurement, & Construction services to support its proposal. For a Bidder proposing wind energy projects, please comment on your ability to qualify the project for the federal Production Tax Credit.

### **Operations and Maintenance**

Bidder shall describe plans for long-term ownership, operation and maintenance of the project, including how Bidder plans to schedule energy deliveries under the proposed PPA. Bidder shall state whether the proposal assumes that EBCE will provide SC Services (per the Term Sheet) or that they, or a third-party, shall provide such SC Services. If the Bidder's proposal includes a unique scheduling arrangement in order to provide an economically advantageous deal structure to EBCE, then the Bidder shall clearly outline the roles and responsibilities of the Bidder and EBCE.

## **Evaluation of Proposals**

EBCE may procure renewable energy and additional services from those Bidders whose proposals, in EBCE's sole judgement, represent the greatest value to EBCE when compared with other available options.

EBCE will, in its sole discretion, evaluate each complete proposal submitted by the RFP deadline to determine which proposals are likely to provide the greatest overall value to EBCE. EBCE will perform an initial screening to identify and eliminate any proposal that is nonresponsive to this RFP, does not meet the minimum requirements set forth in this RFP, is clearly not economically competitive with other proposals, or is submitted by a respondent that lacks appropriate creditworthiness, sufficient financial resources, or qualifications to provide dependable and reliable service.

Once it is determined that a proposal has met the requirements of the RFP, it will be evaluated based on (i) how closely the proposed transaction meets EBCE's goals and requirements described in the "Background and Objectives" section of this RFP, (ii) the economics and potential risks of the transaction, and (iii) the reasonableness and credibility of the proposals with regard to project development and the proposed transaction.

As part of this review process, EBCE shall perform quantitative assessments of each proposal and subsequently rank them based on the costs and benefits to EBCE, and the certainty of such costs and benefits. EBCE shall also evaluate each proposal qualitatively. All proposals will be evaluated based on factors that include, but are not limited to: proposal term, technology, energy source, location, delivery point, timeline, environmental benefits as well as the Bidder's experience, public credit rating, financial stability, extent of off-balance sheet financing, product price and terms, delivery, service levels, and other relevant criteria. Evaluations will be based on information provided during the RFP process, possible oral interviews with the Bidder, email requests, information already known by EBCE or its advisors, and other publicly available information.

EBCE retains the right, at its sole discretion, to reject any proposal for any reason at any time, and reserves the right to request information from any Bidder regarding their proposal at any time during the process. EBCE also retains the right at any time, at its sole discretion, to: (a) change the evaluation criteria for any reason; (b) terminate further participation in this process by any Bidder; (c) negotiate with any Bidder to maximize EBCE value and accept or reject any definitive agreement; and/or (d) modify, suspend or terminate this RFP as it deems appropriate in its sole discretion at any time. EBCE has the right to take the above-stated actions with respect to any or all proposals, all without notice and without assigning any reasons and without liability to EBCE or anyone acting on EBCE's behalf. EBCE will not be liable in any way, by reason of such withdrawal, rejection, suspension, termination or any other action described in this paragraph to any Bidder, whether the Bidder submits a bid or not.

All determinations made by EBCE with respect to any Bidder or its proposal(s), including the determinations described in this RFP, shall be made by EBCE in its sole discretion and without liability. These determinations will be final and are not subject to review. NCPA may assist EBCE in the evaluation of Bidders' proposals.

## **No Guarantee of Offer or Agreement**

This RFP does not constitute an offer from EBCE to buy and creates no obligation to execute any agreement as a consequence of this RFP. Under no circumstances shall EBCE be bound by the terms of any Bidder's proposal nor any subsequent agreement until EBCE has obtained all necessary approvals of its management and the EBCE Board of Directors and all the conditions precedent, if any, set forth in a fully executed agreement have been satisfied or waived.

EBCE reserves the right in its sole discretion to: (i) select multiple Bidders or no Bidders at all, or (ii) negotiate one or more agreements on a bilateral basis outside the terms of this RFP. EBCE shall not be liable to any Bidder submitting a proposal in response to this RFP.

Each Bidder's costs for developing its proposals, including all RFP review, bid preparation and submittal costs, are entirely the responsibility of the applicable Bidder, and EBCE shall not have any responsibility or liability for such costs. EBCE is not responsible for returning any materials submitted by a Bidder as part of its proposal.

### **No Conflicts**

Bidder agrees that to its knowledge no Board member, officer, or employee of EBCE has any interest, whether contractual, non-contractual, financial or otherwise, in this transaction, or in the business of Bidder, and that if any such interest comes to the knowledge of either party at any time, a full and complete disclosure of all such information will be made in writing to the other party or parties, even if such interest would not be considered a conflict of interest under Article 4 of prohibition applicable to specified officer, Chapter 1 of Division 4 of Title 1 (commencing with Section 1090) of the Government Code of the State of California.

### **Prevailing Wages**

It is EBCE's intent that wages paid for all work performed as a result of any and all contracts executed as part of this RFP meet or exceed prevailing wages as described in this section. Therefore, all executed contracts resulting from this RFP shall include prevailing wage provisions mandating that all workers employed on or in support of the project(s) by the Bidder or through subcontractors as a result of the contract execution be paid not less than the prevailing rate of wages for the appropriate craft, classification, type of worker and locality as determined by the Director of the State Department of Industrial Relations in accordance with Division 2, Part 7, Chapter 1 of the California Labor Code, or as set out in the wage determination of the U.S. Secretary of Labor, whichever is higher. Nothing herein shall require EBCE, the Bidder, the Bidders' contractors, or subcontractors to comply with, or assume liability or obligations created by other inapplicable provisions of the California Labor Code.

### **Non-Discrimination**

It is the policy of EBCE to ensure that Bidders who contract with the District do not discriminate or give a preference in the award of subcontracts on the basis of race, national origin, color, ethnicity, or gender.

### **Small Business Participation**

Although there are no small business goals related to this RFP, it is the policy of EBCE to encourage Bidders to utilize small businesses to the maximum extent possible and ensure adherence to EBCE's non-discrimination policy for subcontracting described above. Bidder shall, as part of its Proposal(s) in the Bidder Information Worksheet for each Project, describe the subcontracting activity to small businesses, including subcontracting activity to disabled-veteran-owned, minority-owned and women-owned businesses, and may optionally describe Bidder's subcontracting programs or activity in separate additional documentation included with the Proposal. Contracts executed as a result of this RFP will include a reporting requirement on the percentage of procurement spend with small businesses for subcontracted work during the project construction phase, if applicable.

### **Confidentiality**

Bidder acknowledges that EBCE is a public agency subject to the disclosure requirements of the California Public Records Act, Cal. Gov. Code § 6250 et seq. ("CPRA"). If documents or information submitted to EBCE contain Bidder's proprietary and confidential information and Bidder claims that such information falls within one or more CPRA exemptions, Bidder must clearly mark such information "CONFIDENTIAL AND PROPRIETARY" and identify the specific lines containing such information (the "Confidential Information") and the CPRA exemption

applicable to such information. Except for disclosures to EBCE's directors, officers, employees, agents, representatives or advisors (including financial advisors, attorneys and accountants), EBCE shall disclose such Confidential Information to third parties only to the extent that such disclosure is required by California law (including, without limitation, the California Constitution, the CPRA and the Brown Act) as set forth in this Section.

In the event of a third party request for EBCE to disclose such Confidential Information, EBCE shall make reasonable efforts to provide notice to Bidder prior to disclosure. If Bidder contends that any Confidential Information is exempt from the CPRA and wishes to prevent disclosure, Bidder shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Alameda County, California, before EBCE's deadline for responding to the CPRA request. If Bidder fails to obtain such remedy prior to EBCE's deadline for responding to the CPRA request, Bidder agrees that EBCE may disclose the requested Confidential Information. Bidder further agrees that EBCE shall have no liability to Bidder arising out of any disclosure by EBCE of any Confidential Information before Bidder has timely obtained an order, injunctive relief or other appropriate remedy to prevent EBCE from making the requested third party disclosure.

### **Governing Law**

This RFP shall be governed by and construed in accordance with the laws of the State of California.

### **General Provisions**

EBCE will not be liable for any technical malfunction during communication transit. EBCE will only consider questions, Notices of Intent to Bid Forms, proposals, or other communications to be timely and complete if they are received electronically at RenewableRFP@EBCE.gov not later than the relevant deadline. Bidders may request confirmation of receipt of communications and materials, and EBCE will attempt to accommodate reasonable requests, but assumes no obligation or associated liability related to such accommodation.

Those Bidders who submit proposals agree to do so without legal recourse against EBCE, its Board, managers, agents, or contractors for rejection of their proposal(s) or for failure to execute an agreement for any reason. EBCE shall not be liable to any Bidder or party at law or in equity for any reason whatsoever for any acts or omissions arising out of or in connection with this RFP. By submitting its proposal(s), each Bidder waives any right to challenge any valuation by EBCE of any proposal of any Bidder or any determination of EBCE to select or reject any proposal of any Bidder or take any action contemplated by this RFP, any other decision of EBCE contemplated by this RFP or any resulting agreement related to a selected proposal. Each Bidder, in submitting its proposal(s), irrevocably agrees and acknowledges that it is making its proposal(s) subject to and in agreement with the terms of this RFP.

### **Exhibits**

- A. Notice of Intent to Bid Form
- B. Bidder Information Template
- C. Term Sheet
- D. Generation Profile Template
- E. EBCE Representative Load Shape Data



## Staff Report Item 17

**TO:** East Bay Community Energy Board of Directors

**FROM:** Annie Henderson, Vice President of Marketing and Account Services  
Supria Ranade, Director of Power Resources

**SUBJECT:** Discussion of *Brilliant 100* and Offering a Third Energy Product

**DATE:** January 17, 2018

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### **Recommendation**

Receive update and provide feedback on *Brilliant 100* and potential third energy product.

### **Background and Discussion**

The customer product options of *Bright Choice* and *Brilliant 100* were reviewed by a small focus group in October 2017 and then presented to the board on December 6, 2017 as part of a communications and marketing update. The power mix of *Brilliant 100* was not presented at that time, though there was noted interest in a third product.

### **Brilliant 100**

There are currently two options for the *Brilliant 100* product, both consisting of 100% renewable energy. Both options would source renewable energy from Portfolio Content Category 1 (PCC1), also referred to as a bundled renewable energy product.

The California PUC defines PCC1 as the following:

*Definition of Portfolio Content Category 1 (PCC 1) - Facilities with First Point of Interconnection within a California Balancing Authority (CBA) or with Generation Scheduled into a CBA:*

- *First point of interconnection to the Western Electricity Coordinating Council (WECC) transmission grid within the metered boundaries of a California balancing authority area.*
- *First point of interconnection with the electricity distribution system used to serve end users within the metered boundaries of a California balancing authority area.*
- *Generation from a facility that is scheduled into a California balancing authority without substituting electricity from any other source. If another source provides real-time ancillary services required to maintain an hourly or sub-hourly import*

*schedule into the California balancing authority only the fraction of the schedule actually generated by the generation facility from which the electricity is procured may count toward this portfolio content category.*

- *Generation from a facility that is scheduled into a California balancing authority pursuant to a dynamic transfer agreement between the balancing authority where the generation facility is located and the California balancing authority into which the generation is scheduled.*

The first option would procure PCC1 renewable energy from throughout the Western Electricity Coordinating Council (WECC) region. The second option would procure PCC1 renewable energy from California only. This CA option is approximately 10-15% higher in costs compared to an all WECC option.

**Other CCAs 100% Products**

Most CCAs in the state have a premium product that is 100% renewable energy. Below is a comparison of the power mix, premium, and kWh cost for the E1 rate schedule for five active CCAs around the Bay Area.

CCA	MCE Clean Energy	Sonoma Clean Power	CleanPowerSF	Peninsula Clean Energy	Silicon Valley Clean Energy
Power Mix	25% Biomass 25% PV 50% Wind	100% Geothermal	100% Wind	100% Wind	80% Hydro 20% PV
Premium/kWh	0.010	0.025	0.014	0.010	0.008
\$/kWh (with PCIA)	0.10123	0.12067	0.11813	0.10346	0.10540

**Third Product Options**

EBCE has several options for a potential third product, as outlined in the attached slides. After further discussion with the Board and key stakeholders, EBCE staff will present a single recommendation for Board approval, if a third product is deemed feasible.

**Other CCAs Third Products**

Only a couple CCAs currently have a third product option. The attached slides highlight the MCE Clean Energy *LocalSol* product, which has a distinct power mix from its other products, and the Monterey Bay Community Power *MBshare* product, which has the same power mix as its other products but assigns a customer’s annual rebate to a local environmental organization.

**Attachment:**

- A. Presentation on *Brilliant 100* and Third Product Options

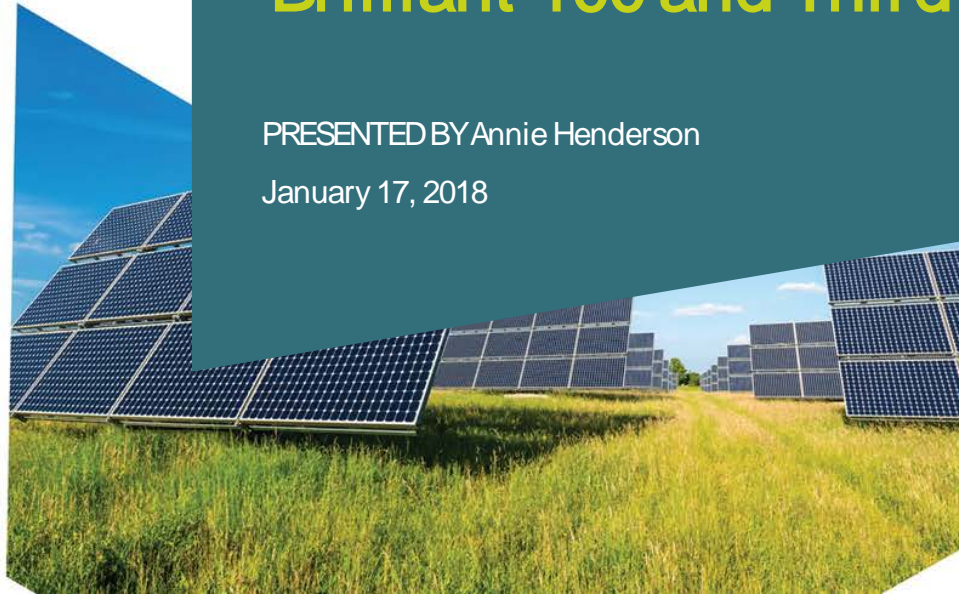




## Product Options: Brilliant 100 and Third Product

PRESENTED BY Annie Henderson

January 17, 2018





# Brilliant 100 Product Options

	Brilliant 100 Options		Other CCA 100% RE Options		PG&E
	100% Renewable (WECC)	100% Renewable (CA)	MCE Deep Green	SCP Evergreen	PG&E
Power Mix	All PCC1 <u>All WECC</u>	All PCC1 <u>CA Only</u>	25% Biomass 25% PV 50% Wind	100% Geothermal	33% Renewable 60% Carbon-Free
% over PG&E	10-15% <i>(estimate only)</i>	20-25% <i>(estimate only)</i>	~10%	~23%	---

# Brilliant 100 Pricing Options

## Bright Choice Discount

Brilliant 100  
Premium  
(\$/kWh)

	5%	4%	3%	2%	1%	0%	
0.010	5.16%	6.16%	7.16%	8.16%	9.16%	10.16%	
0.015	10.25%	11.25%	12.25%	13.25%	14.25%	15.25%	100% WECC
0.020	15.33%	16.33%	17.33%	18.33%	19.33%	20.33%	
0.025	20.41%	21.41%	22.41%	23.41%	24.41%	25.41%	100% CA

## CCA Comparison

	Estimated Default Product Discount	Premium (\$/kWh)	Premium %
Sonoma Clean Power	2.75%	0.025	23.25%
CleanPowerSF	0.25%	0.014	20.08%
MCE	1.00%	0.010	9.54%
Silicon Valley Clean Energy	1.00%	0.008	7.14%
Peninsula Clean Energy	5.00%	0.010	5.16%

# EBCCE Third Product

- EBCCE Potential Options

- Continue focus on execution of *Bright Choice* and marketing *Brilliant 100*
- Develop customized solutions that facilitate large commercial customer needs
- Add a *Build Local* product
  - Same power mix as *Bright Choice*, cost equivalent to *Brilliant 100*
  - Price premium deposited into a Local Development Fund on annual basis
- Develop a Community/Shared Solar program no sooner than late 2018

- Examples of other CCA3rd products

	LocalSol from MCE Clean Energy	MBshare from Monterey Bay Community Power
<b>Logistics</b>	Limited to 300 customers	<ul style="list-style-type: none"> <li>● First CCA to have a third product offering at launch</li> <li>● Donates 3% rate discount rebate to local org</li> </ul>
<b>Power</b>	100% solar power produced by 1MW project in Novato (commissioned in 2017)	Same power mix as other 2 products <ul style="list-style-type: none"> <li>● 30% Renewable</li> <li>● 100% Carbon-Free</li> </ul>
<b>Rate</b>	<ul style="list-style-type: none"> <li>● Deep Green + 30%</li> <li>● Approximately 33%-40% more than PG&amp;E depending on rate schedule and time of year</li> </ul>	<ul style="list-style-type: none"> <li>● Match PG&amp;E rate inclusive of PCIA and Franchise Fee</li> <li>● No discount or premium to PG&amp;E rates</li> </ul>



## Staff Report Item 18

**TO:** East Bay Community Energy Board of Directors

**FROM:** Supria Ranade, Director of Power Resources, Ken Goeke; Manager, Pooling and Portfolio Administration, Northern California Power Agency

**SUBJECT:** Standard Power Purchase Agreements and Confirms

**DATE:** January 17, 2018

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### **Recommendation:**

Receive update and provide feedback on Standard Power Purchase Agreements and Confirms.

### **BACKGROUND**

On January 10, EBCE Board received copies of the EEI Master Agreement and Confirmation, “Lockbox” Agreements: Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement, and WSPP (Western States Power Pool) Agreements and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement. EBCE Staff will be working with NCPA to purchase power and enter into transactions to hedge electricity prices on an ongoing basis, as needed to fill load demand. Each of these transactions can be several million dollars and are typically transacted within 2 hours from the time prices are offered by the supplier, to the time transaction confirmations are executed. This short time frame cannot accommodate the need to seek Board approval for each transaction and generally requires that oversight must be conducted using a different approach. The attached ERM Policy and Guidelines in Item 9 provides for internal controls, a Risk Oversight Committee and other measures consistent with power industry standards and the majority of utilities and energy companies.

**Edison Electric Institute Master Agreement (EEI Master):**

EBCE is basing its power supply agreements on the industry-standard Edison Electric Institute master power purchase and sale agreement (“Master Agreement”) and WSPP agreement, using terms and conditions that have been commonly adopted by existing CCA programs. The Master Agreement is a widely used standard form agreement containing general terms and conditions for electric power transactions. The first section of the Master Agreement, known as the “Cover Sheet”, enables election of certain optional provisions and allows for modifications to the standard terms agreed to between the parties. Generally speaking, the Cover Sheet represents the product of negotiations that have occurred among the parties as those relate to the Master Agreement. The specifics of individual transactions, such as product, price, and delivery term, are documented in the EEI Confirmations, under the umbrella of the general terms and conditions set forth in the Master Agreement.

Because EBCE is a new entity with few existing assets, credit exposure is an important consideration in negotiating power supply contracts. Some of the contracts that involve relatively low levels of financial exposure will not require any unique credit support from EBCE and can be executed immediately upon Board authorization. For larger transactions that impose significant credit exposure to the seller, EBCE will utilize a lockbox structure that has been used successfully by numerous other CCA entities as a form of credit support. Revenues collected by PG&E on EBCE’s behalf will be deposited into a dedicated account, and suppliers will be paid for energy deliveries from that account, administered by the bank acting as collateral agent on behalf of the supplier. Unlike the Master Agreements and Confirmations, which are negotiated and executed separately with each power supplier, there will be a single set of lockbox agreements for the benefit of all secured power suppliers. EBCE has confirmed that many suppliers are able to utilize the lockbox credit structure, and each of these as well as the bank must agree to the same set of lockbox agreements. We anticipate presenting finalized lockbox agreements, EEI Master Agreements at the February 7<sup>th</sup> Board Meeting.

All transactions under the Master Agreements will be executed by EBCE staff in accordance with the Board approved Energy Risk Management Policy, including the Approved Product List and Energy Risk Management Guidelines and Procedures. These procedures are monitored by the Executive Director, Risk Oversight and Coordination Committee to ensure that risks inherent in the energy industry are managed prudently. Staff provides Council with an update of all executed transactions under the Master Agreements in the quarterly Energy Risk Management reports.

**WSPP Agreement:** EBCE is a member of WSPP, which manages a power procurement agreements. The WSPP’s purpose is to facilitate efficient and robust power purchase transactions among its 300 members. Only WSPP members may use the Agreement. The Agreement is another way to allow transactions to occur without constant renegotiations of contract terms and to standardize terms, thereby promoting liquidity in the market. Currently, the WSPP Agreement is a commonly used standardized power sales contract in the electric industry. The WSPP Agreement represents a standardized contract for electric power sales and physical options.

The WSPP Agreement, however, provides parties with the flexibility on the major terms to modify the agreement, by their mutual agreement, to be applied to any WSPP transaction, as discussed below. The WSPP Agreement, by its terms, only applies to transactions between WSPP members. It is anticipated that a portion of EBCE's power procurement will be transacted through the WSPP Agreement.

**Standard Confirmations:** NCPA has provided EBCE with standard confirmation, which they have developed for use in power purchase transactions for their members, which are to be used in conjunction with the WSPP Agreement. There are six standard confirmations related to the following specific types of power purchases:

- Electric Capacity and/or Electric Energy
- Specified Source Energy
- Resource Adequacy Transaction
- Renewable Energy Credit Category 1
- Renewable Energy Credit Category 2

The WSPP Agreement can also serve as a master agreement. The confirmations provide for the specific product(s) being transacted, the identification of the transacting parties, and specific terms of service and delivery. The confirmations also include any special regulatory or legal provisions related to California market transactions. Typical power procurement transactions will be conducted through a competitive process (i.e. a request for proposals). At the close of the response submission deadline, the proposals are reviewed and the selected proposal(s) are awarded, usually within a few hours. The confirmation is then executed to document the transaction. The confirmation is considered a part of the Agreement, providing specific terms and conditions. The confirmations are provided to the Board for consideration and discussion. Staff will return to the Board at a future meeting, seeking approval of the confirmations.

## **FISCAL IMPACT**

There is no fiscal impact associated with approval of the standard power purchase agreements and confirmations.

## **ATTACHMENTS**

- A. EEI Lockbox and WSPP presentation
- B. EEI Master Agreement and Confirmation
- C. Deposit Account Control Agreement, Security Agreement, Intercreditor & Agency Collateral Agreement, collectively known as "Lockbox Agreements"
- D. WSPP (Western States Power Pool) Agreements and copies of five proposed standard confirmations to be used in conjunction with the WSPP Agreement for the purchase of:
  - a. Standard Confirmation Agreement
  - b. Specified Source Energy
  - c. Resource Adequacy
  - d. Renewable Energy, Category 1
  - e. Renewable Energy, Category 2

# EBCE Energy Supply Agreements

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## **Item 18**

**January 17, 2018**

**EBCE Board Meeting**

Supria Ranade

Director of Power Resources

East Bay Community Energy

# Transactions: EEs and WSPP

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## Edison Electric Institute Master Agreement (EEI)

- Utilized by over 200 US utilities
- Establishes a trading relationship, provides **real-time credit provisions**, **standardizes product definitions**,
- Focuses load serving entities on the transaction's basic negotiable elements, e.g., **price, quantity, location, and duration**.
- Directly address counterparty credit

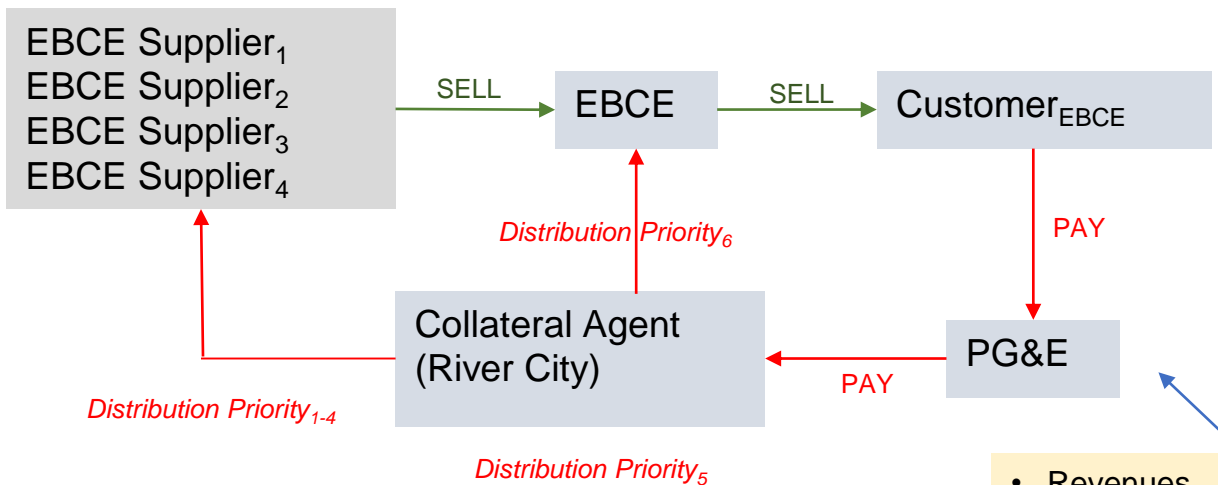
## Western System Power Pool (WSPP) Agreement

- Utilized by over 300 members and utilities
- WSPP Agreement is used to allow transactions to occur **without constant renegotiations of contract terms** and to standardize terms
- Most commonly used standardized power sales contract
- Counterparty credit not directly addressed



# Lockbox Agreements

- EBCE recommends utilizing a lockbox structure that has been used successfully by numerous other CCA entities as a form of credit support.
- The lockbox structure will be used for larger transactions that impose significant credit exposure to the seller



- Revenues collected by PG&E on EBCE's behalf will be deposited into a dedicated account
- Suppliers will be paid for energy deliveries from that account, administered by the bank acting as collateral agent on behalf of the supplier.

**EBCE DRAFT  
2018**

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# Master Power Purchase & Sale Agreement

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

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**MASTER POWER PURCHASE AND SALE AGREEMENT**

**COVER SHEET**

This *Master Power Purchase and Sale Agreement* (“Master Agreement”) is made as of the following date: \_\_\_\_\_, 201\_ (“Effective Date”). The 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 Master Agreement are the following:

Name: \_\_\_\_\_  
 (“\_\_\_\_\_” or “Party A”)

Name: \_\_\_\_\_  
**East Bay Community Energy Authority, a California joint powers authority** (“EBCE” or “Party B”)

**All Notices:**

Address: \_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**All Notices:**

Address: 1111 Broadway, Suite 300  
Oakland, CA 94607

Attn: Nick Chaset \_\_\_\_\_  
Phone: 510-670-5936 \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: [Nchaset@ebce.org](mailto:Nchaset@ebce.org) \_\_\_\_\_  
Duns: \_\_\_\_\_  
Federal Tax ID Number: \_\_\_\_\_

**Invoices:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**Invoices:**

Attn: Nick Chaset \_\_\_\_\_  
Phone: 510-670-5936 \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: [Nchaset@ebce.org](mailto:Nchaset@ebce.org) \_\_\_\_\_

**Scheduling:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Scheduling:**

Attn: Nick Chaset \_\_\_\_\_  
Phone: 510-670-5936 \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Confirmations:**

Attn: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**Confirmations:**

Attn: Nick Chaset \_\_\_\_\_  
Address: Same as above \_\_\_\_\_  
Phone: 510-670-5936 \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: [Nchaset@ebce.org](mailto:Nchaset@ebce.org) \_\_\_\_\_

**Payments:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email: \_\_\_\_\_

**Payments:**

Attn: Nick Chaset  
Phone: 510-670-5936  
Facsimile: \_\_\_\_\_  
E-mail: [Nchaset@ebce.org](mailto:Nchaset@ebce.org)

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Wire Transfer:**

BNK: \_\_\_\_\_  
ABA: \_\_\_\_\_  
ACCT: \_\_\_\_\_

**Credit and Collections:**

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

**Credit and Collections:**

Attn: Nick Chaset  
Phone: 510-670-5936  
Facsimile: \_\_\_\_\_

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

Attn: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

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

Attn: Troutman Sanders LLP  
100 SW Main St. Ste. 1000  
Portland, OR 97204  
Attn: Stephen Hall  
Phone: 503-290-2336  
Email: [Steve.Hall@troutmansanders.com](mailto:Steve.Hall@troutmansanders.com)

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff    Tariff: FERC Electric Tariff    Dated: \_\_\_\_\_    Docket Number: \_\_\_\_\_

Party B Tariff    N/A

---

**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: East Bay    Cross Default Amount  
Community Energy Authority    **\$1,000,000.00**

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 unless otherwise specified as follows: \_\_\_\_\_  
\_\_\_\_\_

Option C (No Setoff)

---

**Article 8**

8.1 Party A Credit Protection:

Credit and Collateral Requirements    (a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

(1) The annual report containing audited consolidated financial statements for such fiscal year of Party B as soon as practicable after demand, but in no event later than 180 days after the end of each annual period and such request will be deemed to have been filled if such financial statements are available at <http://ebce.org/>,



and (2) quarterly unaudited financial statements for Party B as soon as practicable upon demand, but in no event later than 90 days after the applicable quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements. The first quarterly audited statement will be provided within 90 days after the fiscal quarter during which Party A begins deliveries under a Transaction. Party B's fiscal year ends June 30.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$\_\_\_\_; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$\_\_\_\_\_

Party B Rounding Amount: \$\_\_\_\_\_

(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 BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's.

Other:

Specify: Downgrade Event threshold as set forth in the

Applicable Confirmation.

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

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

## 8.2 Party B Credit Protection:

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

The annual report containing audited consolidated financial statements for such fiscal year of Party A as soon as practicable after demand, but in no event later than 180 days after the end of each annual period of Party A and unaudited semi-annual financials within 90 days after the end of each semi-annual period of Party A, and such request will be deemed to have been filled if such financial statements are available at \_\_\_\_\_ [website]. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

(b) Credit Assurances:

Not Applicable

Applicable

(c) Collateral Threshold:

Not Applicable

Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$**TBD**; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: As set forth in the Applicable Confirmation.

Party A Rounding Amount: **\$250,000.00**

(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 BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

Other:  
Specify: It shall be a Downgrade Event for Party A if Party A's Guarantor's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's.

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

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

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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. Collateral description as follows: See Schedule M

**Other Changes**

**This Master Power Purchase and Sale Agreement and the associated Collateral Annex incorporate, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.**

1) Section 1.1 is amended by adding the following sentence at the end of the definition of "Affiliate":

"Notwithstanding the foregoing, the Parties hereby agree and acknowledge that with respect to Party A, [REDACTED], and with respect to Party B the public entities designated as members or participants under the Joint Powers Agreement creating Party B shall not constitute or otherwise be deemed an "Affiliate" for the purposes of this Master Agreement or any Confirmation executed in connection therewith."

2) Section 1.4 is amended by deleting the first sentence and

replacing it to read as follows: “Business Day” means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) Section 1.23 shall be amended by inserting in the thirteenth line of this Subsection before the phrase “foregoing factors” the word “two.”

4) Section 1.24 is amended by adding before the period at the end thereof the following: “in accordance with Section 5.2”.

5) A new Section 1.26A is added as follows:

“1.26A “Joint Powers Agreement” means the Joint Powers Agreement, effective as of December 1, 2016, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated.”

6) Section 1.27 is amended by deleting the phrase “or a foreign bank with a U.S. branch” and replacing it with the phrase “or a U.S. branch of a foreign bank.”

7) Section 1.46 is deleted in its entirety.

8) Section 1.51 is amended by (i) inserting the phrase “for delivery” in the second line after the word “purchases” and before the phrase “at the Delivery Point” and (ii) deleting the phrase “at Buyer’s option” from the fifth line and replacing it with the phrase “absent a purchase”.

9) Section 1.52 shall be amended by (i) deleting the words “Rating” and “Group” from the first line and replacing with “Financial Services LLC” and (ii) by replacing the words in the parenthetical with “a subsidiary of McGraw-Hill Companies, Inc.”

10) Section 1.53 is amended by:

(i) deleting the phrase “at the Delivery Point” from the second line;

(ii) deleting the phrase in line 5 “at the Seller’s option” and replacing it with “absent a sale”; and

(iii) inserting after the word “liability” in the ninth line the following: “provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0).”

11) Section 1.56 is amended by deleting the words “pursuant to Section 5.2” and by adding before the period at the end thereof the

following: “, as determined in accordance with Section 5.2.”

12) Section 1.60 is amended by inserting the words “in writing” immediately following the words “agreed to”

13) In Section 2.1, delete the first sentence in its entirety and replace with the following: “A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties.”

14) In Section 2.1, the last sentence is deleted in its entirety and replaced with the following:

“Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction; provided, however, Party A acknowledges that no employee of Party B may amend or otherwise materially modify this Master Agreement or a Transaction, or enter into a new Transaction, without the approval of the board of Party B, which may be granted on a prospective basis, and that evidence of such approval, including a certified incumbency setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B, will be provided pursuant to Section 10.13.”

15) Section 2.3 is hereby deleted in its entirety and replaced with the following:

2.3 “No Oral Agreements or Modifications. Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Transactions may not be orally amended or modified.”

16) Section 2.4 is hereby amended by deleting the words “either orally or” in the sixth line.

17) Section 2.5 is hereby deleted in its entirety and replaced with the following:

“2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence and secured from improper access; provided, however, that both Parties acknowledge and agree that any such Recording may not be submitted as evidence in any proceeding or action relating to this Agreement. Each Party waives any further

notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees.”

18) Section 3.2 is hereby amended by adding the following text to the end of the Section: “Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating procedures and scheduling practices for the relevant region.”

19) In Section 5.1(a) change “three (3) Business Days” to “five (5) Business Days”.

20) In Section 5.1(g), delete the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section, and add the following at the end of the Section:

“provided, however, that no default or event of default shall be deemed to have occurred under this Section 5.1(g) to the extent that any applicable cure period or grace period is available;”

21) Section 5.1(h)(v) - “Events of Default”

Add “made in connection with this Agreement” after “any guaranty”.

22) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

“(i) during any consecutive ninety (90) day period, there have occurred five (5) or more “Seller Failures” as that term is used in Section 4.1, under any and all Transactions, regarding which the Seller shall be deemed to be the Defaulting Party, and Buyer shall also be entitled to its remedies under Section 4.1;”

“(j) a representation or warranty with respect to the Defaulting Party’s financial statement that is false or misleading if such false or misleading statement is not be remedied within five (5) Business Days after written notice; or”

“(k) revocation or suspension by the Federal Energy Regulatory Commission of Party A’s authorization to make sales at market-based rates, and Party A is unable to reinstate such authorization within ninety (90) days.”

“(l) Either Party: (i) commits an Event of Default under or otherwise defaults under one or more of the Security Documents (as defined below in Schedule M) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period; or (ii) disaffirms,

disclaims or repudiates any Security Document.”

“(m) A Party or its Guarantor suffering or being the subject of a default, event of default, termination event, breach or other similar condition or event (howsoever expressed) that has not been remedied within the applicable grace periods under any other agreement or instrument (including, without limitation, commodity and financial derivative agreements or transactions) between a Party or one of its Affiliates and the other Party or one of its Affiliates, where the result of such event has been the termination and liquidation of transactions and the acceleration of amounts due thereunder.”

23) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: “as soon thereafter as is reasonably practicable”; and

(ii) adding the following to the end of that provision: “then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party’s calculation of the Termination Payment results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then the Termination Payment shall be deemed to be zero dollars (\$0.00).”

24) Section 5.3 shall be amended by adding the phrase “plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article 8,” after the first use of the phrase “due to the Non-Defaulting Party” in the sixth line.

25) In Section 6.3, lines 3, 16 & 18, change twelve (12) months to

twenty-four (24) months.

26) Section 7.1 shall be amended by:

(i) adding “SET FORTH IN THIS AGREEMENT” after “INDEMNITY PROVISION” and before “OR OTHERWISE,” in the fifth sentence;

(ii) adding in the nineteenth line the words “PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND 5.3.” immediately after the words “ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE”; and

(iii) adding at the end of the last sentence the words “AND ARE NOT PENALTIES.”

27) In Sections 8.1(b) and 8.2(b), change “three (3) Business Days” to “five (5) Business Days”.

28) In Sections 8.1(d) and 8.2(d) on line 5, change “three (3) Business Days” to “five (5) Business Days” and before the comma in line five, add “or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing, and does not restore such Performance Assurance within five (5) Business Days of receipt of notice”.

29) Section 8.4 is added as follows:

“In no event shall a Party be required to provide Credit Assurances, Independent Amounts or any other collateral that in the aggregate exceeds Termination Payment plus the Independent Amount.”

30) In Section 10.2, delete the phrase “or Potential Event of Default” from Section 10.2(vii).

31) After Section 10.2(xii) add the following:

“(xiii) each Transaction that is not executed or traded on a trading facility, as defined in the Commodity Exchange Act, is subject to individual negotiation by the Parties;

(xiv) all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute “settlement



payments”;

(xv) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments”; and

(xvi) each Party’s rights under Section 5.2, Declaration of an Early Termination Date and Calculation of Settlement Amounts, and Section 5.3, Net Out of Settlement Amounts constitute a “contractual right to liquidate” Transactions.

(xvii) it is an “eligible commercial entity” within the meaning of Section 1a (17) of the Commodity Exchange Act, as amended by the Commodity Futures Modernization Act of 2000 (the “Commodity Exchange Act”);

(xviii) it is an “eligible contract participant” within the meaning of Section 1a (18) of the Commodity Exchange Act.”

32) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

“it is a “forward contract merchant” within the meaning of the Title 11 of the United States Code, as amended (the “Bankruptcy Code”), all payments made or to be made by one Party to the other Party pursuant to this Agreement constitute a “settlement payment” within the meaning of the Bankruptcy Code, all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute a “margin payment” within the meaning of the Bankruptcy Codes, each Party shall have the “contractual right” to terminate, liquidate, accelerate, or offset the transaction as a “master netting agreement participant” within the meaning of the Bankruptcy Code, electricity delivered hereunder constitutes a “good” under Section 503(b)(9) of the Bankruptcy Code, and the Parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code.”

33) Section 10.5 shall be amended by deleting the words from the beginning of clause (ii) through the words prior to “provided, however” and replacing them with:

“(ii) transfer or assign this Agreement to an Affiliate of such Party so long as (x) such Affiliate’s creditworthiness is equal to or higher than that of such Party or the Guarantor, if any, for such Party, or (y) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the

assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any”

34) Section 10.6 shall be amended by deleting the sentence “EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.”;

and adding the following after the last line: “(a) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HEREBY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION. (b) “EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

The Parties intend for the waiver in clause (a) above to be enforced to the fullest extent permitted under applicable law as in effect from time to time. To the extent that the waiver in clause (a) above is not enforceable at the time that any action or proceeding is filed in a court of the State of California by or against any Party in connection with any of the transactions contemplated by this Agreement, then (i) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any Party, any such issues pertaining to a “provisional remedy” as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (ii) the Parties shall share equally all fees and expenses of any referee appointed in such action or proceeding.”

35) In Section 10.6 change “NEW YORK” to “CALIFORNIA”

36) Section 10.8 shall be amended by:

(i) adding at the end of the second to last sentence: “and the rights of either Party pursuant to (i) Article 5, (ii) Section 7.1, (iii) Section 10.11 (iv) Waiver of Jury Trial provisions, if applicable, (v) the obligation of either Party to make payments hereunder, (vi) Section 10.6 (vii) Section 10.13 and (viii) section 10.4 shall also survive the termination of the Agreement or any Transaction.”; and

(ii) adding the following to the end thereof: “This Master Agreement may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by facsimile or electronic mail transmission shall be effective as delivery of a manually executed signature page.”

37) In section 10.9 insert the words “copies of” after the word “examine” in line 2.

38) Section 10.10 shall be amended by adding the following after the last sentence of Section 10.10:

“Each Party further agrees that, for purposes of this Agreement, the other Party is not a “utility” as such term is used in 11 U.S.C. Section 366, and each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. Section 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort.”

39) Section 10.11, shall be amended by adding the following:

(i) the phrase “or the completed Cover Sheet to this Master Agreement” immediately before the phrase “to a third party” in line three;

(ii) the phrase “, or any such representatives of a Party’s Affiliates,” immediately after the phrase “counsel, accountants, or advisors” in line four;

(iii) in the seventh line thereof, between the word “proceeding” and the semi-colon, which immediately follows, the words “applicable to such Party or any of its Affiliates”;

(iv) an additional sentence at the end of Section 10.11: “The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the

commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.”; and

(v) the following at the end of the last sentence: “Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code Sections 6254 and 6255). Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the “Confidential Information” and the disclosing Party, the “Disclosing Party”), the Party receiving such request (the “Receiving Party”) as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.”

40) The following Mobile-Sierra clause shall be added as Section 10.12:

#### 10.12 Standard of Review/Modifications.

(a) Absent the prior mutual written agreement of all parties to the contrary, the standard of review for any proposed changes to the rates, terms, and/or conditions of service of this Agreement or any Transaction entered into thereunder, whether proposed by a Party, a non-party or FERC acting sua sponte, shall be the *Mobile Sierra* “public interest” standard of review set forth in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, Nos. 06-1457, 128 S.Ct. 2733 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing, LLC, et al., v. Maine Public Utilities Commission et al.* No. 08-674, 130 S.Ct. 693 (2010) (“NRG Order”). As to all other persons, the Parties intend and agree that the same standard applies, to the maximum degree permitted under the NRG Order.”

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

41) The following shall be added as a new Section 10.13:

“Party B’s Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide to Party (i) the deliveries of Party B under Section 3.4, and (ii) the incumbency and signatures of the signatories of

Party B executing this Master Agreement and any Confirmations executed in connection herewith, and setting forth the name and signatures of employees of Party B with authority to act on behalf of Party B.”

42) The following shall be added as a new Section 10.14:

“Party A’s Deliveries. On the Effective Date and as a condition to the obligations of Party B under this Agreement, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution, delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith.”

43) The following shall be added as a new Section 10.15:

“Physical Transactions. The Parties understand and agree that the Transactions under this Agreement are physical transactions for deferred delivery, and that the Parties contemplate making or taking physical delivery of electric energy. Party B is a commercial entity engaged in the business of delivering electric energy to its retail load and routinely makes or takes delivery of electric energy in order to provide service to its retail electric customers.”

44) The following new Section shall be added as Section 10.16:

“Imaged Agreement.” Any original executed Agreement, Confirmation or other related document may be photocopied and stored on computer tapes and disks (the “Imaged Agreement”). The Imaged Agreement, if introduced as evidenced on paper, the Confirmation, if introduced as evidence in automated facsimile form, the Recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of the Recording, the Confirmation or the Imaged Agreement (or photocopies of the transcription of the Recording, the Confirmation or the Imaged Agreement) on the basis that such were not originated or maintained in documentary form under the hearsay rule, the best evidence rule

or other rule of evidence.”

45) The following new Section shall be added as Section 10.17:

“Index Transactions. If the Contract Price for a Transaction is determined by reference to a third-party information source, then the following provisions shall be applicable to such Transaction:

(i) Market Disruption. If a Market Disruption Event occurs during a Determination Period, the Floating Price for the affected Trading Day(s) shall be determined by reference to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by taking the average of two dealer quotes obtained from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time in deciding to offer or to make an extension of credit. Notwithstanding the foregoing and subject to time limitations set forth in Sub-Section (ii) below, if the Parties have determined a Floating Price pursuant to this Sub-Section (i) and at a later date the responsible Price Source announces or publishes the relevant Floating Price, then such Floating Price shall be treated as a corrected price pursuant to Sub-Section (ii) below.”

“Determination Period” means each calendar month, a part or all of which, is within the Delivery Period of a Transaction.

“Exchange” means, in respect of a Transaction, the exchange or principal trading market specified in the relevant Transaction.

“Floating Price” means a Contract Price specified in a Transaction that is based upon a Price Source.

“Market Disruption Event” means, with respect to any Price Source, any of the following events: (a) the failure of the Price Source to announce or publish the specified Floating Price or information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange or in the

market specified for determining a Floating Price; (c) the temporary or permanent discontinuance or unavailability of the Price Source; (d) the temporary or permanent closing of any Exchange specified for determining a Floating Price; or (e) a material change in the formula for or the method of determining the Floating Price.

“Price Source” means, in respect of a Transaction, the publication (or such other origin of reference, including an Exchange) containing (or reporting) the specified price (or prices from which the specified price is calculated) specified in the relevant Transaction.

“Trading Day” means a day in respect of which the relevant Price Source published the Floating Price.

(ii) Corrections to Published Prices. For purposes of determining a Floating Price for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within three (3) years of the original publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If, not later than thirty (30) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

(iii) Calculation of Floating Price. For purposes of calculating a Floating Price, all numbers shall be rounded to four (4) decimal places. If the fifth (5th) decimal number is five (5) or greater, then the fourth (4th) decimal number shall be increased by one (1), and if the fifth (5th) decimal number is less than five (5), then the fourth (4th) decimal number shall remain unchanged.”

46) The following new Section shall be added as Section 10.18:

Generally Accepted Accounting Principles. Any reference to “generally accepted accounting principles” shall mean, with respect to an entity and its financial statements, generally accepted accounting principles, consistently applied, adopted or used in the



jurisdiction of the entity whose financial statements are being considered for the purposes of this Agreement.”

47) The following new Section shall be added as Section 10.19:

No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement in accordance with the Security Agreements. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B’s constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B’s constituent members, in connection with this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the Effective Date.

\_\_\_\_\_

**EAST BAY COMMUNITY ENERGY  
AUTHORITY, a California joint powers  
authority**

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.**

## **GENERAL TERMS AND CONDITIONS**

### **ARTICLE ONE: GENERAL DEFINITIONS**

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in

terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence

hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 “Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 “Guarantor” means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 “Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 “Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 “Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 “Master Agreement” has the meaning set forth on the Cover Sheet.

1.30 “Moody’s” means Moody’s Investor Services, Inc. or its successor.

1.31 “NERC Business Day” means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization

of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

## **ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS**

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any

law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

**2.2 Governing Terms.** Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and 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) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

**2.3 Confirmation.** Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party’s Confirmation within two (2) Business Days of receipt, Seller’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller’s Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer’s Confirmation was sent prior to Seller’s Confirmation, in which case Buyer’s Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

**2.4 Additional Confirmation Terms.** If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

**2.5 Recording.** Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording (“Recording”) of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties’ agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.



### **ARTICLE THREE: OBLIGATIONS AND DELIVERIES**

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

### **ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE**

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

### **ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES**

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;
- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (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 except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
  - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
  - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;
  - (iii) a Guarantor becomes Bankrupt;

- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

#### 5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by

the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

**5.7 Suspension of Performance.** Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

## **ARTICLE SIX: PAYMENT AND NETTING**

**6.1 Billing Period.** Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

**6.2 Timeliness of Payment.** Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party’s invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

**6.3 Disputes and Adjustments of Invoices.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when

due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

## ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

## ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally

accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a)

Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.



For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

**8.3 Grant of Security Interest/Remedies**. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor’s obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party’s obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## **ARTICLE NINE: GOVERNMENTAL CHARGES**

**9.1 Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

**9.2 Governmental Charges**. Seller shall pay or cause to be paid all taxes imposed by any government authority (“Governmental Charges”) on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller’s responsibility

hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

**ARTICLE TEN: MISCELLANEOUS**

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;
- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. 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; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (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 such Party which affiliate’s creditworthiness is equal to or higher than that of such Party, 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 such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including 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 Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any

statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS

**(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)**

A. The Parties agree to add the following definitions in Article One.

“Act” the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.).

“Collateral Agent” has the meaning in the Security Documents.

“Depository Bank” has the meaning in the Security Documents.

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

“Secured Account” means the Lockbox Account (as defined in the Security Agreement).

“Secured Creditors” means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

“Security Agreement” means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

“Security Documents” means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement, the Account Control Agreement entered into by the Parties and certain third parties in connection with a Transaction, and any other agreement or instrument documenting the security of Party A in connection with a Transaction, as the same may be amended, restated, modified, replaced, extended, or supplemented from time to time.

“Special Fund” means the Secured Account, which is set aside and pledged to satisfy Party B’s obligations hereunder and out of which amounts shall be paid to satisfy all of Party B’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is Party B, Force Majeure does not include any action taken by, or any omission or failure to act of, Party B in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, and (vi) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Party B's Deliveries. On the Effective Date and as a condition to the obligations of Party A under this Agreement, Party B shall provide Party A (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (ii) a certificate, signed by an officer of Party B and in form and substance reasonably satisfactory to Party A, certifying as to certain factual matters.

Section 3.5 No Immunity Claim. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue

permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Party B Security. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents in form and substance reasonably satisfactory to Party A. The Parties agree that Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Party B Security. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents, each in form and substance reasonably satisfactory to Party A, and such Security Documents shall have been duly executed and delivered by the Parties and by all third party signatories as contemplated therein and shall be in full force and effect. Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein. If Party A and Party B still have active or unsettled transactions, then Party B agrees that it shall provide five (5) Business Days prior written notice to Party A before terminating the Secured Account at Depository Bank and such notice shall include information regarding the replacement Secured Account.

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY.

## **SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS**



“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance.

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into \_\_\_\_\_ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product.

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses

performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

**EXHIBIT A**

**MASTER POWER PURCHASE AND SALE AGREEMENT  
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on \_\_\_\_\_, \_\_\_ between \_\_\_\_\_ (“Party A”) and \_\_\_\_\_ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: \_\_\_\_\_

Buyer: \_\_\_\_\_

Product:

Into \_\_\_\_\_, Seller’s Daily Choice

Firm (LD)

Firm (No Force Majeure)

System Firm  
(Specify System: \_\_\_\_\_)

Unit Firm  
(Specify Unit(s): \_\_\_\_\_)

Other \_\_\_\_\_

Transmission Contingency (If not marked, no transmission contingency)

<input type="checkbox"/> FT-Contract Path Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> FT-Delivery Point Contingency	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Transmission Contingent	<input type="checkbox"/> Seller	<input type="checkbox"/> Buyer
<input type="checkbox"/> Other transmission contingency		

(Specify: \_\_\_\_\_)

Contract Quantity: \_\_\_\_\_

Delivery Point: \_\_\_\_\_

Contract Price: \_\_\_\_\_

Energy Price: \_\_\_\_\_

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



Delivery Period: \_\_\_\_\_

Special Conditions: \_\_\_\_\_

Scheduling: \_\_\_\_\_

Option Buyer: \_\_\_\_\_

Option Seller: \_\_\_\_\_

Type of Option: \_\_\_\_\_

Strike Price: \_\_\_\_\_

Premium: \_\_\_\_\_

Exercise Period: \_\_\_\_\_

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Phone No: \_\_\_\_\_

Phone No: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

DATED as of \_\_\_\_\_, 2018

- (1) **RIVER CITY BANK**,  
as Account Bank,
  - (2) **EAST BAY COMMUNITY ENERGY AUTHORITY**,  
as EBCEA,
- and
- (3) **RIVER CITY BANK**, not in its individual capacity, but solely as  
collateral agent,  
as Secured Party.

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**ACCOUNT CONTROL AGREEMENT**

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**ACCOUNT CONTROL AGREEMENT** (this “Agreement”) dated as of \_\_\_\_\_, 2018 (the “Effective Date”)

**BETWEEN:**

- (1) **RIVER CITY BANK**, a California corporation (the “Account Bank”);
- (2) **EAST BAY COMMUNITY ENERGY AUTHORITY** (“EBCEA”);  
and
- (3) **RIVER CITY BANK**, a California corporation, not in its individual capacity, but solely as collateral agent (the “Secured Party”).

**WHEREAS:**

(A) EBCEA has pledged to the Secured Party (for the benefit of the PPA Providers (as defined in the Security Agreement), as secured creditors) all of the Collateral (as defined in the Security Agreement), pursuant to that certain Security Agreement between EBCEA and Secured Party dated as of the Effective Date (the “Security Agreement”);

(B) EBCEA has directed Pacific Gas and Electric Company (“PG&E”) to remit all present and future collections on accounts receivable now or hereafter billed by PG&E and owed by EBCEA’s customers to Secured Party, for remittance to a Lockbox Account (as defined in the Security Agreement) maintained by Secured Party;

(C) Secured Party shall have, for the benefit of the PPA Providers, a first priority continuing security interest in and lien on such Collateral pledged to Secured Party for the benefit of the PPA Providers, as provided in the Security Agreement;

(D) EBCEA intends that Secured Party shall distribute the Collateral deposited into the Lockbox Account in accordance with the provisions of the Security Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

Unless otherwise defined herein, all capitalized terms used herein and defined in the Security Agreement shall be used herein as therein defined. Reference to singular terms shall include the plural and vice versa.

**1. THE ACCOUNTS.**

EBCEA hereby requests that Account Bank open, and Account Bank hereby confirms that it has opened, account number \*\*\*\*\* \_\_\_\_\_ (a non-interest-bearing deposit account held in the name of EBCEA) which will be subject to, and administered in accordance with, the terms of this Agreement (together, the “EBCEA Account”).

The parties hereto agree that the EBCEA Account will be the Lockbox Account and shall be funded solely by electronic transfers of immediately available funds and that Account Bank shall not be required to accept any other items for deposit into the EBCEA Account. All

amounts payable for deposit into the EBCEA Account shall be paid to Account Bank at the following accounts:

Bank: River City Bank  
ABA#: \_\_\_\_\_  
Account No. \*\*\*\*\* \_\_\_\_\_

**2. CONTROL OF THE ACCOUNTS / PAYMENT MECHANICS.**

- (a) The EBCEA Account shall be maintained by Account Bank in the name of “East Bay Community Energy Authority” and shall be under the sole dominion and control of Secured Party. Account Bank agrees that it will comply with written instructions originated by Secured Party directing disposition of the funds in the EBCEA Account without further consent by EBCEA or otherwise.
- (b) Account Bank (i) shall disburse and/or invest funds held in the EBCEA Account as instructed by Secured Party and (ii) agrees that, except as otherwise expressly provided herein, EBCEA will not have access to the funds in the EBCEA Account and that the Account Bank will not agree with EBCEA or any other party (other than the Secured Party) to comply with any instructions for the disposition of the funds in the EBCEA Account originated by EBCEA or such other party.

**3. STATEMENTS AND OTHER INFORMATION.**

- (a) Account Bank shall provide Secured Party with copies of the regular monthly bank statements of the EBCEA Account at such times such statements are provided to EBCEA and such other information relating to the EBCEA Account as shall reasonably be requested by Secured Party or EBCEA. Account Bank shall also deliver a copy of all notices and statements required to be sent by it to EBCEA pursuant to any agreement governing or related to the EBCEA Account to Secured Party at such times such notices and statements are provided to EBCEA. Except as otherwise required by law, Account Bank will use reasonable efforts promptly to notify Secured Party and EBCEA if Account Bank receives a notice that any other person claims that it has an interest in the EBCEA Account. As of the date of this Agreement, Account Bank confirms that it has not received notice that any other person has any interest in the EBCEA Account.
- (b) Account Bank hereby confirms that (i) the EBCEA Account has been established and is maintained with Account Bank on its books and records, (ii) Account Bank is a bank within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code of California, (iii) the EBCEA Account is a deposit account within the meaning of Section 9-102(a)(29) of the Uniform Commercial Code of California, and (iv) the jurisdiction of Account Bank for the purposes of Article 9 of the Uniform Commercial Code of California is California.

4. **FEES.**

EBCEA agrees to pay on demand all usual and customary service charges, transfer fees and account maintenance fees of Account Bank in connection with the EBCEA Account in accordance with the terms of the separate fee agreement entered into by EBCEA and Account Bank.

5. **SET-OFF.**

Account Bank hereby agrees that Account Bank will not exercise or claim any right of set-off or banker's lien against the EBCEA Account. As of the date of this Agreement, Account Bank does not know of any claim to or interest in the EBCEA Account, except for claims and interests of the parties hereto. All of Account Bank's present and future rights against the EBCEA Account are subordinate to Secured Party's security interest therein.

6. **ACCOUNT BANK.**

The acceptance by Account Bank of its duties under this Agreement is subject to the following terms and conditions, which the parties to this Agreement hereby agree shall govern and control with respect to all of Account Bank's rights, duties, liabilities and immunities:

- (a) Account Bank shall be protected in acting upon any written notice, certificate, resolution, instruction, request, authorization or other paper or document as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information therein contained, which it in good faith believes to be genuine and to have been signed or presented by the proper party or parties in accordance with the terms of this Agreement.
- (b) Account Bank may act relative hereto upon advice of counsel in reference to any matter connected herewith, and shall not be liable for any mistake of fact or error of judgment, or any acts or omissions of any kind unless caused by its willful misconduct or gross negligence. If at any time Account Bank determines that it requires or desires guidance regarding the application of any provision of this Agreement or any other document, regarding compliance with any direction it receives hereunder, Account Bank may deliver a notice to Secured Party (or EBCEA after Secured Party has informed Account Bank that EBCEA has satisfied all of its obligations under the Power Purchase Agreements) requesting written instructions as to such application or compliance, and such instructions by or on behalf of Secured Party (or EBCEA after Secured Party has informed Account Bank that EBCEA has satisfied all of its obligations under the Power Purchase Agreements), as applicable, shall constitute full and complete authorization and protection for actions taken and other performance by Account Bank in reliance thereon. Until Account Bank has received such instructions after delivering such notice, it may, but shall be under no duty to, take or refrain from taking any action with respect to the matters described in such notice.

- (c) This Agreement sets forth exclusively the duties of Account Bank with respect to any and all matters pertinent hereto, and no implied duties or obligations shall be read into this Agreement against Account Bank.
- (d) Any funds held by Account Bank, as such, need not be segregated from other funds except to the extent required by mandatory provisions of law.

## 7. REPRESENTATIONS OF ACCOUNT BANK.

Account Bank represents and warrants as to itself (as set forth below) to Secured Party as follows, such representations are being made on the date of the execution and delivery of this Agreement, except to the extent that such representations and warranties relate solely to an earlier date (in which case such representations and warranties are correct on and as of such earlier date):

- (a) Organization, Corporate Authority. Account Bank represents and warrants that it is a national banking association duly organized and validly existing in good standing under the laws of the United States of America and has the corporate power and authority to enter into and perform its obligations under this Agreement, and has full right, power and authority to enter into and perform its obligations under this Agreement.
- (b) Authorization. Account Bank represents and warrants that this Agreement has been duly executed and delivered by one of its officers who is duly authorized to execute and deliver this Agreement on its own behalf.
- (c) Legal, Valid and Binding. Account Bank represents and warrants that this Agreement has been duly executed and delivered by it and, assuming that this Agreement is the legal, valid and binding obligation of each other party thereto, is the legal, valid and binding obligation of Account Bank, enforceable against Account Bank in accordance with its terms.
- (d) No Violation. Account Bank represents and warrants that this Agreement has been duly authorized by all necessary corporate action on its part, and neither the execution and delivery thereof nor its performance of any of the terms and provisions thereof will violate any federal law or regulation relating to its banking or trust powers or contravene or result in any breach of, or constitute any default under its charter or by-laws or the provisions of any indenture, mortgage, contract or other agreement to which it is a party or by which it or its properties may be bound or affected.

## 8. EXCULPATION OF ACCOUNT BANK; INDEMNIFICATION BY BORROWER.

Each of EBCEA and Secured Party agrees that Account Bank shall have no liability to any of them for any loss or damage that any or all may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by the provisions hereof, unless occasioned by the gross negligence, breach of an express term of this Agreement or willful misconduct of Account Bank. In no event shall Account Bank be

liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties or other causes beyond Account Bank's reasonable control or for the indirect, special or consequential damages. EBCEA agrees to indemnify Account Bank and hold it harmless from and against all claims, other than those ultimately determined to be founded on the gross negligence or willful misconduct of Account Bank, and from and against any damages, penalties, judgments, liabilities, losses or expenses (including reasonable attorney's fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Account Bank through the use of any EBCEA Account at Account Bank or pursuant to this Agreement.

**9. TERMINATION.**

This Agreement may be terminated upon delivery to Account Bank of a written notification thereof jointly executed by Secured Party and (provided Secured Party has not notified Account Bank that an Event of Default is then continuing) EBCEA. Notwithstanding the foregoing, this Agreement may be terminated by Secured Party in accordance with and subject to the requirements of that certain Intercreditor and Collateral Agency Agreement, dated as of the Effective Date, between and among Secured Party, the PPA Providers, and EBCEA, at any time, with or without cause, upon its delivery of written notice thereof to each of EBCEA and Account Bank. This Agreement may be terminated by Account Bank at any time on not less than sixty (60) days' prior written notice delivered to each of EBCEA and Secured Party provided that such termination shall not take effect until Secured Party confirms that a replacement account and replacement security thereover have been obtained in form and substance satisfactory to Secured Party. Upon any such termination of this Agreement, Account Bank will immediately transmit to such account as Secured Party may direct all funds, if any, then on deposit in, or otherwise standing to the credit of the EBCEA Account. The provisions of paragraphs 2 and 5 shall survive termination of this Agreement unless and until specifically released by Secured Party in writing. All rights of Account Bank under paragraphs 4, 5, 6 and 8 shall survive any termination of this Agreement.

**10. IRREVOCABLE AGREEMENTS.**

EBCEA acknowledges that the agreements made by it and the authorizations granted by it in paragraph 2 hereof are irrevocable and that the authorizations granted in paragraph 2 hereof are powers coupled with an interest.

**11. NOTICES.**

All notices, requests or other communications given to Account Bank, EBCEA or Secured Party shall be given in writing (including by facsimile) at the address specified below:

Account Bank: River City Bank  
Attention: Cash Management  
2485 Natomas Park Dr.  
Sacramento, CA, 95833

EBCEA: East Bay Community Energy Authority  
1111 Broadway, Suite 300  
Oakland, CA 94607  
Attention: Nick Chaset  
Email: [Nchaset@ebce.org](mailto:Nchaset@ebce.org)

Secured Party: River City Bank  
Attention: Cash Management  
2485 Natomas Park Dr.  
Sacramento, CA, 95833

Any party may change its address for notices hereunder by notice to each other party hereunder given in accordance with this paragraph 11. Each notice, request or other communication shall be effective (a) if given by facsimile, when such facsimile is transmitted to the facsimile number specified in this paragraph 11 and confirmation of receipt is made by the appropriate party, (b) if given by overnight courier, five (5) days after such communication is deposited with the overnight courier for delivery, addressed as aforesaid, or (c) if given by any other means, when delivered at the address specified in this paragraph 11.

## 12. MISCELLANEOUS.

- (a) This Agreement may be amended only by a written instrument executed by each of the parties hereto acting by their respective duly authorized representatives.
- (b) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, but neither EBCEA nor Account Bank shall be entitled to assign or delegate any of its rights or duties hereunder without first obtaining the express prior written consent of Secured Party.
- (c) This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- (d) This Agreement and any document contemplated hereby may be delivered by a party hereto by way of facsimile or e-mail transmission and such delivery shall be deemed completed for all purposes upon the completion of such facsimile or e-mail transmission. A party that so delivers this Agreement or any such document by way of facsimile or e-mail transmission agrees to promptly thereafter deliver to the other party hereto an original signed counterpart. The signature of any party transmitted by facsimile or e-mail shall be considered for these purposes as an original document, and any such document shall be considered to have the same binding legal effect as an originally executed document. In consideration of the mutual covenants herein contained, the parties agree that none of them shall raise the use of a facsimile machine or e-mail as a defense in any suit or controversy related to this Agreement or any of the other documents and forever waive any such defense.



- (e) THIS AGREEMENT SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE. THIS AGREEMENT IS BEING DELIVERED IN THE STATE OF CALIFORNIA. The parties agree that the State of California (i) is and shall remain the “bank’s jurisdiction” of the Account Bank for purposes of the Uniform Commercial Code; and (ii) shall be deemed to be the location of the EBCEA Account and of EBCEA’s rights and interests in and to the EBCEA Account.
- (f) JURY WAIVER AND JUDICIAL REFERENCE. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (1) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (2) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (3) APPOINTMENT OF A RECEIVER AND (4) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN THE FOREGOING CLAUSES (1) – (4) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iv) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT

JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

- (g) EBCEA hereby submits to the nonexclusive jurisdiction of the United States District Court for the Northern District of California and of any California state court sitting in San Francisco for the purpose of all legal proceedings arising out of or relating to this Agreement or the transactions contemplated hereby and thereby. EBCEA irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.
- (h) EBCEA hereby irrevocably appoints Nick Chaset, Chief Executive Officer, East Bay Community Energy Authority, 1111 Broadway, Suite 300, Oakland, CA 94607 from time to time to receive on its behalf service of process issued out of the federal courts of California in any legal action or proceeding arising out of or in connection with this Agreement or any other document to which it is a party. EBCEA undertakes not to revoke the authority of the agent specified above and if, for any reason, any such agent no longer serves or is capable of serving as agent of the relevant party hereto to receive service of process in California, such party shall promptly appoint another such agent and advise Secured Party thereof and, failing such appointment within fourteen (14) days, Secured Party shall be entitled (and is hereby authorized) to appoint an agent on behalf of EBCEA. Nothing herein contained shall restrict the right to serve process in any other manner allowed by law.

*[Signature page follows]*

IN WITNESS WHEREOF, each of the parties has executed and delivered this Account Control Agreement as of the Effective Date.

Account Bank

**RIVER CITY BANK**

By: \_\_\_\_\_

Name:

Title:

EBCEA

**EAST BAY COMMUNITY ENERGY  
AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

Secured Party

**RIVER CITY BANK**, not in its individual  
capacity, but solely as Collateral Agent

By: \_\_\_\_\_

Name:

Title:

## SECURITY AGREEMENT

This **SECURITY AGREEMENT** (this “**Agreement**”) dated as of \_\_\_\_\_, 2018, is entered into between East Bay Community Energy Authority, a California joint powers authority, as pledgor (“**EBCEA**”), and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent (in such capacity, together with its successors and assigns in such capacity, the “**Collateral Agent**”), for the benefit of the PPA Providers (as defined below), as Secured Creditors (as defined below).

### RECITALS:

A. EBCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which EBCEA has agreed, or will agree, to purchase the Product from such PPA Provider and shall cause such PPA Provider to become a party to the Intercreditor Agreement (as defined below).

B. EBCEA shall sell the Product it purchases from PPA Providers to EBCEA’s customers at rates established by EBCEA from time to time.

C. EBCEA generates accounts receivable owing to EBCEA by EBCEA’s customers for such Product.

D. EBCEA’s customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by EBCEA.

E. As of the date hereof, EBCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of EBCEA to Collateral Agent, for remittance to a Lockbox Account (as defined below) maintained by Collateral Agent, which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and EBCEA direct PG&E otherwise.

F. EBCEA desires herein to pledge to Collateral Agent, for the benefit of the PPA Providers as Secured Creditors, a first priority continuing security interest in and to the Collateral (defined below).

G. The PPA Providers and EBCEA have entered into the Intercreditor Agreement (as defined below) wherein the PPA Providers appointed River City Bank, as Collateral Agent, to act on their behalf regarding the administration, collection and allocation of the proceeds of the Collateral.

H. EBCEA and Collateral Agent desire to enter into this Agreement to evidence the pledge of the Collateral and to set forth their agreements regarding the Collateral and the application of the Collateral to the Obligations (as defined below).

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

**Section 1. Definitions, Etc.**

1.01 Defined Terms. The following terms shall have the meanings assigned to them in this Section 1.01 or in the provisions of this Agreement referred to below:

**“Applicable Law”** means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California are required or authorized to close.

**“Collateral”** means the following, whether now existing or hereafter arising: (a) the Receivables; (b) the Deposit Accounts; (c) all cash, cash equivalents, Securities, Investment Property (as such term is defined in the UCC), Security Entitlements (as such term is defined in the UCC), checks, money orders and other items of value now or hereafter that are required to be, or that are, paid, deposited, credited or held (whether for collection, provisionally or otherwise) in or with respect to any Deposit Account or otherwise in the possession or under the control of, or in transit to, the Collateral Agent or the Depository Bank for credit or with respect to any Deposit Account and all interest accumulated thereon; and (d) all Proceeds (as such term is defined in the UCC) of any or all of the foregoing. The term “Collateral” shall not include any amounts distributed to EBCEA pursuant to Section 6.02(iv).

**“Collateral Agent”** has the meaning given to such term in the Preamble hereof.

**“Control”** has the meaning given to such term in Section 9-104 of the UCC.

**“Control Agreements”** means the Account Control Agreement, dated as of the date hereof, among the Depository Bank, EBCEA and Collateral Agent and any other agreements entered into among EBCEA and Depository Bank which shall designate the Deposit Accounts as blocked accounts under the Control of Collateral Agent, for the

benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

**“Credit Rating”** means for a Qualified Institution the respective ratings then assigned to such entity’s unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody’s or other specified rating agency or agencies or, if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its “corporate credit rating” by S&P.

**“Customer”** means any customer of EBCEA who purchases the Product from EBCEA but is invoiced by PG&E, and any other obligor(s) responsible for payment of a Receivable.

**“Deposit Accounts”** means the Lockbox Account, together with any other Deposit Account or Securities Account (as such terms are defined in the UCC) from time to time pledged by EBCEA to Collateral Agent, for the benefit of Secured Creditors, to secure the Obligations.

**“Depository Bank”** means River City Bank, a California corporation, in its capacity as depository bank, and its successors and assigns.

**“Direction Letter”** means that certain letter, a copy of which has been delivered to the Collateral Agent, from EBCEA to PG&E dated as of the date of this Agreement pursuant to which EBCEA has directed PG&E to remit all of the Proceeds on the Receivables collected by PG&E from Customers to the Lockbox Account for application to the Obligations, unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and EBCEA jointly instruct PG&E to terminate or change such direction and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof and any similar letter or written direction provided to PG&E.

**“Discharge Date”** means that date on which: (a) any and all outstanding Obligations under the Transaction Agreements have been fully satisfied, and (b) there are no continuing obligations by EBCEA under any Transaction Agreements (other than for any provisions which are intended to survive the termination of the Transaction Agreements).

**“Distribution Date”** means the twenty-third (23<sup>rd</sup>) day of each month.

**“Distribution Date Certificate”** means a certificate prepared and submitted by EBCEA in accordance with Section 6.03.

**“Event of Default”** has the meaning set forth in the applicable Power Purchase Agreement.

**“Implementation Plan”** means that certain Implementation Plan filed with and certified by the California Public Utilities Commission (CPUC).

**“Intercreditor Agreement”** means the Intercreditor and Collateral Agency Agreement, dated as of even date herewith, among Collateral Agent, the Secured Creditors from time to time party thereto and EBCEA, as amended, supplemented, restated or replaced from time to time.

**“Letter of Credit”** means one or more irrevocable, transferable standby letters of credit, in a form acceptable to the Secured Creditors and issued by a Qualified Institution.

**“Lien”** means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

**“Lockbox Account”** means the deposit account no. \*\*\*\*\*\_\_\_\_\_, which is maintained in the name of EBCEA and is under the Control of Collateral Agent, for the benefit of the Secured Creditors, at Depository Bank, and any replacement account, in each case, pursuant to the Control Agreements.

**“Master Agreements”** means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iv) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(v) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.



“**Moody’s**” means Moody’s Investor Services, Inc.

“**Obligations**” means all of the obligations and liabilities of EBCEA to each PPA Provider, whether direct or indirect, joint or several, absolute or contingent, due or to become due, now existing or hereinafter arising under or in respect of one or more of the Transaction Agreements, including all payments, fees, purchases, mark-to-market exposure, commitments for reimbursement, indemnifications, interest, damages and Termination Payments, if any. The term “Obligations” also includes all of EBCEA’s other present and future obligations to each PPA Provider under the Transaction Agreements, including the repayment of (a) any amounts that Collateral Agent (or a PPA Provider) may advance or spend for the maintenance or preservation of the Collateral and (b) any other expenditure that Collateral Agent (or PPA Provider) may make under the provisions of the Transaction Agreements for the benefit of EBCEA. For the avoidance of doubt, the term “Obligations” includes any of the foregoing that arises after the filing of a petition by or against EBCEA under any bankruptcy or insolvency statute, even if the Obligations do not accrue because of any statutory automatic stay or otherwise.

“**Person**” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

“**PG&E**” means the Pacific Gas and Electric Company, its successor and assigns or any other Person that is the host utility that bills Customers in EBCEA’s service territory and collects payments for Product from such Customers on behalf of EBCEA.

“**Power Purchase Agreement**” means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations (including confirmations entered into after the date hereof), and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to EBCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

“**PPA Provider**” means each seller of Product under a Power Purchase Agreement that is made a party to the Intercreditor Agreement, and its respective successors and assigns.

“**Product**” means one or more of the following: energy, renewable energy attributes, capacity attributes, resource adequacy benefits, or any other similar or related products contemplated in the Master Agreements.

“**Qualified Institution**” means a commercial bank organized under the laws of the United States or a political subdivision thereof having at the applicable time (a) a Credit Rating of (i) A- or better from Standard & Poor’s, or (ii) A3 or better from Moody’s, or (iii) if such bank has a Credit Rating at such time from both Standard & Poor’s and Moody’s, A- or better from Standard & Poor’s and A3 or better from Moody’s and (b) assets of at least Ten Billion Dollars (\$10,000,000,000).

“**Receivable**” means an Account evidencing EBCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and EBCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of EBCEA.

“**Regular Charges**” means, as of any date of determination, amounts then due and owing to a PPA Provider for the Product delivered by such PPA Provider, without giving effect to any Supplemental Payment owing to such PPA Provider.

“**Regular Sharing Percentage**” means, as of any date of determination, with respect to each PPA Provider as calculated by EBCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (i) the numerator of which is the amount of the Regular Charges due and owing to such PPA Provider, as of such date, and (ii) the denominator of which is the amount of the Regular Charges due and owing to all PPA Providers, as of such date.

“**Required Secured Creditors**” has the meaning given to such term in the Intercreditor Agreement.

“**Reserve Amount**” means an initial amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) for Phase 1 (as such Phases are defined in the Implementation Plan), plus an additional One Million Dollars (\$1,000,000.00) for a total of Two Million Five Hundred Thousand Dollars (\$2,500,000) for Phase 2. If EBCEA is not subject to an Event of Default, the total Reserve Amount shall automatically be reduced by 20% annually, upon the annual anniversary of the date on which the Phase 2 confirmation(s) were executed (or next Business Day if the anniversary date is not a Business Day).

“**Secured Creditors**” means each PPA Provider party to the Intercreditor Agreement, and its respective successors and assigns.

“**Standard & Poor’s**” means Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Supplemental Payment**” means, as of any date of determination, all Obligations owing by EBCEA to each PPA Provider, excluding, however, the Regular Charges owed to such PPA Provider. Supplemental Payments include, but are not limited to, all out-of-pocket losses such as indemnity claims arising under the Transaction Agreements to the extent such losses were incurred by such PPA Provider, all late payment charges due under a Power Purchase Agreement, and all Obligations arising upon a default or Termination Event, such as Termination Payments.

“**Supplemental Sharing Percentage**” means, as of any date of determination, with respect to each PPA Provider, the percentage equivalent of a fraction, (y) the numerator of which is the outstanding amount of the Supplemental Payments due and owing to such PPA Provider, as of such date, and (z) the denominator of which is the sum of the outstanding amount of the Supplemental Payments due and owing to all PPA Providers, as of such date.

**“Termination Event”** means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

**“Termination Payment”** has the meaning given to such term in the Intercreditor Agreement.

**“Transaction Agreements”** means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Intercreditor Agreement, this Agreement and all other agreements, instruments or documents to which EBCEA is a party and which are executed and delivered from time to time in connection with or as security for EBCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

**“UCC”** means the Uniform Commercial Code in effect in the State of California from time to time.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms **“Account”**, **“Investment Property”**, and **“Proceeds”** have the respective meanings set forth in Article 9 of the UCC. The terms **“Security”** and **“Security Entitlements”** have the respective meanings set forth in Article 8 of the UCC.

1.03 Other Interpretive Provisions. References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement. References to any Person include the successors and permitted assigns of such Person. References to any statute, act or regulation shall include its related current version and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

## **Section 2. Grant of Security Interest.**

As collateral security for the payment and performance in full of the Obligations when due, whether at stated maturity, by acceleration or otherwise, EBCEA hereby assigns, pledges and grants to Collateral Agent, for the benefit of the Secured Creditors, a first priority continuing security interest in and continuing lien on all of EBCEA’s right, title and interest in and to the Collateral, including the following:

(a) the prompt and complete payment, when due and payable, of all Obligations;

(b) the timely performance and observance by EBCEA of all covenants, obligations and conditions contained in the Transaction Agreements; and

(c) without limiting the generality of the foregoing and to the fullest extent permitted under Applicable Law, the payment of all amounts, including interest which constitute part of the Obligations and would be owed by EBCEA to the Secured Creditors under the Transaction Agreements but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving EBCEA.

The collateral assignment evidenced by this Agreement is a continuing one and is irrevocable by EBCEA so long as any of the Obligations are outstanding.

### **Section 3. Representations and Warranties.**

EBCEA represents and warrants to Collateral Agent that:

3.01 Title. It is the sole beneficial owner of the Collateral and such Collateral is free and clear of all liens, except liens in favor of Collateral Agent created hereunder.

3.02 Names, Etc. As of the date hereof, the full and correct legal name, type of organization, jurisdiction of organization, mailing address and principal place of business, and federal employer identification number of EBCEA is as follows: East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, federal employer identification number: \_\_\_\_\_.

3.03 Changes in Circumstances. EBCEA has not: (a) within the period of four (4) months prior to the date hereof, changed its location (as defined in Article 9 of the UCC); (b) within the period of five (5) years prior to the date hereof, changed its name; or (c) within the period of four (4) months prior to the date hereof, become a “new debtor” (as defined in Article 9 of the UCC) with respect to a currently effective security agreement previously entered into with any other Person.

3.04 Security Interests. The Liens granted by this Agreement have attached and constitute a perfected first priority continuing security interest in the Collateral. EBCEA owns good and marketable title to the Collateral free and clear of all Liens, and neither the Collateral nor any interest in the Collateral has been transferred to any other Person. EBCEA has full right, power and authority to grant a first-priority security interest in the Collateral to Collateral Agent in the manner provided in this Agreement, free and clear of any other Liens, adverse claims and options and without the consent of any other person or entity or if consent is required, such consent has been obtained. No other Lien, adverse claim or option has been created by EBCEA or is known by EBCEA to exist with respect to the Collateral. At the time the security interest in favor of Collateral Agent attaches, good and indefeasible title to all after-acquired property included within the Collateral, free and clear of any other Liens, adverse claims or options shall be vested in EBCEA. All consents for the assignment of Collateral to Collateral Agent, if any, required to be obtained by EBCEA have been obtained.

#### **Section 4. Covenants.**

EBCEA hereby stipulates and agrees with the Collateral Agent as follows:

4.01 Perfection by Control. EBCEA shall not be permitted to withdraw funds from the Deposit Accounts until the Discharge Date and this Agreement has been terminated. Collateral Agent shall have the exclusive authority to withdraw, or (other than as set forth herein) direct the withdrawal of, funds from the Deposit Accounts. The Control Agreement for each Deposit Account shall give the Collateral Agent the sole power to direct Depository Bank regarding the Deposit Account, and thus Collateral Agent shall Control the Deposit Accounts within the meaning of the UCC. Collateral Agent shall make distributions from the Deposit Accounts only in accordance with Section 6 of this Agreement.

4.02 Further Assurances. Upon the request of Collateral Agent, EBCEA shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, documents, agreements or other papers as may be necessary in the judgment of Collateral Agent to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable Collateral Agent to exercise and enforce its rights hereunder with respect to such security interest, and without limiting the foregoing, shall:

- (a) take such other action as Collateral Agent may reasonably deem necessary or appropriate to duly record or otherwise perfect the security interest created hereunder in the Collateral;
- (b) promptly from time to time enter into such Control Agreements, each in form and substance reasonably acceptable to Collateral Agent, as may be required to perfect the security interest created hereby;
- (c) keep full and accurate books and records relating to the Collateral, and stamp or otherwise mark such books and records in such manner as Collateral Agent may reasonably require in order to reflect the security interests granted by this Agreement; and
- (d) permit representatives of Collateral Agent, upon reasonable notice, at any time during normal business hours to inspect and make abstracts from its books and records pertaining to the Collateral, and to be present at EBCEA's places of business to receive copies of communications and remittances relating to the Collateral, and forward copies of any notices or communications received by EBCEA with respect to the Collateral, all in such manner as Collateral Agent may reasonably require.

4.03 No Other Liens. EBCEA is and shall be the owner of or have other transferable rights in the Collateral free from any right or claim of any other Person or any Lien and EBCEA shall defend the same against all claims and demands of all Persons at any time claiming the same or any interest therein adverse to Collateral Agent. EBCEA shall not (a) grant, or permit to be granted, any Lien with respect to any of the Collateral in which Collateral Agent is not named as the sole secured party, (b) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which Collateral Agent is not named as the sole secured

party, or (c) cause or permit any Person other than Collateral Agent to have Control of any Deposit Account constituting part of the Collateral.

4.04 Locations; Names, Etc. Without at least thirty (30) days' prior written notice to the Collateral Agent, EBCEA shall not: (a) change its location (as defined in Article 9 of the UCC), (b) change its name from the name shown as its current legal name in Section 3 of this Agreement, or (c) agree to or authorize any modification of the terms of any item of the Collateral if the effect thereof would be to result in a loss of perfection of, or diminution of priority for, the security interests created hereunder in such item of Collateral, or the loss of control (within the meaning of Article 9 of the UCC) by Collateral Agent over such item of Collateral.

4.05 Perfection and Recordation. EBCEA authorizes Collateral Agent to file Uniform Commercial Code financing statements describing the Collateral (provided that no such description shall be deemed to modify the description of Collateral set forth in Section 2). The Collateral Agent, in accordance with Section 4.02 hereof, hereby requests and instructs EBCEA to, and EBCEA hereby agrees, at its sole cost and expense to, prepare and file such Uniform Commercial Code financing and continuation statements describing the Collateral as may be necessary to perfect and continue the security interest granted herein. EBCEA shall deliver to the Collateral Agent a file stamped copy of all such filings, which the Collateral Agent shall make available to any PPA Provider upon request.

## **Section 5. Remittance of Collections to Collateral Agent.**

5.01 Irrevocable Direction. EBCEA has, pursuant to the Direction Letter, irrevocably instructed PG&E to remit to Collateral Agent all payments due or to become due in respect of the Receivables unless and until both Collateral Agent, at the direction of the Required Secured Creditors, and EBCEA direct otherwise in writing. The Collateral shall be collected by Collateral Agent from PG&E pursuant to the Direction Letter. EBCEA shall periodically take such additional measures as may be commercially reasonable to cause PG&E or Customers to make all payments due to EBCEA into the Lockbox Account. All invoices issued by or on behalf of EBCEA shall direct payment into the Lockbox Account. EBCEA shall provide Collateral Agent with such proof of compliance with this Section 5.01 as Collateral Agent may reasonably request from time to time. Without the prior written consent of Collateral Agent (acting at the written direction of the Required Secured Creditors), EBCEA shall not (a) terminate, amend, revoke or modify such payment instructions to PG&E or Customers or (b) direct or cause, directly or indirectly, PG&E or any Customer to make any payments except in accordance with such payment instructions. The parties agree that if any such payments, or any other Proceeds of Collateral, are received by EBCEA, (i) they shall be held in trust by EBCEA for the benefit of the Collateral Agent, (ii) EBCEA shall as promptly as possible remit or deliver same to Collateral Agent for application as provided herein, (iii) EBCEA shall take such commercially reasonable steps as necessary to require such Customer or PG&E to make any future remittances into the Lockbox Account and (iv) such activity shall be reported promptly to Collateral Agent following EBCEA's receipt of such funds. Collateral Agent thus has the right to all collections on the Collateral remitted to it by PG&E until the Discharge Date.

5.02 Application of Proceeds. The Proceeds of any collection or realization of all or any part of the Collateral shall be applied by Collateral Agent as provided for in Section 6 below.

5.03 Deficiency. If the Proceeds of the collection of the Collateral are insufficient to pay in full the Obligations, EBCEA remains liable to Collateral Agent and Secured Creditors for any deficiency.

5.04 Attorney-in-Fact. Collateral Agent is hereby appointed the attorney-in-fact of EBCEA to receive, endorse and collect all checks made payable to the order of EBCEA representing any payment or other distribution in respect of the Collateral.

## **Section 6. Establishment of and Distributions From Deposit Accounts.**

6.01 Establishment of Deposit Accounts. EBCEA shall establish the Deposit Accounts in EBCEA's name at Depositary Bank and shall fund the Reserve Amount into the Lockbox Account. The deposits into the Deposit Accounts and all interest accumulated thereon shall be held and disbursed by the Depositary Bank in accordance with the terms and conditions of the Control Agreements and this Agreement. The Deposit Accounts are subject to the sole dominion, control and discretion of Collateral Agent until the Discharge Date. Until the Discharge Date, neither EBCEA nor any person or entity claiming on behalf of or through EBCEA shall have any right or authority, whether express or implied, to make use of, withdraw or transfer any funds or to give instructions with respect to disbursement of the Accounts other than Collateral Agent. Until the Discharge Date, subject to Section 6.02, Collateral Agent shall be entitled to exercise any and all rights in respect of or in connection with the Deposit Accounts including (i) the right to specify the amount of payments to be made from the Deposit Accounts, (ii) when such payments are to be made out of the Deposit Accounts and (iii) the right to withdraw funds for the payment of Obligations which are due and payable from the Deposit Accounts. Collateral Agent shall accept all funds remitted to the Deposit Accounts under this Agreement, and credit such funds as provided for in Section 6.02 below.

6.02 Priority of Distributions of Collateral. Proceeds of Collateral shall be allocated in accordance with this Section 6.02. On each Distribution Date, Collateral Agent shall distribute all funds in the Deposit Accounts or otherwise received on the Collateral in accordance with the following priority:

(i) *first*, to each PPA Provider in payment of any Regular Charges, according to its Regular Sharing Percentage;

(ii) *second*, to each PPA Provider in payment of any Supplemental Payment owing to it according to its Supplemental Sharing Percentage;

(iii) *third*, to the Collateral Agent (as such and in its individual capacity) in respect of its reasonable out-of-pocket fees and expenses incurred under this Agreement, the Intercreditor Agreement or the Control Agreements that have been invoiced to EBCEA, including, without limitation, payment of expenses incurred by the Collateral Agent which indemnity shall include the reasonable out of pocket attorneys' fees of outside counsel to the Collateral Agent; and

(iv) *fourth*, unless an Event of Default shall exist as to EBCEA, the balance, if any, after retention in the Deposit Accounts of the Reserve Amount, shall be returned to EBCEA free and clear of the lien of this Agreement, provided, however, that if the Collateral Agent has been notified of a dispute in accordance with Section 6.06, the portion of the balance, if any, up to such disputed amount shall be retained in the Deposit Account and EBCEA shall only receive the amount of the balance, if any, that is in excess of such disputed amount until such time as the Collateral Agent receives written notice from the relevant PPA Provider and EBCEA that the dispute pursuant to Section 6.06 has been resolved.

Collateral Agent shall rely, and shall be fully protected in relying, on a Distribution Date Certificate submitted to it by EBCEA in making the above calculations, without any requirement that Collateral Agent verify the accuracy of such Distribution Date Certificate, subject to revision in the event of disputes resolved under Section 6.06.

6.03 Distribution Date Certificate. On or before three (3) Business Days before each Distribution Date, EBCEA shall remit to Collateral Agent and each PPA Provider a certificate in substantially the form of Exhibit A hereto (the “**Distribution Date Certificate**”) prepared by EBCEA itemizing each of the payments to be remitted under Section 6.02 above. The PPA Providers may share such Distribution Date Certificates with their respective accountants, legal counsel and other advisors.

6.04 Replenishing the Reserve Amount; No Waiver. Subject to Section 6.05, if at any time the balance in the Deposit Accounts is less than the Reserve Amount, then (a) the Collateral Agent shall within two (2) Business Days thereafter provide EBCEA with written notice thereof and (b) EBCEA shall deposit such shortfall amount into the Deposit Accounts not later than ten (10) Business Days after its receipt of such notice from Collateral Agent. The Collateral Agent shall have no duty or obligation to monitor or oversee EBCEA’s replenishment of the Reserve Amount, and shall have no duty or obligation under this Section 6.04 other than to deliver the written notice required pursuant to 6.04(a). Nothing contained herein shall impair or otherwise limit EBCEA’s obligations to timely make the payments required pursuant to any of the Transaction Agreements. It is expressly understood and agreed that the Collateral Agent shall have no liability for its failure to deliver any amounts required to be delivered by it pursuant to this Agreement or any other Transaction Agreement to the extent that such amounts are not then available in the Deposit Accounts.

6.05 Release of Reserve Amount. Except following and during the continuance of an Event of Default, if EBCEA provides the Collateral Agent with a Letter of Credit for the benefit of the PPA Providers in an amount equal to the Reserve Amount, EBCEA may request in writing and, upon receipt of such request, Collateral Agent shall instruct the Depository Bank to release and distribute the Reserve Amount to EBCEA. All of the fees, costs and expenses associated with the Letter of Credit shall be borne by EBCEA. EBCEA shall thereafter cause the Letter of Credit to be maintained in full force and effect through the Discharge Date. If at any time the issuer of the Letter of Credit is no longer a Qualified Institution, then EBCEA shall, within five (5) Business Days of such occurrence, either (a) provide Collateral Agent with a replacement Letter of Credit for the benefit of the PPA Providers issued by a Qualified



Institution in an amount equal to the Reserve Amount or (b) fund the applicable Reserve Amount into the Lockbox Account.

6.06 Disputes. If a PPA Provider advises EBCEA and Collateral Agent in writing that the calculations by EBCEA in any Distribution Date Certificate are in its opinion materially incorrect, then EBCEA and such PPA Provider shall attempt to resolve the discrepancy in good faith. If the parties are able to reach an agreement with respect to such discrepancy in advance of the relevant Distribution Date, EBCEA shall remit to Collateral Agent and each PPA Provider a revised Distribution Date Certificate reflecting the agreed upon amounts, and the Collateral Agent shall disburse funds in accordance with such revised Distribution Date Certificate on the applicable Distribution Date, provided, however, that the Collateral Agent shall have no liability whatsoever for any failure to disburse funds in accordance with a revised Distribution Date Certificate to the extent that it has not received such revised Distribution Date Certificate sufficiently in advance of the scheduled distribution. If the parties are unable to agree, they shall resolve such dispute in accordance with the dispute resolution provision of the Power Purchase Agreement between such PPA Provider and EBCEA. In the interim, the Distribution Date Certificate originally submitted by EBCEA shall be relied upon by Collateral Agent for purposes of making distributions from the Lockbox Account or any other Deposit Account of all undisputed amounts in accordance with Section 6.02, and the Collateral Agent shall make no distribution in respect of any disputed amount until such time as it has received a revised Distribution Date Certificate. Notwithstanding the above, no dispute shall prevent any other PPA Provider from receiving its distributions from the Lockbox, even if such distributions would result in a shortfall of the disputed amount. However, EBCEA shall not be entitled to receive any funds if such distribution to EBCEA would result in a shortfall of the disputed amount.

6.07 Earnings on Deposit Accounts. EBCEA shall establish the Deposit Accounts as a non-interest bearing account.

6.08 Rights and Remedies. If an Event of Default shall have occurred and is continuing, Collateral Agent, without any other notice to or demand upon EBCEA, shall have in any jurisdiction in which enforcement hereof is sought, in addition to all other rights and remedies, the rights and remedies of a secured party under the UCC and any additional rights and remedies as may be provided to a secured party in any jurisdiction in which Collateral is located; it being understood and agreed that the Collateral Agent would be exercising any such rights and remedies in its capacity as collateral agent for the benefit of the PPA Providers, as Secured Creditors. In addition, **EBCEA HEREBY WAIVES ANY AND ALL RIGHTS THAT IT MAY HAVE TO A JUDICIAL HEARING IN ADVANCE OF THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES HEREUNDER, INCLUDING ITS RIGHT FOLLOWING AN EVENT OF DEFAULT TO TAKE IMMEDIATE POSSESSION OF THE COLLATERAL AND TO EXERCISE ITS RIGHTS AND REMEDIES WITH RESPECT THERETO**. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Intercreditor Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Intercreditor Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral,

it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

6.09 No Waiver by Collateral Agent. Collateral Agent shall not be deemed to have waived any of its rights and remedies in respect of the Obligations or the Collateral unless such waiver shall be made in writing and signed by Collateral Agent (acting at the written direction of the Required Secured Creditors). No delay or omission on the part of Collateral Agent in exercising any right or remedy shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any occasion shall not be construed as a bar to or a waiver of any right or remedy on any future occasion. All rights and remedies of Collateral Agent with respect to the Obligations or the Collateral, whether evidenced hereby or by any other instrument or papers, may be exercised by Collateral Agent (acting at the written direction of the Required Secured Creditors), shall be cumulative and may be exercised singularly, alternatively, successively or concurrently at such time or at such times as Collateral Agent (acting at the written direction of the Required Secured Creditors) deems expedient.

6.10 Waivers by EBCEA. To the extent permitted by applicable law, EBCEA hereby waives demand, notice, protest, notice of acceptance of this Agreement, notice of loans made, credit extended, collateral received or delivered or other action taken in reliance hereon and all other demands and notices of any description.

6.11 Marshalling. **TO THE EXTENT THAT IT LAWFULLY MAY, EBCEA HEREBY AGREES THAT IT WILL NOT INVOKE ANY LAW RELATING TO THE MARSHALLING OF COLLATERAL WHICH MIGHT CAUSE DELAY IN OR IMPEDE THE ENFORCEMENT OF COLLATERAL AGENT'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT OR UNDER ANY OTHER INSTRUMENT CREATING OR EVIDENCING ANY OF THE OBLIGATIONS OR UNDER WHICH ANY OF THE OBLIGATIONS IS OUTSTANDING OR BY WHICH ANY OF THE OBLIGATIONS IS SECURED OR PAYMENT THEREOF IS OTHERWISE ASSURED, AND, TO THE EXTENT THAT IT LAWFULLY MAY, EBCEA HEREBY IRREVOCABLY WAIVES THE BENEFITS OF ALL SUCH LAWS.**

## **Section 7. Miscellaneous.**

7.01 Notices. Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed to the relevant party as provided below their signatures to this Agreement or at such other address for notice as EBCEA or Collateral Agent shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) that is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) that is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

7.02 No Waiver. No failure on the part of the Collateral Agent to exercise, and no course of dealing with respect to, and no delay in exercising, any right or power hereunder shall operate as a waiver thereof.

7.03 Amendments. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by EBCEA and Collateral Agent.

7.04 Expenses. If EBCEA fails to do so, Collateral Agent may, upon receipt from the Required Secured Creditors of written direction and such sums as may be necessary in connection therewith, discharge taxes and any other Liens or encumbrance at any time levied or placed on any of the Collateral. EBCEA agrees to reimburse Collateral Agent on demand for any such expenditures made by Collateral Agent, and the Collateral Agent promptly upon receipt thereof shall remit such reimbursed sums to the Required Secured Creditors. For the avoidance of doubt, it is expressly understood and agreed that the Collateral Agent shall not use or expend its own funds in connection with such taxes, Liens or encumbrances. Collateral Agent shall have no obligation to make any such expenditure nor shall the making thereof be construed as a waiver or cure of any Event of Default. EBCEA agrees to reimburse Collateral Agent (as such and in its individual capacity) for all reasonable costs and expenses incurred by it (including the reasonable fees and expenses of legal counsel) in connection with (i) the performance by Collateral Agent of its duties under this Agreement, the Intercreditor Agreement or the Control Agreements, (x) protecting, defending or asserting rights and claims of the Collateral Agent in respect of the Collateral, (y) litigation relating to the Collateral, and (z) workout, restructuring or other negotiations or proceedings, and (ii) the enforcement of this Section 7.04, and all such reasonable costs and expenses shall be Obligations entitled to the benefits of the collateral security provided pursuant to Section 2.

7.05 Duty of Care; Earnings. Collateral Agent shall have no duty or obligation with respect to the Collateral except for its contractual obligations under this Agreement, the Intercreditor Agreement or the Control Agreements. The Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against any Person, beyond the safe custody of any Collateral in the Collateral Agent's possession or control. Without limiting the generality of the foregoing, Collateral Agent shall have no duty (a) other than to instruct EBCEA as set forth in Section 4.05 hereof, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of EBCEA, the Secured

Creditors, and the Collateral Agent (provided that EBCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of Collateral Agent) and Collateral Agent shall only transfer or assign its rights hereunder in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of the Intercreditor Agreement). This Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect in accordance with Section 7.12, and be binding upon EBCEA, its successors and assigns, and inure, together with the rights of Collateral Agent hereunder, to the benefit of the Collateral Agent and its successors, transferees and assigns.

7.07 Counterparts. This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto shall be as effective as an original signature.

7.08 GOVERNING LAW; JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

7.09 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

7.10 CONSENT TO INJUNCTIVE RELIEF. WITHOUT LIMITING ANY OTHER RIGHTS OR REMEDIES THAT COLLATERAL AGENT MAY HAVE, EBCEA ACKNOWLEDGES THAT ITS VIOLATION OF SECTION 5.01 WOULD RESULT IN IRREPARABLE INJURY TO COLLATERAL AGENT FOR WHICH NO ADEQUATE REMEDY AT LAW WOULD BE AVAILABLE. ACCORDINGLY, EBCEA HEREBY (I)

**CONSENTS TO THE ENTRY OF AN IMMEDIATE EX-PARTE INJUNCTION, TEMPORARY RESTRAINING ORDER, AND/OR PERMANENT INJUNCTION TO ENFORCE THE PROVISIONS OF SECTION 5.01, IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY AND (II) WAIVES ANY DEFENSE THAT ADEQUATE REMEDIES ARE AVAILABLE AT LAW AND ANY REQUIREMENT THAT A BOND OR ANY OTHER SECURITY BE POSTED IN CONNECTION WITH THE ENTRY OF ANY RESTRAINING ORDER OR INJUNCTION.**

7.11 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.12 Termination. Unless earlier terminated in writing by the parties hereto, this is a continuing security agreement and the grant of a security interest under this Agreement shall remain in full force and effect and all the rights, powers and remedies of Collateral Agent hereunder shall continue to exist until: (a) the Obligations are paid in full as the same becomes due and payable; (b) the PPA Providers have no further obligation to deliver products or render services (including credit support services) to, or on behalf of, EBCEA; (c) EBCEA has no further obligations to the PPA Providers under any of the Transaction Agreements; and (d) the PPA Providers, upon request of EBCEA, have executed a written termination statement, and Collateral Agent has reassigned to EBCEA, without recourse, the Collateral and all rights conveyed hereby and returned possession of the Collateral to EBCEA. Furthermore, it is contemplated by the parties that there may be times when no Obligations are owing; but notwithstanding such occurrences, unless the PPA Providers have executed a written termination under clause (d) above, this Agreement shall remain valid and shall be in full force and effect as to subsequent Obligations, provided Collateral Agent has not executed a written agreement terminating this Agreement. This Agreement shall continue irrespective of the fact that the liability of any other obligor may have ceased, or irrespective of the validity or enforceability of the Transaction Agreements, to which any other obligor may be a party, and notwithstanding the reorganization or bankruptcy of EBCEA, or any other event or proceeding affecting EBCEA or any other obligor. At EBCEA's request, Collateral Agent shall, at EBCEA's reasonable expense, instruct Depository Bank to release all assets credited to the Deposit Accounts to EBCEA, and Collateral Agent shall also execute such other documentation as shall be reasonably requested by EBCEA to effect the termination and release of the liens on the Collateral, including notice to PG&E that the Direction Letter is terminated.

7.13 Severability. The provisions of this Agreement are intended to be severable. If for any reason any of the provisions of this Agreement shall be held invalid or unenforceable in whole or in part in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without in any manner affecting the validity or enforceability thereof in any other jurisdiction or the remaining provisions thereof in any jurisdiction.

7.14 Disclosure of Information. EBCEA hereby consents to the disclosure by any PPA Provider or Collateral Agent of any information provided by or relating to EBCEA as may be required or reasonably necessary for the administration of this Agreement, the Intercreditor Agreement or the Control Agreements, or the enforcement or protection of any of the rights of the Collateral Agent or the PPA Providers hereunder.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the date first written above.

**EAST BAY COMMUNITY ENERGY AUTHORITY,**  
as Pledgor

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

East Bay Community Energy Authority  
1111 Broadway, Suite 300  
Oakland, CA 94607  
Attention: Nick Chaset  
Email: [Nchaset@ebce.org](mailto:Nchaset@ebce.org)

**RIVER CITY BANK,**  
not in its individual capacity, but solely as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

River City Bank  
2485 Natomas Park Dr.  
Sacramento, CA, 95833  
Attention: Cash Management  
Fax: (916) 567-2799  
Email: [cashmgmt@rivercitybank.com](mailto:cashmgmt@rivercitybank.com)

Exhibit A

Form of Distribution Date Certificate

The undersigned, [INSERT NAME], the [INSERT NAME OF OFFICE HELD] of East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”), hereby certifies, on behalf of EBCEA in such capacity and not in its individual capacity, with reference to that certain Security Agreement dated as of \_\_\_\_\_, 201\_\_ (capitalized terms used herein shall have the same meaning as set forth in the Security Agreement) between EBCEA and \_\_\_\_\_, as collateral agent (“**Collateral Agent**”), to Collateral Agent as follows:

This certificate is being delivered to Collateral Agent on or before the date that is three (3) Business Days before the Distribution Date of [\_\_\_\_\_, 20\_\_].

No Event of Default exists as of the date of this certificate and EBCEA does not anticipate that an Event of Default will exist as of the Distribution Date set forth in paragraph 1 above.

The funds that are on deposit in the Lockbox Account shall be disbursed on the Distribution Date as follows:

1. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of its Regular Charges, an aggregate amount equal to [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)]; *[Include this paragraph for each PPA Provider]*
2. [To [INSERT NAME OF APPLICABLE PPA PROVIDER], for payment of any Supplemental Payment owing in an aggregate amount equal to [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)]; *[Include this paragraph for each PPA Provider]*
3. To Collateral Agent, in respect of Collateral Agent’s reasonable out-of-pocket fees and expenses incurred under the Security Agreement or the Intercreditor Agreement that have been invoiced to EBCEA, an aggregate amount equal to [\_\_\_\_\_ Dollars (\$\_\_\_\_\_)]; and
4. The remaining funds, if any, that are on deposit, after retention of the Reserve Amount are to be disbursed to EBCEA into the account designated by EBCEA.

[Signature page follows]



I hereby certify, on behalf of EBCEA and not in my individual capacity, that this Distribution Date Certificate is true and complete in all material respects.

**EAST BAY COMMUNITY ENERGY AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

Date:

**INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT,**

**dated as of \_\_\_\_\_, 2018,**

**by and among**

**RIVER CITY BANK,  
as Collateral Agent,**

**THE PPA PROVIDERS  
FROM TIME TO TIME  
PARTY HERETO,**

**and**

**EAST BAY COMMUNITY ENERGY AUTHORITY**

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Exhibit A – Form of Joinder

## INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

This **INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT** (this “**Agreement**”), dated as of \_\_\_\_\_, 2018 (the “**Effective Date**”), is entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as Collateral Agent (“**Collateral Agent**”), (ii) each of the creditors from time to time signatory hereto that are party to a Power Purchase Agreement (each such creditor defined below as a “**PPA Provider**”) and (iii) East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”).

### RECITALS:

A. EBCEA has (i) entered into the Master Agreements (as defined below) with the PPA Providers for the purchase of Product (as defined below), and (ii) may in the future enter into, a Power Purchase Agreement (as defined below) with a PPA Provider pursuant to which EBCEA has agreed, or will agree, to purchase the Product from such PPA Provider.

B. EBCEA shall sell the Product it purchases from PPA Providers to EBCEA’s customers at rates established by EBCEA from time to time.

C. Pursuant to the Security Agreement (as defined below) EBCEA has pledged to Collateral Agent, for the benefit of the PPA Providers, as Secured Creditors, a first priority continuing security interest in and to the Collateral (as defined below).

D. EBCEA’s customers are billed by PG&E (as defined below) and instructed to remit to PG&E sums they owe for the Product provided by EBCEA.

E. As of the date hereof, EBCEA has directed PG&E to remit all present and future collections on accounts receivable now or hereafter billed by PG&E on behalf of EBCEA to Collateral Agent for remittance to the Lockbox Account (as defined below), which direction is irrevocable unless both Collateral Agent, at the direction of the Required Secured Creditors (as defined below), and EBCEA direct PG&E otherwise.

F. Collateral Agent shall have, for the benefit of the Secured Creditors, a first priority continuing security interest in and lien on such receivables, deposit accounts and related Collateral pledged to Collateral Agent for the benefit of the Secured Creditors, as provided in the Security Agreement.

G. Distributions from such Collateral shall be made by Collateral Agent as provided in this Agreement and the Security Agreement, with PPA Providers having a senior right to distributions from the Collateral.

H. Secured Creditors desire in this Agreement to appoint River City Bank as Collateral Agent to act on their behalf regarding the administration, collection and enforcement of the Collateral, all as more fully provided herein.

I. Secured Creditors also desire to enter into this Agreement to define the rights, duties, authority and responsibilities of Collateral Agent.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto hereby agree as follows:

## **SECTION 1. DEFINITIONS**

### *Section 1.1. Definitions*

Each capitalized term used herein and not defined herein shall have the meaning given to such term in the Security Agreement. The following terms shall have the meanings assigned to them in this Section 1.1 or in the provisions of this Agreement referred to below:

**“Affiliate”** means, at any time, and as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

**“Agreement”** shall have the meaning assigned thereto in the Preamble hereof.

**“Applicable Law”** means any applicable law, including without limitation any: (a) federal, state, territorial, county, municipal or other governmental or quasi-governmental law, statute, ordinance, rule, regulation, requirement or use or disposal classification or restriction, whether domestic or foreign; (b) judicial, administrative or other governmental or quasi-governmental order, injunction, writ, judgment, decree, ruling, interpretation, finding or other directive, whether domestic or foreign; (c) common law or other legal or quasi-legal precedent; (d) any binding arbitrator’s, mediator’s or referee’s decision, finding, award or recommendation; or (e) charter, rule, regulation or other organizational or governance document of any national securities exchange or market or other self-regulatory organization.

**“Bankruptcy Code”** means the Bankruptcy Reform Act of 1978, as codified under Title 11 of the United States Code, and the rules promulgated thereunder, as the same may be in effect from time to time.

**“Bankruptcy Proceeding”** means, with respect to any Person, the institution by or against such Person of any proceeding seeking relief as a debtor, or seeking to adjudicate such Person as bankrupt or insolvent, or seeking the reorganization, arrangement, adjustment or composition of such Person or its debts, under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or seeking appointment of a receiver, trustee, custodian or other similar official for such Person or for any substantial part of its property, or a general assignment by such Person for the benefit of its creditors.

**“Business Day”** means any day other than a Saturday, a Sunday or a day on which commercial banks in the State of California are required or authorized to be closed.

**“Collateral”** has the meaning given to such term in the Security Agreement.

**“Collateral Agent”** means the party identified as such in the Preamble hereof, and its successors and permitted assigns in such capacity.

**“Control Agreements”** means the Account Control Agreement, dated as of the date hereof, among the Depository Bank, EBCEA and Collateral Agent and any other agreements entered into among EBCEA and Depository Bank which shall designate the Deposit Accounts as blocked accounts under the “control” of Collateral Agent, for the benefit of Secured Creditors, as provided in the UCC, as each such agreement may be amended, supplemented, restated or replaced from time to time.

**“Customer”** means any customer of EBCEA who purchases Product from EBCEA but is invoiced by PG&E, or any other obligor(s) responsible for payment of a Receivable.

**“Deposit Accounts”** has the meaning given to such term in the Security Agreement.

**“Depository Bank”** has the meaning given to such term in the Security Agreement.

**“Distribution Date”** has the meaning given to such term in the Security Agreement.

**“Distribution Date Certificate”** has the meaning given to such term in the Security Agreement.

**“EBCEA”** means the party identified as such in the Preamble hereof, and its successors and permitted assigns, and includes EBCEA in its capacity as a debtor in possession under the Bankruptcy Code.

**“Event of Default”** has the meaning set forth in the applicable Power Purchase Agreement.

**“Joinder”** has the meaning given to such term in Section 6.5.

**“Lien”** means any mortgage, pledge, hypothecation, deposit arrangement, encumbrance, lien (statutory or other), assignment, charge or other security interest or any preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including any sale governed by Article 9 of the UCC, any conditional sale or title retention agreement, or any capital lease having substantially the same economic effect as any of the foregoing).

**“Lockbox Account”** has the meaning given to such term in the Security Agreement.

**“Master Agreements”** means the following:

(i) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(ii) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iii) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof;

(iv) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof; and

(v) the Master Power Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2018, between \_\_\_\_\_ and EBCEA, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof.

**“Obligations”** has the meaning given to such term in the Security Agreement.

**“Person”** means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, or a government or agency or political subdivision thereof.

**“PG&E”** means the Pacific Gas and Electric Company, its successors and assigns or any other Person that is the host utility that bills Customers in EBCEA’s service territory and collects payments for Product from such Customers on behalf of EBCEA.

**“Power Purchase Agreement”** means each agreement, including the Master Agreements, together with the exhibits, schedules, transactions, confirmations, and any written amendments, modifications, restatements, extensions or supplements thereto or replacements thereof, pursuant to which a PPA Provider sells the Product to EBCEA, as amended, modified, supplemented, restated, extended or replaced from time to time.

**“PPA Provider”** means each seller of Product under a Power Purchase Agreement that is a party to this Agreement, and its respective successors and assigns.

**“Product”** means one or more of the following: energy, renewable energy attributes, capacity attributes or resource adequacy benefits.

**“Receivable”** means an Account evidencing EBCEA’s rights to payment for Product, billed in an invoice sent to a Customer by PG&E, together with all late fees and other fees which PG&E and EBCEA agree are to be charged in such invoice to the Customer by PG&E on behalf of EBCEA.

**“Regular Charges”** has the meaning given to such term in the Security Agreement.



**“Required Secured Creditors”** means, as of any date, the Secured Creditor, or Secured Creditors, that, as of such date, have at least fifty percent (50%) of the total aggregate Sharing Percentage, as calculated on such date.

**“Secured Creditors”** means each PPA Provider that is a party to this Agreement, and its respective successors and assigns.

**“Security Agreement”** means the Security Agreement, dated as of even date herewith, between EBCEA and Collateral Agent for the benefit of Secured Creditors, granting a security interest in the Collateral to secure the Obligations, as amended, supplemented, restated or replaced from time to time.

**“Sharing Percentage”** means, as of any date, with respect to each PPA Provider as calculated by EBCEA in a commercially reasonable manner, the percentage equivalent of a fraction, (a) the numerator of which is the sum of (i) the outstanding amount of the Obligations of such PPA Provider, as of such date, and (ii) the calculated amount of the Termination Payment, if any, that would be owed to such PPA Provider if a Termination Event occurred on such date, and (b) the denominator of which is the sum of (i) the outstanding aggregate amount of the Obligations of all PPA Providers as of such date, and (ii) the calculated aggregate amount of the Termination Payments, if any, that would be owed to all PPA Providers if a Termination Event occurred on such date.

**“Supplemental Payment”** has the meaning given to such term in the Security Agreement.

**“Termination Event”** means, with respect to any Power Purchase Agreement, the termination and/or acceleration thereof in accordance with the terms of such Power Purchase Agreement.

**“Termination Payment”** means, with respect to any Power Purchase Agreement, any and all Obligations arising upon or in connection with a Termination Event under such Power Purchase Agreement, including any termination fees and payments or other amounts owed by EBCEA thereunder, as of the date of such Termination Event, as calculated in a commercially reasonable manner by the PPA Provider to such Power Purchase Agreement.

**“Transaction Agreements”** means the Master Agreements, any other Power Purchase Agreements, the Control Agreements, the Security Agreement, this Agreement and all other agreements, instruments or documents to which EBCEA is a party and which are executed and delivered from time to time in connection with or as security for EBCEA’s obligations under the Master Agreements, any other Power Purchase Agreements and any other Transaction Agreements, as the same may be amended, restated, modified, replaced, extended or supplemented from time to time.

**“UCC”** means the Uniform Commercial Code in effect in the State of California from time to time.

### *Section 1.2. Other Interpretive Provisions*

References to “Sections” shall be to Sections of this Agreement unless otherwise specifically provided. For purposes hereof, “including” is not limiting and “or” is not exclusive. All capitalized terms defined in the UCC and not otherwise defined herein or in the Security Agreement shall have the respective meanings provided for by the UCC. Any of the terms defined in this Agreement may, unless the context otherwise requires, be used in the singular or the plural depending on the reference. All references to statutes and related regulations shall include any amendments of same and any successor statutes and regulations. References to any instrument, agreement or document shall include such instrument, agreement or document as supplemented, modified, amended or restated from time to time to the extent permitted by this Agreement or the Security Agreement, as applicable. References to any Person include the successors and permitted assigns of such Person. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto.

## **SECTION 2. RELATIONSHIPS AMONG SECURED CREDITORS**

### *Section 2.1. Liens in the Collateral*

At all times, whether before, after or during the pendency of any Bankruptcy Proceeding and notwithstanding the priorities which would ordinarily result from the order of granting of any Liens, the order of attachment or perfection thereof, or the order of filing or recording of any financing statements or other instrument, or the priorities that would otherwise apply under Applicable Law, Collateral Agent, for the benefit of the Secured Creditors, shall have a first priority lien in the Collateral to secure the Obligations. No Secured Creditor will acquire in its own name a Lien in the assets of EBCEA to secure any Obligations arising under a Power Purchase Agreement other than Liens arising by operation of law such as setoff rights. Secured Creditors shall share in the Proceeds of the Collateral as provided for in Section 4.6.

### *Section 2.2. No Debt Subordination*

Nothing in this Agreement shall be construed to be or operate as a subordination of any of the Obligations owed to a Secured Creditor in right of payment to the Obligations owed to any other Secured Creditor.

### *Section 2.3. Restrictions on Enforcement Action*

So long as any Obligation is outstanding and the Security Agreement remains in effect, the provisions of this Agreement and the Security Agreement shall provide the exclusive method by which Collateral Agent or any Secured Creditor may exercise rights in or assert claims against the Collateral or EBCEA pertaining to the Obligations. Notwithstanding the foregoing, nothing in this Agreement shall prohibit or otherwise restrict a Secured Creditor from exercising any right of termination, acceleration or similar right in accordance with its Power Purchase Agreement, or prohibit or otherwise restrict a Secured Creditor from exercising any set-off rights it may have with respect to the Obligations owing to it.

*Section 2.4. No Restriction on Terms of Power Purchase Agreements*

This Agreement does not impose any restriction on the terms of a Power Purchase Agreement. EBCEA and any PPA Provider are free to agree on any and all of the terms for charges that may be provided for under its Power Purchase Agreement, such as the price for the Product, late fees, and early termination fees. Without limiting the foregoing, no PPA Provider shall be restricted as to the amount or output of the Product it sells to EBCEA or the length of such Power Purchase Agreement, or any amendment thereof. Upon request by the Collateral Agent, each PPA Provider will disclose to Collateral Agent the Obligations then due and owing to such PPA Provider in an itemized manner, and EBCEA consents to such disclosure to such Person or any party hereto.

*Section 2.5. Representations and Warranties*

Each Secured Creditor represents and warrants to the other parties hereto that:

(a) the execution, delivery and performance by such Secured Creditor of this Agreement has been duly authorized by all necessary corporate or similar proceedings and does not and will not contravene any provision of law, its charter or by-laws or any amendment thereof, or of any indenture, agreement, instrument or undertaking binding upon such Secured Creditor;

(b) the execution, delivery and performance by such Secured Creditor of this Agreement will result in a valid and legally binding obligation of such Secured Creditor enforceable against such Secured Creditor in accordance with its terms; and

(c) any Termination Payment calculated by it and provided to the Collateral Agent or the other Secured Creditors shall be calculated in good faith, in accordance with its Power Purchase Agreement, and consistent with such Secured Creditor's historical practices.

*Section 2.6. Cooperation; Accountings*

Each Secured Creditor will, upon the reasonable request of the Collateral Agent, from time to time execute and deliver or cause to be executed and delivered such further instruments, and do and cause to be done such further acts as may be reasonably necessary or proper to carry out more effectively the provisions of this Agreement. Each Secured Creditor agrees to provide to the Collateral Agent upon reasonable request a statement of all payments received by it in respect of the Obligations pertaining to its Power Purchase Agreement.

**SECTION 3. AGENCY PROVISIONS**

*Section 3.1. Appointment and Authorization of Collateral Agent*

(a) Each Secured Creditor hereby designates and appoints River City Bank, as Collateral Agent of such Secured Creditor under this Agreement and River City Bank hereby accepts such designation and appointment. The Collateral Agent is a non-

fiduciary agent of the Secured Creditors and does not act in a fiduciary capacity or as trustee for the Secured Creditors or Collateral.

(b) Notwithstanding any provision to the contrary elsewhere in this Agreement, Collateral Agent shall not have any duties or responsibilities except those expressly set forth herein and in the Security Agreement, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or otherwise exist against Collateral Agent. The right or power of Collateral Agent to perform any discretionary act hereunder shall not be construed as a duty. Collateral Agent is hereby authorized, empowered and instructed to execute, deliver and perform its obligations under this Agreement, the Security Agreement, the Control Agreements and each other document as may be necessary or convenient in connection with the foregoing; provided, however, that the Collateral Agent shall not amend, modify or terminate the Control Agreements without the prior written consent of the Secured Creditors.

(c) Collateral Agent shall not (i) be subject to any fiduciary or other implied duties, (ii) have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the Security Agreement, the Control Agreements, or other agreement to which the Collateral Agent is a party, and (iii) be required to take action that, in its opinion or the opinion of its counsel, may expose Collateral Agent to liability.

(d) The Collateral Agent, hereby represents and warrants that (i) it has all requisite power and authority to execute, deliver and perform under this Agreement; (ii) the execution, delivery and performance by it of this Agreement has been duly authorized by all requisite corporate or other action; (iii) no consent or approval of any other Person and no consent, license, approval or authorization of any governmental authority is required in connection with the execution, delivery, and performance by it of this Agreement; and (iv) this Agreement constitutes its legal, valid and binding obligation enforceable in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws in effect from time to time affecting the rights of creditors generally and general principles of equity regardless of whether such enforcement is considered in a proceeding in equity or at law.

### *Section 3.2. Collateral*

#### (a) Deposit Accounts Subject to Collateral Agent's Control.

Collateral Agent agrees that its security interest and right of setoff in and to the Deposit Accounts is held for the benefit of all the Secured Creditors and itself as Collateral Agent, and that Collateral Agent will comply with this Agreement and the Security Agreement in distributing monies received from such Deposit Accounts.

#### (b) Collateral Held by Secured Creditors.

Each Secured Creditor hereby acknowledges that if any Secured Creditor (individually or through its own custodian) shall hold or control, at any time, any assets

comprising Collateral, such possession or control is also held for the benefit of Collateral Agent for the benefit of the Secured Creditors. The foregoing sentence shall not be construed to impose any duty on a Secured Creditor (or any third party acting on its behalf) with respect to such Collateral if it is not perfected by possession or control.

*Section 3.3. Delegation of Duties*

Collateral Agent may exercise its powers and execute any of its duties under this Agreement by or through employees, agents, and attorneys-in-fact, and shall be entitled to take and to rely on advice of counsel concerning all matters pertaining to such powers and duties. Subject to Section 3.4, Collateral Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact unless Collateral Agent acted in bad faith or gross negligence in the selection of such agents or attorneys-in-fact. Collateral Agent may utilize the services of such Persons as Collateral Agent in its reasonable discretion may determine, and shall be entitled to indemnity hereunder for all reasonable fees and expenses of such Persons.

*Section 3.4. Exculpatory Provisions*

Neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates shall be (a) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection with this Agreement (except for its or such Person's own bad faith, gross negligence (or ordinary negligence in the handling or disbursement of funds actually received by it pursuant to the terms hereof) or willful misconduct, respectively) or (b) responsible in any manner to EBCEA or any of the Secured Creditors for any recitals, statements, representations, warranties or covenants made by EBCEA or any Secured Creditor or any officer thereof contained in any certificate, report, statement or other document referred to or provided for in, or received by, Collateral Agent under or in connection with this Agreement or any other document in any way connected therewith, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Lien or the perfection or priority of any such Lien (including any Lien in the Collateral), or for any failure of EBCEA to perform its obligations thereunder.

*Section 3.5. Reliance by Collateral Agent*

Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing (in electronic or physical form), resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document or conversation reasonably believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including, without limitation, counsel to EBCEA), independent accountants and other experts selected by Collateral Agent. Collateral Agent shall be fully justified in failing or refusing to take action not provided for under this Agreement unless it shall first be indemnified to its reasonable satisfaction by EBCEA against any and all liability and expense which may be incurred by it by reason of taking, continuing to take or refraining from taking any such action. Collateral Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with the provisions of Section 4 hereof, and any action taken or failure to act pursuant thereto shall be binding upon all the Secured Creditors.

### *Section 3.6. Knowledge*

Collateral Agent shall not be deemed to have knowledge or notice of any facts regarding the Collateral or the Obligations unless Collateral Agent has received written notice from the Secured Creditor or EBCEA referring to this Agreement, describing such facts in reasonable detail.

### *Section 3.7. Non-Reliance on Collateral Agent and Secured Creditors*

Each Secured Creditor expressly acknowledges that except as expressly set forth in this Agreement, neither Collateral Agent (as such or in its individual capacity) nor any of Collateral Agent's officers, directors, employees, agents, attorneys-in-fact, or Affiliates has made any representations or warranties to it, except as expressly provided herein at Section 3.1 (d) and that no act by Collateral Agent hereinafter taken shall be deemed to constitute any representation or warranty by Collateral Agent (as such or in its individual capacity) to any Secured Creditor.

### *Section 3.8. Reporting*

EBCEA shall provide online access for the Lockbox Account that enables the Collateral Agent and the Secured Creditors to view the balance of the Lockbox Account at any time. Collateral Agent will provide the Secured Creditors with a copy of the bank statement for the Lockbox Account no later than five (5) Business Days following receipt thereof by the Collateral Agent. Collateral Agent shall have no duty or responsibility to provide the Secured Creditors with, or otherwise monitor or review in any respect, any credit or other information concerning the business, operations, property, financial and other condition or creditworthiness of EBCEA which may come into the possession of Collateral Agent or any of its officers, directors, employees, agents, attorneys-in-fact, or Affiliates. Collateral Agent shall provide to Secured Creditors copies of all notices received by it regarding the Collateral, the Security Agreement or this Agreement; provided that the failure to provide such copies shall not cause Collateral Agent (as such or in its individual capacity) to incur liability to any Person. Collateral Agent shall promptly (but in no event more than 3 Business Days) after Collateral Agent's receipt of a written request from a Secured Creditor provide a report to all Secured Creditors regarding the status of any matter relating to payments or distributions of Collateral received by Collateral Agent.

### *Section 3.9. Indemnification*

EBCEA shall indemnify Collateral Agent (as such and in its individual capacity) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind whatsoever which may at any time be imposed on, incurred by or asserted against Collateral Agent (as such or in its individual capacity) arising out of actions or omissions of Collateral Agent arising out of this Agreement; provided that neither EBCEA nor the Secured Creditors shall be liable for the payment of any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting solely from Collateral Agent's fraud, willful misconduct, gross negligence or bad faith. The agreements in this Section 3.9 shall survive the repayment of the Obligations and the termination of this Agreement.

*Section 3.10. Collateral Agent May Act in its Individual Capacity*

River City Bank, and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with EBCEA and its Affiliates as though it was not Collateral Agent hereunder.

*Section 3.11. Successor Collateral Agent*

(a) Collateral Agent may resign at any time upon at least 60 days' prior written notice to the Secured Creditors and EBCEA, or may be removed by the demand of the Required Secured Creditors for cause at any time if Collateral Agent has failed to take any action that Collateral Agent is required to take hereunder after request by a Secured Creditor, or Collateral Agent has taken any action hereunder that Collateral Agent is not authorized to take hereunder or that violates the terms hereof and, in either case, has not remedied such failure or violation with reasonable promptness after a written request for corrective action is delivered to Collateral Agent. After any resignation or removal hereunder of Collateral Agent, the provisions of this Section 3 shall continue to be binding upon and inure to its benefit as to any actions taken or omitted to be taken by it in its capacity as Collateral Agent hereunder while it was Collateral Agent under this Agreement.

(b) Upon receiving written notice of any such resignation or removal, a successor Collateral Agent, reasonably acceptable to EBCEA, shall be appointed by the Secured Creditors provided, if an Event of Default as to EBCEA has occurred no such acceptance of the successor Collateral Agent by EBCEA shall be required. If a successor Collateral Agent shall not have been appointed pursuant to this Section 3.11(b) within 60 days after Collateral Agent's notice of resignation or upon removal of Collateral Agent, then any Secured Creditor or Collateral Agent (unless Collateral Agent is being removed) may petition a court of competent jurisdiction for the appointment of a successor Collateral Agent (it being expressly understood and agreed that any such petition by the Collateral Agent shall be at the expense of the Secured Creditors, jointly and severally) and the Collateral Agent shall continue its functions in accordance with subsection (c) below. The appointment of a successor Collateral Agent pursuant to this Section 3.11(b) shall become effective upon the acceptance of the appointment as Collateral Agent hereunder by a successor Collateral Agent. Upon such effective appointment, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent.

(c) The resignation or removal of a Collateral Agent shall take effect on the day specified in the notice described in Section 3.11(a), unless previously a successor Collateral Agent shall have been appointed and shall have accepted such appointment, in which event such resignation or removal shall take effect immediately upon the acceptance of such appointment by such successor Collateral Agent, and provided, further, that no resignation or removal shall be effective hereunder unless and until a successor Collateral Agent shall have been appointed and shall have accepted such appointment.

(d) Upon the effective appointment of and acceptance by a successor Collateral Agent, the successor Collateral Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Collateral Agent and the predecessor Collateral Agent hereby appoints the successor Collateral Agent the attorney-in-fact of such predecessor Collateral Agent to accomplish the purposes hereof, which appointment is coupled with an interest. Such appointment and designation shall be full evidence of the right and authority to act as Collateral Agent hereunder and all power, duties, documents, rights and authority of the previous Collateral Agent shall rest in the successor, without any further deed or conveyance. The predecessor Collateral Agent shall, nevertheless, on the written request of the Secured Creditors or successor Collateral Agent, execute and deliver any other such instrument transferring to such successor Collateral Agent all the Collateral, properties, rights, power, duties, authority and title of such predecessor. In connection with the resignation or removal of Collateral Agent, EBCEA, to the extent requested by the Secured Creditors or Collateral Agent, shall procure and execute any and all documents, conveyances or instruments requested, including any documentation appropriate to reflect the transfer of the Lien or other rights granted herein to such successor Collateral Agent.

#### **SECTION 4. ACTIONS BY COLLATERAL AGENT**

##### *Section 4.1. Duties and Obligations*

The duties and obligations of Collateral Agent are only those set forth in this Agreement and the Security Agreement. The Collateral Agent shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with the Collateral, or to otherwise take or refrain from taking any action hereunder, except as expressly provided by the terms hereof or in written instructions received pursuant hereto, and no implied duties or obligations shall be read into this Agreement against the Collateral Agent. Upon the written instruction at any time and from time to time of the Required Secured Creditors, the Collateral Agent shall take such action or refrain from taking such action, not inconsistent with the provisions of this Agreement, as may be specified in such instruction. Notwithstanding the foregoing, Collateral Agent shall not be required to take, or refrain from taking, any action that, in its opinion or in the opinion of its counsel, may expose Collateral Agent (as such or in its individual capacity) to liability. Collateral Agent (as such or in its individual capacity) shall not be liable for any action it takes or omits to take in good faith which it believes to be authorized or within its rights or powers; provided, however, that such action or omission by Collateral Agent does not constitute willful misconduct, gross negligence or bad faith. The Collateral Agent shall not be obligated to expend its own funds or to incur any obligation in its individual capacity in the performance of any of its obligations under or in connection with this Agreement, the Security Agreement, the Control Agreements or any related document.

##### *Section 4.2. Voting; Amendments to Transaction Agreements*

Collateral Agent shall act at the written instruction of the Required Secured Creditors in connection with all material actions, matters or decisions, or any actions, matters or decisions requiring a vote or instruction under this Agreement, under the Control Agreements or the Security Agreement, including with respect to Section 5.01 of the Security Agreement.



Notwithstanding the foregoing or anything in any Transaction Agreement to the contrary, without the prior written consent of all of the Secured Creditors, Collateral Agent shall not enter into any amendments, modifications, restatements, extensions or supplements of this Agreement, the Control Agreements or the Security Agreement.

#### *Section 4.3. Actions Pertaining to the Collateral*

Collateral Agent has the sole and exclusive standing and right to assert claims relating to the Collateral, and no Secured Creditor may enforce or assert against EBCEA, the Deposit Accounts, the Depository Bank, or any other Person, any claims relating to the Collateral. Collateral Agent shall only act at the written instruction of the Required Secured Creditors in (a) taking any action under this Agreement, the Security Agreement or the Control Agreements with respect to the Collateral following an Event of Default and (b) asserting any claim under this Agreement, the Security Agreement or the Control Agreements. Notwithstanding the foregoing, if Collateral Agent deems it prudent to take reasonable actions, without the instruction of a Secured Creditor, to protect the Collateral, it may (but shall be under no obligation to) do so and thereafter provide written notice to all the Secured Creditors of such actions, and no provision of this Agreement shall restrict Collateral Agent from exercising such rights and no liability shall be imposed on Collateral Agent for omitting to exercise such rights.

#### *Section 4.4. Duty of Care*

Collateral Agent shall have no duty or obligation as to the collection or protection of the Collateral or any income thereon, nor as to the preservation of rights against prior parties, nor as to the preservation of rights pertaining to the Collateral beyond the safe custody of any Collateral in Collateral Agent's actual possession. Without limiting the generality of the foregoing, Collateral Agent shall have no duty or obligation (a) other than to instruct EBCEA as set forth in Section 4.05 of the Security Agreement, to see to any recording or filing of any financing statement evidencing a security interest in the Collateral, or to see to the maintenance of any such recording or filing, (b) to see to the payment or discharge of any tax, assessment or other governmental charge or any Lien or encumbrance of any kind owing with respect to, assessed or levied against any part of the Collateral, (c) to confirm or verify the contents of any reports or certificates delivered to Collateral Agent reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties, or (d) to ascertain or inquire as to the performance of observance by any other Person of any representations, warranties or covenants. Collateral Agent may require an officer's certificate or an opinion of counsel before acting or refraining from acting, and Collateral Agent shall not be liable for any action it takes or omits to take in good faith in reliance on an officer's certificate or an opinion of counsel.

#### *Section 4.5. Further Assurances*

EBCEA and each Secured Creditor shall take such actions and cooperate with Collateral Agent as may be reasonably requested, and execute such documents as may be reasonably necessary, to carry out or effect the intent of the parties hereto.

*Section 4.6. Distribution of Proceeds of Collateral*

Collateral Agent shall distribute the Proceeds of the Collateral as provided in Section 6.02 of the Security Agreement. Collateral Agent shall rely on the provisions in Section 6 of the Security Agreement for calculating the Obligations payable from such Proceeds. Collateral Agent has no duty or obligation to make an independent inquiry regarding the foregoing calculations or the facts on which such calculations are based.

*Section 4.7. Deposit Accounts*

Subject to distributions permitted under the Security Agreement or this Agreement, the Proceeds of Collateral shall be maintained in the Deposit Accounts, and no such account shall be required to be interest bearing.

*Section 4.8. Restoration of Obligations*

In the event any payment of, or any application of any amount, asset or property to, any of the Obligations owed to any Secured Creditor or any obligations owed to Collateral Agent under the Security Agreement or this Agreement, or any part thereof, made at any time (including, without limitation, made prior to any applicable Bankruptcy Proceeding) is rescinded or are otherwise to be restored or returned by such Secured Creditor or Collateral Agent at any time after such payment or application, whether by order of any court, by settlement, or otherwise, then the respective obligations and the security interests of such Person shall be reinstated, all as though such payment or application had never been made.

*Section 4.9. Privileged Materials*

With respect to all materials and communications relating to the Collateral with or in the possession of Collateral Agent or its counsel that are subject to any claim of privilege in favor of Collateral Agent, each Secured Creditor agrees that Collateral Agent shall not be required to take any action under this Agreement that compromises the privileged nature of such conversations or materials, and all such privileges shall be preserved.

*Section 4.10. Action Upon Instruction*

Whenever the Collateral Agent is unable to decide between alternative courses of action permitted or required by the terms of this Agreement or any document, or is unsure as to the application, intent, interpretation or meaning of any provision of this Agreement or any other document, or any such provision may be ambiguous as to its application or in conflict with any other applicable provision, permits any determination by the Collateral Agent, or is silent or incomplete as to the course of action that the Collateral Agent is required to take with respect to a particular set of facts, then the Collateral Agent may give notice (in such form as shall be appropriate under the circumstances) to the Secured Creditors requesting instruction as to the course of action to be adopted, and, to the extent the Collateral Agent acts or refrains from acting in good faith in accordance with any such written instruction of the Required Secured Creditors received, the Collateral Agent shall not be personally liable on account of such action or inaction to any Person. If the Collateral Agent shall not have received appropriate instruction from the Required Secured Creditors within ten (10) days of such notice (or within such shorter

period of time as reasonably may be specified in such notice or may be necessary under the circumstances) it may, but shall be under no duty to, take or refrain from taking such action which is consistent, in its view, with this Agreement, the Security Agreement, and the Control Agreements or other documents, and as it shall deem to be in the best interests of the Secured Creditors, and the Collateral Agent shall have no personal liability to any Person for any such action or inaction.

## **SECTION 5. BANKRUPTCY PROCEEDINGS**

The following provisions shall apply during any Bankruptcy Proceeding of EBCEA:

(a) Collateral Agent shall represent all Secured Creditors in connection with all matters directly relating solely to the Collateral, use of cash collateral, relief from the automatic stay and adequate protection. In such Bankruptcy Proceeding, Collateral Agent shall act on the instruction of the Required Secured Creditors.

(b) Each Secured Creditor shall be free to act independently on any issue not directly relating solely to the Collateral.

(c) Each Secured Creditor shall file its own proof of claim in respect of the Obligations owing to it. Collateral Agent shall have the right to file (but has no obligation to file) a proof of claim in its capacity as Collateral Agent in respect of any or all of the Obligations.

(d) Each Secured Creditor shall have the sole right to vote the claims pertaining to the Obligations owing to it by EBCEA.

(e) Any property received by any Secured Creditor with respect to the Obligations owing to it as a result of, or during, any Bankruptcy Proceeding will be delivered promptly to Collateral Agent for distribution in accordance with Section 4.6.

## **SECTION 6. MISCELLANEOUS**

### *Section 6.1. Amendments to this Agreement and Assignments*

This Agreement may not be modified, altered or amended, except by an agreement in writing signed by Collateral Agent, EBCEA and all the Secured Creditors. This Agreement is assignable by a Secured Creditor. Collateral Agent shall only transfer or assign its rights hereunder by operation of law or in connection with a resignation or removal from its capacity as Collateral Agent in accordance with the terms of this Agreement and, if required by the successor Collateral Agent, the parties agree to execute and deliver a restated Agreement in the event there is a replacement of Collateral Agent. EBCEA shall not assign, transfer or delegate its rights or obligations hereunder without the prior written consent of all the Secured Creditors and Collateral Agent. Any assignee of a PPA Provider under a Power Purchase Agreement shall comply with Section 6.5.

*Section 6.2. Marshalling*

Collateral Agent shall not be required to marshal any present or future security for (including, without limitation, the Collateral), or guaranties of the Obligations or to resort to such security or guaranties in any particular order; and all of each of such Person's rights in respect of such security and guaranties shall be cumulative and in addition to all other rights, however existing or arising.

*Section 6.3. Governing Law; Jurisdiction*

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH, AND ENFORCED UNDER, THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE. EACH PARTY TO THIS AGREEMENT HEREBY IRREVOCABLY AGREES THAT ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR ANY OTHER TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE BROUGHT IN THE COURTS OF THE UNITED STATES OF AMERICA FOR THE NORTHERN DISTRICT OF CALIFORNIA OR, IF SUCH COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, THE COURTS OF THE STATE OF CALIFORNIA AND HEREBY EXPRESSLY SUBMITS TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS FOR THE PURPOSES THEREOF AND EXPRESSLY WAIVES ANY CLAIM OF IMPROPER VENUE AND ANY CLAIM THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH PARTY HEREBY IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO ITS NOTICE ADDRESS APPLICABLE TO THIS AGREEMENT, SUCH SERVICE TO BECOME EFFECTIVE 10 DAYS AFTER SUCH MAILING.

*Section 6.4. Waiver of Jury Trial*

EACH PARTY TO THIS AGREEMENT HEREBY WAIVES, ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS AGREEMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, OR THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS.

*Section 6.5. Joinder*

Each time EBCEA enters into a new Power Purchase Agreement as to which the counterparty thereto is to share in the Collateral, such counterparty shall execute and deliver to Collateral Agent a Joinder to Intercreditor and Collateral Agency Agreement in the form of Exhibit A hereto (a "**Joinder**") at the same time as such counterparty executes the Power Purchase Agreement. Further, no PPA Provider may assign or transfer its rights hereunder or under a Power Purchase Agreement without such assignees or transferees delivering an executed Joinder to Collateral Agent. By executing a Joinder, such counterparty agrees to be bound by the terms of this Agreement as though named herein and shall share in the Collateral in accordance with the provisions of this Agreement. Each such counterparty that is an assignee shall upon

execution and delivery of a Joinder be the PPA Provider and Secured Creditor under this Agreement representing the holder of the assigned Obligations and shall be obligated for all obligations to Collateral Agent of its transferor, and such transferor shall cease forthwith to be a Secured Creditor hereunder.

*Section 6.6. Counterparts*

This Agreement and any related amendment or waiver may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, but all of which together shall constitute one instrument. In proving this Agreement it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought. A facsimile of a signature page hereto or to any Joinder shall be as effective as an original signature.

*Section 6.7. Termination*

Unless earlier terminated by the parties hereto, upon termination of the Security Agreement in accordance with its terms and upon payment of all Obligations owed to Collateral Agent and Secured Creditors, this Agreement shall terminate, except for those provisions hereof that by their express terms shall survive the termination of this Agreement; provided, however, if all or any part of the Obligations are reinstated pursuant to Section 4.8, then this Agreement shall be renewed as of such date and shall thereafter continue in full force and effect to the extent of the Obligations so invalidated, set aside or repaid, or that remain outstanding.

*Section 6.8. Controlling Terms*

In the event of any inconsistency between this Agreement and the Security Agreement, the Security Agreement shall control.

*Section 6.9. Notices*

Except as otherwise expressly provided herein, all notices, consents and waivers and other communications made or required to be given pursuant to this Agreement shall be in writing and shall be delivered by hand, mailed by registered or certified mail or prepaid overnight air courier, or by facsimile communications, addressed as provided below their signatures to this Agreement or at such other address for notice as Collateral Agent, EBCEA or such Secured Creditor shall last have furnished in writing to the Person giving the notice. A notice addressed as provided herein that (i) is delivered by hand or overnight courier is effective upon delivery, (ii) is sent by facsimile communication is effective if made by confirmed transmission at a telephone number designated as provided herein for such purpose, and (iii) is sent by registered or certified mail is effective on the earlier of acknowledgement of receipt as shown on the return receipt or three (3) Business Days after mailing.

*Section 6.10. No Recourse Against Constituent Members of EBCEA*

EBCEA hereby represents, warrants and agrees that (i) EBCEA is organized as a joint powers authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and

is a public entity separate from its constituent members, (ii) EBCEA will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement, the Security Agreement and any other agreement entered into in connection therewith. In light of the foregoing, the Collateral Agent and the Secured Creditors will have no rights and will not make any claims, take any actions or assert any remedies against any of EBCEA's constituent members, or the officers, directors, advisors, contractors, consultants or employees of EBCEA or EBCEA's constituent members, in connection with this Agreement, the Security Agreement and any other agreement entered into in connection therewith.

*[Signature page follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as an instrument under seal by their authorized representatives as of the Effective Date.

**RIVER CITY BANK**, not in its individual capacity, but solely as Collateral Agent

By: \_\_\_\_\_  
Name:  
Title:

Notice Address:

River City Bank  
2485 Natomas Park Dr.  
Sacramento, CA, 95833  
Attention: Cash Management  
Fax: (916) 567-2799  
Email: [cashmgmt@rivercitybank.com](mailto:cashmgmt@rivercitybank.com)

\_\_\_\_\_, as Secured Creditor

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_



\_\_\_\_\_, as Secured Creditor

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_, as Secured Creditor

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_, as Secured Creditor

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

\_\_\_\_\_, as Secured Creditor

By: \_\_\_\_\_

Name:

Title:

Notice Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

**EAST BAY COMMUNITY ENERGY  
AUTHORITY**

By: \_\_\_\_\_

Name:

Title:

Notice Address:

East Bay Community Energy Authority  
1111 Broadway, Suite 300  
Oakland, CA 94607  
Attention: Nick Chaset

**EXHIBIT A**

**JOINDER TO INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT**

\_\_\_\_\_, in its capacity as Collateral Agent

With a copy to:

\_\_\_\_\_

Reference is made to the Intercreditor and Collateral Agency Agreement, dated as of \_\_\_\_\_, 2018 (as amended or restated from time to time, the “**Intercreditor Agreement**”; capitalized terms used but not otherwise defined herein shall have the meaning ascribed thereto in the Intercreditor Agreement), among \_\_\_\_\_, as Collateral Agent, and the PPA Providers party thereto, relating to East Bay Community Energy Authority, a California joint powers authority (“**EBCEA**”).

By executing and delivering this Joinder to Intercreditor and Collateral Agency Agreement (this “**Joinder**”), the undersigned holder of the Obligations arising under that certain Power Purchase Agreement between EBCEA and the undersigned, a copy of which is enclosed with this Joinder, (1) agrees to the appointment of \_\_\_\_\_ as its Collateral Agent in accordance with Section 3.1 of the Intercreditor Agreement, and (2) agrees to be bound by all of the terms and provisions of the Intercreditor Agreement. The address set forth under the signature of the undersigned constitutes its address for the purposes of Section 6.9 of the Intercreditor Agreement.

Dated as of: \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

[Insert address for notices]

**CONFIRMATION**

Reference:  
 Master Power Purchase and Sale Agreement  
 Between \_\_\_\_\_ (“Seller”)  
 And  
 East Bay Community Energy Authority, a California joint powers authority (“Buyer”)  
 dated \_\_\_\_\_  
 Transaction Date: \_\_\_\_\_ (the “Effective Date”)

**RECITALS:**

**WHEREAS**, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

**WHEREAS**, Buyer is a California joint powers authority, which has established East Bay Community Energy Authority for purposes of delivering CCA service to certain customers located within the County of Alameda;

**WHEREAS**, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

**WHEREAS**, the CPUC has certified the Implementation Plan;

**WHEREAS**, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

1. **DEFINITIONS**. Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9<sup>th</sup> Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy generated by Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.



“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the East Bay Community Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of Alameda.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“East Bay Community Energy Program” means the community choice aggregation program operated by Buyer.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” means the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

“Inter-SC Trade” or “IST” has the meaning set forth in the Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” has the meaning set forth in Section 2.1 hereof.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law(s), the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

“Security Documents” has the meaning set forth in the Master Agreement.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source.

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification that the electricity has been sold once and only once.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

## **2. PRODUCT.**

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of one or more of the following:

- (a) the quantity of Energy specified in Section 7.1;
- (b) the quantity of Renewable Energy specified in Section 7.2; and
- (c) the quantity of Carbon Free Energy specified in Section 7.3.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to

maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within sixty (60) days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below.

### 2.3 RPS Standard Terms and Conditions.

#### **STC 6: Eligibility**

Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

#### **STC REC-1: Transfer of Renewable Energy Credits**

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

#### **STC REC-2: Tracking of RECs in WREGIS**

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable

Energy Generation Information System will be taken prior to the first delivery under this contract.

### **STC 17: Applicable Law**

This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement.

- 2.4 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power, as further detailed in Exhibit B & C respectively; provided however, Seller may designate additional Specified Sources of Power upon 5 (five) days written notice to Buyer thereof; provided further any such additional Specified Sources of Power shall meet the requirement of Renewable Energy and Carbon Free Source as defined herein. For other Energy deliveries hereunder, if any, Seller may use Unspecified Sources of Power; provided that any Energy delivered under this Confirmation (including incremental energy associated with Category 2 Renewable products) shall not be procured from unit-specific sources that are nuclear or coal-fired resources. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.5 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to

the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage (i.e. with WREGIS Certificates produced within the same calendar year) and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

2.6 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.

2.7. Additional Terms and Conditions

(1) Seller Representations and Warranties: Seller represents and warrants:

- (a) Seller has not sold the Product or any Program Attributes of the Product to be transferred to Buyer to any other person or entity;
- (b) For the sale of Renewable Energy and Carbon Free Energy, Seller receives compensation directly from the CAISO for energy imported or scheduled to the CAISO in real-time on Buyer's behalf.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof.

<b>Start Date:</b>	<b>End Date:</b>

4. **DELIVERY POINT.**

<b>Product</b>	<b>Delivery Point</b>
Energy	TH_NP15_GEN- APND
Renewable Energy	CAISO or a California Balancing Authority inside the California State boundaries
Carbon Free Energy	CAISO or a California Balancing Authority inside the California State boundaries

5. **SCHEDULING.** Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Unless otherwise mutually agreed between the Parties, Carbon Free Energy and Renewable Energy will be scheduled to the applicable delivery point without (an) IST.

6. **PRICING.**

6.1 **Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

6.2 **Renewable Energy Contract Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B multiplied by the portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS.

6.3 **Carbon Free Energy Price and Payment.** For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

7. **CONTRACT QUANTITIES.**

7.1 **Energy.** Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.

- 7.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include all Renewable Energy Credits associated with such Renewable Energy.
- 7.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

**8. MONTHLY BILLING SETTLEMENT.**

- 8.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.
- 8.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the tenth (10th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-third (23rd) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-third (23rd) day of the month.
- 8.3 Specified Source of Power. Seller shall deliver the Specified Source of Power associated with the Renewable Energy and Carbon Free Energy to the CAISO at the Delivery Point and shall be entitled to retain all CAISO revenues associated with such delivery.
9. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.
10. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that



Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibits A, B and C.

11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Industry Practices.

12. **SECURITY PROVISIONS.**

12.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform. If the Security Documents have not become effective in accordance with their terms as of the Effective Date, Buyer expressly agrees (a) to use its best efforts to cause such Security Documents to become effective as soon as reasonably possible, but in any case, not later than the Start Date, (b) that such Security Documents will be substantially in the form of such documents last presented to Seller prior to the Effective Date, subject to conforming, clarifying or other non-material changes, including changes reasonably requested by the Collateral Agent, and (c) that Seller will have a security interest in the Collateral as a Secured Creditor in accordance with the Security Documents. In the event the Security Documents do not become effective by the Start Date, Seller shall have no obligation to perform under this Confirmation until such time as the Security Documents become effective.

12.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports requested by Seller and such failure is not remedied within fifteen (15) Business Days of Seller's written request therefor and notice of a potential Event of Default, such failure shall be an Event of Default in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
  - (ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
  - (iii) Cash reconciliations and bank statements for each of Buyer's banking accounts; and
  - (iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers
- (b) Semi-Annual Reports. The following report shall be provided by Buyer to Seller not later than 20 days following the end of the first six calendar months of each Buyer fiscal year: consolidated and consolidating financial statements for such six-month period prepared in accordance with generally accepted accounting principles. Such financial statements shall include, at a minimum, a detailed profit and loss statement balance sheet statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the annual financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time.

12.3 Annual Reports. The following report shall be provided by Buyer to Seller not later than 120 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated \_\_\_\_\_ (the “Master Agreement”) between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the “Agreement.”

<b>This Confirmation is subject to the Exhibits identified below and that are attached hereto:</b>
<b>Exhibit A – Energy Contract Quantity and Price Schedule</b>
<b>Exhibit B – Renewable Energy Contract Quantity and Price Schedule</b>
<b>Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule</b>

\_\_\_\_\_

**EAST BAY COMMUNITY ENERGY, a  
California joint powers authority**

Sign: \_\_\_\_\_

Sign: \_\_\_\_\_

Print: \_\_\_\_\_

Print: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit A**

**Energy Contract Quantity and Price Schedule**

**[TBD]**

**Exhibit B**

**Renewable Energy Contract Quantity and Price Schedule**

**[TBD]**

**Exhibit C**

**Carbon Free Energy Contract Quantity and Price Schedule**

**[TBD]**

## TRANSACTION CONFIRMATION

This Transaction Confirmation (the "Confirmation") is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between **Party 1**, ("Purchaser") and **Party 2** ("Seller"), each referred to herein individually as a "Party" and collectively as the "Parties" regarding the purchase and sale of the Product. This Transaction is governed by the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement.

### Contact Information:

Purchaser: <b>Party 1</b>	Seller: <b>Party 2</b>
Address:	Address:
Contact Representative:	Contact Representative:
Phone:	Phone:
Cell:	Cell:
Email:	Email:
Settlement Contact:	Settlement Contact:
Phone:	Phone:
Email:	Email:

**Master Agreement:** WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto. Any conflicts between or among the Master Agreement and this Confirmation shall be resolved in the following order of control: first, the Confirmation, and second, the Master Agreement.

**Transaction:** This transaction is intended to comply with AB32 and in particular section 95102(a) of the Regulation for Mandatory Reporting of Greenhouse Gas Emissions (title 17 California Code of Regulations (CCR), section 95100 et seq.) as a "Specified Source" under the regulation.

**Product:** WSPP Service Schedule C Firm Energy that is primarily produced by the Specified Source and/or Asset Control Supplier scheduled and delivered

by Seller to Purchaser at the Delivery Point (“Specified Source Energy” or “SSE” and/or “Asset Control Supplier energy” or “ACS energy”).

**Seller:** Party 2

**Purchaser:** Party 1

**Specified Source:** Any set forth on Exhibit A. Seller has the right at any time to substitute the Specified Source with any Specified Source Energy from any other resources with a 0.0 emissions factor or with ACS Energy but will require written approval from Purchaser prior to scheduling.

**Delivery Period:** \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_

**Delivery Point:** TBD

**Scheduling:** Seller shall schedule all SSE or ACS energy on a daily prescheduled basis according to the prevailing protocols of the WECC. Specified Source and CARB ID will be represented on each NERC E-Tag. Seller will create all E-Tags.

**Contract Quantity:** TBD

**Contract Price:** \$X.XX per MWh

**Credit and Collateral Requirements:** TBD

**Seller’s Information To be Provided to**

**Purchaser:** No later than the 25<sup>th</sup> day of each calendar month during the Delivery Period, Seller shall provide Purchaser with the hourly meter data or allocation report from the Specified Source or ACS.





Purchaser agrees to pay the Contract Price for the Specified Source Amount delivered from Seller to Purchaser.



**Change in Law:**

If California ends the California Cap-and-Trade program, or a federal Judge stays the California AB32 Cap-and-Trade program and the result is that Purchaser is precluded from using the Product purchased herein as SSE or ACS energy ("Change in Law"), using commercially reasonable efforts and under the Delivery Period hereof, the Parties shall work together to attempt to maintain the intent of this Confirmation in the event of such Change in Law. Purchaser may elect to terminate this Confirmation by delivering to the Seller written notice of such termination not later than 60 days following the effective date of the Change in Law, and such notice of termination because of a Change in Law shall not be considered an Event of Default. If Purchaser does not exercise its right to terminate this Confirmation due to a Change in Law within such 60 day period, Purchaser may not thereafter terminate this Confirmation due to that applicable Change in Law.

A termination of this Confirmation due to a Change in Law shall be effective upon the delivery of written notice therefore and thereafter:

- (i) all SSE or ACS energy not then already transferred and/or delivered by Seller to Purchaser shall be terminated and Seller shall have no obligation to make any further deliveries, and Purchaser shall have no obligation to accept any deliveries, of the Product; and
- (ii) neither Party shall have any further obligations to the other hereunder (other than for performance already completed prior to such termination).

|  
|



**Attestations and  
Maintenance  
of Records:**



Specified Source and CARB ID are valid zero-emission resources or Asset Control System energy.

**Forward Contract:** This Agreement constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and Commodities Future Trading Commission and Securities and Exchange Commission regulations under Title 17 of the Code of Federal Regulations Part 1 and Title 17 of the Code of Federal Regulations Parts 230, 240, and 241, respectively.

**True Up:** If at the end of each Calendar year the energy delivered by Seller has been less than 90% SSE or ACS energy, then the Seller will deliver an amount of California Carbon Allowances to the CITTS account of the Purchaser, by January 31st of the following year, equal to the Deficient Volume multiplied by the then current Unspecified Resource Emissions Factor. The vintage of Allowances delivered pursuant to this section will correspond to the delivery year of the Deficient Volume.

#### **Definitions/**

**Interpretations:** For purposes of this Confirmation, the following definitions [and rules of interpretations](#) shall apply:

**“AB32”** means the California Global Warming Solutions Act of 2006 and the Cap and Trade Regulations as each may be amended from time to time.

**“Applicable Law”** means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to the California Program or any one or both of the Parties or the terms hereof.

**“CAISO”** means the California Independent System Operator, or its successor.

**“Cap and Trade Regulations”** means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5

[respectively\) promulgated by CARB pursuant to the California Global Warming Solutions Act of 2006.](#)

**“CARB”** means the California Air Resources Board or its regulatory successor.

**“CPUC”** means the California Public Utilities Commission or its regulatory successor.

**“Delivery Date”** means the date on which the Product is delivered from Seller to Purchaser.

**“FERC”** means the Federal Energy Regulatory Commission or its regulatory successor.

**“Governmental Authority”** means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

;

**“Off-Peak (LLH)”** means all hours other than On-Peak hours.

**“On-Peak (HLH)”** means 6x16 (Monday through Saturday, HE 0700 – HE 2200 PPT, excluding NERC holidays).

**“Specified Source”** has the meaning set forth on the first page hereof.

;

|| means the transaction complies with AB32, as amended from time to time, as of the Effective Date and the Delivery Date.

**WECC**

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## TRANSACTION CONFIRMATION RESOURCE ADEQUACY

This Confirmation Letter (“Confirmation”) confirms the Transaction between **Party 1** (“Seller”) and **Party 2** (“Buyer”), each individually a “Party” and together the “Parties”, dated as of \_\_\_\_\_, 20\_\_ (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product. This Transaction is governed by the WSPP Agreement effective as of June 20, 2017, as amended to date, along with any schedules and amendments thereto (collectively, the “Master Agreement”). The Master Agreement and this Confirmation shall be collectively referred to herein as the “Agreement”. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

### ARTICLE 1. DEFINITIONS

- 1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” is defined in the Tariff.
- 1.4 “Availability Standards” means the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 “Buyer” is defined in the introductory paragraph hereof.
- 1.6 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of the WSPP Agreement, “Capacity Replacement Price” shall be deemed to be the “Replacement Price.”
- 1.8 “Confirmation” is defined in the introductory paragraph hereof.

- 1.9** “Confirmation Effective Date” is defined in the introductory paragraph hereof.
- 1.10** “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.11** “Contract Quantity” means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3, which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.12** “CPUC Decisions” means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.13** “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.14** “Delivery Period” is defined in Section 4.1 hereof.
- 1.15** “Delivery Point” is defined in Section 4.2 hereof.
- 1.16** “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) less any reductions to Contract Quantity made by Seller pursuant to Section 4.4 for such Showing Month.

- 1.17** “Excusable Event” means any event caused by a Planned Outage that is acceptably noticed pursuant to the Notification Deadline prescribed in Section 4.5 that excuses Seller from failure to otherwise perform its obligations under this Confirmation.
- 1.18** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. If the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.



- 1.25** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, “PG&E Other RA”, “Greater Bay Area RA”, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26** “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27** “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28** “Monthly Delivery Period” means each calendar month during the Delivery Period and corresponds to each Showing Month.
- 1.29** “Monthly RA Capacity Payment” is defined in Section 4.9 hereof.
- 1.30** “Net Qualifying Capacity” is defined in the Tariff.
- 1.31** “Notification Deadline” is defined in Section 4.5 hereof.
- 1.32** “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.33** “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.34** “Product” is defined in Article 3 hereof.
- 1.35** “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.36** “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.

- 1.37** “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.38** “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.39** “Replacement Capacity” is defined in Section 4.7 hereof.
- 1.40** “Replacement Unit” is defined in Section 4.5.
- 1.41** “Resource Category” is as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.42** “Scheduling Coordinator” is defined in the Tariff.
- 1.43** “Seller” is defined in the introductory paragraph hereof.
- 1.44** “Showing Month” is the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.45** “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.46** “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.47** “Transaction” for purposes of this Confirmation means the transaction (as that term is used in the WSPP Agreement) that is evidenced by this Confirmation.
- 1.48** “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.49** “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

- 1.50** “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.51** “WSPP Agreement” is defined in the introductory paragraph hereof.

**ARTICLE 2. UNIT INFORMATION**

Name:	
Location:	
CAISO Resource ID:	
Unit SCID:	
Unit NQC:	
Unit EFC:	
Resource Type:	
Resource Category (1, 2, 3 or 4):	
Flexible RAR Category (1, 2 or 3):	
Path 26 (North or South):	
Local Capacity Area (if any, as of Confirmation Effective Date):	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	
Run Hour Restrictions:	

**ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT**

During the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Confirmation, the Designated RA Capacity of RA Attributes, LRA Attributes, and if applicable, Flexible RA Attributes from each Unit, as further marked and specified in Section 3.1, Section 3.2 and Section 3.3 below (the “Product”), measured in MWs. The Product does not confer to Buyer any right to the electrical output from the Unit. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for

compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from the Unit in excess of the Unit's Contract Quantity and any RA Attributes, LAR Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

### **3.1 Product Attributes**

- RA Attributes
- RA Attributes with Flexible RA Attributes
  
- LAR Attributes
- LAR Attributes with Flexible RA Attributes
- Flexible RA Attributes

### **3.2 Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity for any reason other than Force Majeure, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

### **3.3 Contingent Firm RA Product**

Seller shall provide Buyer with Designated RA Capacity from the Unit in the amount of the Contract Quantity specified in Section 4.3. If the Unit is not available to provide the full amount of the Contract Quantity as result of an Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, including without limitation any adjustment of the RA Capacity of any Unit, as set forth in Section 4.4(c), then Seller shall have the option to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity and has failed to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, the Seller shall be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Section 4.7 and 4.8.

## ARTICLE 4. DELIVERY AND PAYMENT

### 4.1 Delivery Period

The Delivery Period shall be: \_\_\_\_\_, 20\_\_, through \_\_\_\_\_, 20\_\_.

### 4.2 Delivery Point

The Delivery Point for each Unit is the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

### 4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

Contract Month	RAR Contract Quantity (MWs)
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	

### 4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of the Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

- (b) **Invoice Adjustment**: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC**: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

#### 4.5 Notification Deadline and Replacement Units

- (a) The "**Notification Deadline**" in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than five days (5) before the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of the Product description in Article 3 and notice provisions in this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an Excusable Event.

#### **4.6 Delivery of Product**

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.**
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.**

#### **4.7 Damages for Failure to Provide Designated RA Capacity**

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of this Confirmation, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.**
- (b) Seller shall pay to Buyer the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor**



**purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this Confirmation pursuant to Section 9 of the WSPP Agreement.**

- (c) *In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure.*

#### **4.8 Indemnities for Failure to Deliver Contract Quantity**

Subject to any adjustments made pursuant to Section 4.4 and requests from Buyer pursuant to Section 4.6(b)(i), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) **Seller's failure to provide any portion of the Designated RA Capacity due to a non-Excusable Event;**
- (b) **Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Article 3, Section 4.4 and Section 4.5; or**
- (c) **A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.**

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

#### **4.9 Monthly RA Capacity Payment**

In accordance with the terms of Section 9 of the WSPP Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month.

Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

**RA CAPACITY PRICE TABLE**

<b>Contract Month</b>	<b>RAR Capacity Price (\$/kW-month)</b>
January	\$X.XX
February	\$X.XX
March	\$X.XX
April	\$X.XX
May	\$X.XX
June	\$X.XX
July	\$X.XX
August	\$X.XX
September	\$X.XX
October	\$X.XX
November	\$X.XX
December	\$X.XX

**4.10 Allocation of Other Payments and Costs**

Seller shall be entitled to receive and retain all revenues Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC.

Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account

and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above).

In accordance with Section 4.9 of this Confirmation and Sections 9 and 28 of the WSPP Agreement, all such Buyer revenues actually received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, owner, or operator, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Section 28 of the WSPP Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

#### **ARTICLE 5. CAISO OFFER REQUIREMENTS**

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

#### **ARTICLE 6. [RESERVED]**

#### **ARTICLE 7. OTHER BUYER AND SELLER COVENANTS**

##### **7.1 Further Assurances**

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right

to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) **cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction; and**
- (b) **negotiating in good faith to make necessary amendments, if any, to this Confirmation, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.**

## **7.2 Seller Representations and Warranties**

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) **Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;**
- (b) **No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;**

- (c) **No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;**
- (d) **The Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;**
- (e) **The owner or operator of the Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;**
- (f) **The owner or operator of the Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;**
- (g) **If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;**
- (h) **With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;**
- (i) **Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;**
- (j) **Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Confirmation for the applicable period; and**

- (k) Seller has notified each Unit’s Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.**

#### **ARTICLE 8. CONFIDENTIALITY**

In addition to the rights and obligations in Section 30 of the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

#### **ARTICLE 9. BUYER’S RE-SALE OF PRODUCT**

Buyer may re-sell all or a portion of the Product hereunder; provided, however, that any such re-sale does not increase Seller’s obligations or liabilities hereunder. Notwithstanding anything in this Confirmation to the contrary, to the extent any end user to which Buyer re-sells the Product (“End User”) defaults (however defined) under its agreement to purchase the Product from Buyer (“End User Purchase Agreement”) and such End User Purchase Agreement terminates as a result, Buyer may terminate this Confirmation upon notice to Seller and neither Party shall have any further liability to the other Party except that Buyer shall remain liable for any payment obligations owing to Seller hereunder with respect to accrued but unpaid amounts for Products delivered prior to termination, but only to the extent that Buyer has received such payments from End User pursuant to the End User Purchase Agreement. Buyer agrees to promptly assign to Seller any and all claims that Buyer may have against End User relating to such End User’s default under the End User Purchase Agreement by entering into documentation mutually agreeable to the Parties which is reasonably necessary to effectuate such assignment of claims.

#### **ARTICLE 10. MARKET BASED RATE AUTHORITY**

Upon Buyer’s written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer “ownership or control of generation capacity” from Seller to Buyer as the term “ownership or control of generation capacity” is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

**ARTICLE 11. COLLATERAL REQUIREMENTS**

Notwithstanding any provision in the WSPP Agreement to the contrary, neither Party shall be required to post collateral or other security for this Transaction.

**ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.**

**PARTY 1**

**PARTY 2**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

## Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **Party 1**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 1 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

**Contact Information:**

Seller:	Purchaser:
Address:	Address:
Contract Representative:	Contract Representative:
Phone:	Phone:
Email:	Email:
Settlements Contact:	Settlements Contact:
Phone:	Phone:
Email:	Email:

**Master Agreement:** WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

**Transaction:** Seller owns or procures Seller’s Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

**Product:** [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer of RECS, and Change of Law Provisions, the Product shall comply with



Section 399.16(b)(1)(A) Portfolio Content Category Product 1, as defined by CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller’s Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the “Generating Facilities”). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

**Seller:** Party 1

**Purchaser:** Party 2

**Delivery Term:** \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

**Generating Facilities:** Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller’s Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

**Delivery Points:** Each Generating Facilities’ respective Point of Interconnection with the CAISO Balancing Authority Area.

**Scheduling:** Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

**Contract Quantity:** Product generation from **X.X%** of Seller’s Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from

Seller to Purchaser during any applicable dispatch interval during the Delivery Term of the Transaction shall be limited to Seller's Entitlement Interest in the output of each Generating Facility listed herein.

**Contract Price:** The Contract Price for Energy ("Energy Contract Price") shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser ("REC Contract Price") shall be equal to **\$XX.XX**.

**Eligibility:** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Purchaser qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate "commercially reasonable efforts" expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

**Transfer of RECs:** Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information

System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is \_\_\_\_\_.

**Vintage:** Calendar Year 20\_\_.

**Payment:** Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity \* REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the

Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

**Applicable Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as “California RPS”, “Renewables Portfolio Standards” or “RPS Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

**Tracking System:**

RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

**Representations and Warranties:**

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;

(v) the Product is free and clear of all liens or other encumbrances;  
and

(vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 1 Product as set forth in California Public Utilities Code Section 399.16(b)(1)(A).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 1 Product being delivered.

**Change in Law Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than **\$X.XX** (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(1)(A) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

**Reporting**

**Obligation:** Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

**Review:** To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

**Confidentiality:** Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

**Applicable Law/**

**Governing Law:** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17, Applicable Law, Non-Modifiable. (Source: D.07-11-025, Attachment A) D.08-04-009].

**FERC Standard of Review; Mobile-Sierra Waiver:**

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting sua sponte, shall solely be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008), and *NRG Power Marketing LLC v. Maine Public Utility Commission*, 558 U.S. 527 (2010).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the

“public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

**Forward Contract:** This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically settled and is excluded from the term “swap” as defined in the Commodity Exchange Act under 7 U.S.C. § 1a(47) and the regulations of the Commodity Future Trading Commission and Securities and Exchange Commission, with further reference to 77 Fed. Reg. 48233-35.

**Amendments  
To The Master  
Agreement:**

Assignment. Section 14, Transfer of Interest in Agreement, of the WSPP Agreement shall for purposes of this Confirmation be deleted in its entirety and replaced with the following: “Neither Party shall transfer, assign or sell its rights as set forth in this Confirmation, to any third party without first obtaining the prior written consent of the other Party. Notwithstanding the foregoing, no such consent shall be required to the extent that the transfer or sale occurs (i) to an affiliate of a Party by operation of law, through merger or acquisition, or as the result of the sale or transfer of all or substantially all of the transferring Party’s assets, and the resulting entity’s creditworthiness is equal to or higher than that of such Party as of the Effective Date of this Confirmation, or (ii) the obligations of such Affiliate are guaranteed by such Party or its Guarantor, if any, in accordance with a guaranty agreement in form and substance satisfactory to the other Party, and (iii) transfer or assign this Confirmation is to any person or entity succeeding to all or substantially all of the assets of such Party whose creditworthiness is equal to or higher than that of such Party or its Guarantor, if any, as of the Effective Date of this Confirmation.”

Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

**Definitions/  
Interpretations:**

For purposes of the Confirmation, the following definitions and rules of interpretations shall apply:

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders or any Governmental Authority or arbitrator that apply to RPS or any one or both of the Parties or the terms hereof.



**“CAISO”** means the California ISO.

**“CAISO Tariff”** means the CAISO FERC Electric Tariff.

**“Confidential Information”** means all oral and written information exchanged between the Parties with respect to the subject matter of this Agreement. The following information does not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Generating Facilities, and its avoided emission of pollutants. Green Attributes include but are not limited to RECs, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, including but not limited to Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Generating Facilities, (ii) production tax credits associated with the construction or operation of the Generating Facilities and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Generating Facilities for compliance with local, state, or federal operating and/or air quality permits. If the Generating Facilities are biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Purchaser with sufficient Green

Attributes to ensure that there are zero net emissions associated with the production of electricity from the Generating Facilities.

**“Point of Interconnection”** means the physical point at which a Generating Facility interconnects to the CAISO Balancing Authority Area.

**“WECC”** means the Western Electricity Coordinating Council or its successor organizations.

**“WREGIS”** mean the Western Renewable Energy Generation Information System, or its successor organization.

The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.


EXHIBIT A

<b>Unit Name:</b>
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

<b>Unit Name:</b>
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

## Transaction Confirmation

This Transaction Confirmation (the “Confirmation”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the “Effective Date”), by and between **Party 1**, (“Purchaser”) and **Party 2** (“Seller”), each referred to herein individually as a “Party” and collectively as the “Parties” regarding the purchase and sale of Portfolio Content Category 2 Product [**Defined Product Type**] RECs (“the Product”) pursuant to the terms and conditions contained herein. The Master Agreement, WSPP Service Schedule R and this Confirmation shall be collectively referred to herein as the “Agreement” and supersede and replace any prior oral or written confirmation regarding the Transaction (as defined below). Terms capitalized but not defined herein shall have the meaning as set forth in the Master Agreement, WSPP Service Schedule R or the CAISO Tariff.

**Contact Information:**

Seller:	Purchaser:
Address:	Address:
Contract Representative:	Contract Representative:
Phone:	Phone:
Email:	Email:
Settlements Contact:	Settlements Contact:
Phone:	Phone:
Email:	Email:

**Master Agreement:** WSPP Agreement effective June 20, 2017, as amended to date, including; WSPP Service Schedule R. Any conflicts between the Master Agreement and the Confirmation shall be resolved in the following order of control: first, the Confirmation; and second, the Master Agreement.

**Transaction:** Seller owns or procures Seller’s Entitlement Interest in the output of certain generating facilities, which are identified in this Confirmation, each of which qualifies as an eligible renewable energy resource (“ERR”) during the Delivery Term (as defined below) under the California RPS (as defined below), as codified at California Public Utilities Code Section 399.11, et seq., and Seller desires to sell to Purchaser, and Purchaser desires to accept from Seller, Product produced by such generating facilities pursuant to the terms and conditions set forth herein.

**Product:** [**Defined Product Type**] RECs as such is described under Section **R-XYZ** of WSPP Service Schedule R. More specifically subject to Eligibility, Transfer

of RECS, and Change of Law Provisions, the Product shall comply with Section 399.16(b)(2) Portfolio Content Category Product 2, as defined by CPUC Decision 11-12-052, consisting of Service Schedule B Energy and associated Green Attributes, including RECs, produced during the Delivery Term by the Projects listed herein, each of which is: (i) certified as an ERR for the California RPS and registered with WREGIS, and (ii) from which Seller is entitled, pursuant to its agreements, to Seller’s Entitlement Interest of the output of the Energy and associated Green Attributes, and such output is used to source the Product delivered hereunder during the Delivery Term (collectively, the “Generating Facilities”). The Product shall include Energy and associated RECs, but does not include any other non-renewable and environmental attributes (e.g., Ancillary Services or Resource Adequacy Capacity).

**Seller:** Party 1

**Purchaser:** Party 2

**Delivery Term:** \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

**Generating Facilities:** Identified Below and further defined in Exhibit A.

Facility Name	Resource ID	WREGIS ID	Seller’s Entitlement Interest	CEC Certification No.	Estimated Annual Generation (MWh)
Resource 1	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 2	XXXX	WXXXX	X.X%	XXXX	XXXX
Resource 3	XXXX	WXXXX	X.X%	XXXX	XXXX
Total					XXXX

**Delivery Points:** TBD

**Scheduling:** Seller or Seller’s designee shall schedule and deliver the Energy portion of the Product, on behalf of Purchaser, to the CAISO at the applicable Delivery Point, in accordance with the requirements and the prevailing protocols of the WECC and CAISO Tariff.

**Contract Quantity:** Product generation from X.X% of Seller’s Entitlement Interest generated from the Generating Facilities. The amount of Product delivered from

Seller to Purchaser during any applicable dispatch interval during the Delivery Term of the Transaction shall be limited to Seller's Entitlement Interest in the output of each Generating Facility listed herein.

**Contract Price:** The Contract Price for Energy ("Energy Contract Price") shall be equal to the CAISO Locational Marginal Price calculated at the Delivery Point PNode per megawatt hour (as the same may be netted in accordance with the *Payment* section below).

The Contract Price for each REC produced and transferred from Seller to Purchaser ("REC Contract Price") shall be equal to **\$XX.XX**.

**Eligibility:** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Purchaser qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6, Non-Modifiable. (Source: D.07-11-025, Attachment A.) D.08-04-009] The aggregate "commercially reasonable efforts" expenditures for Eligibility, Transfer of RECS, and Change of Law Provisions (Section R-5.2.2(b)) are limited to the Capped Amount.

**Transfer of RECs:** Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Term of this Agreement the Renewable Energy Credits transferred to Purchaser conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1, Non-modifiable. D.11-01-025]

Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information

System will be taken prior to the first delivery under the contract. [STC REC-2, Non-modifiable. D.11-01-025]

Purchaser warrants that all necessary steps to allow the Renewable Energy Credits transferred to Purchaser to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

The Transfer of RECs shall be made in accordance with the rules and regulations of WREGIS. For each month during the Delivery Term, Seller shall transfer RECs from its WREGIS account to Purchaser's WREGIS account within ten (10) Business Days of creation of the RECs. Purchaser's WREGIS account ID is \_\_\_\_\_.

**Vintage:** Calendar Year 20\_\_.

**Payment:** Energy: To simplify the scheduling and settlement process based on the current CAISO market scheduling and settlement protocols, whereby CAISO will pay the Seller for the value of the Energy produced and delivered by the Generating Facilities at the Delivery Point on behalf of Purchaser, the Parties agree that Seller shall schedule and deliver an amount of Energy consistent with the Contract Quantity during the Delivery Period with and to the CAISO at the Delivery Point(s), and Seller shall receive payment for the Energy from the CAISO for such delivery based on the CAISO Locational Marginal Price. Consequently, and consistent with applicable netting provisions of the Master Agreement, Purchaser and Seller hereby agree to net the payment for Energy Seller receives from the CAISO against the Contract Price, such that the net payment Seller shall receive from Purchaser shall be calculated as follows:

Payment Due from Purchaser to Seller = Delivered and Accepted Contract Quantity \* REC Contract Price.

RECs: Purchaser shall pay Seller for transferred RECs within (10) Business Days of receipt of Seller's invoice subsequent to the transfer of RECs. The invoices issued by Seller hereunder shall include a statement detailing the RECs conveyed via WREGIS (i.e., Project Name, Vintage Month, CEC RPS ID, Contract Quantity and REC Contract Price).

**Environmental Attributes:**

All Attributes. The Product is a Resource Contingent Bundled REC sourced from the Generating Facilities. The Parties agree that the

Product will be sourced only from the specific Generating Facilities identified in the Confirmation with no substitutions.

**Applicable Program:**

State of California Renewable Portfolio Standard Program (hereinafter referred to as “California RPS”, “Renewables Portfolio Standards” or “RPS Program”), as codified at California Public Utilities Code Section 399.11, *et seq.*, and requiring that a specified percentage of a load-serving entity’s retail sales should be supplied with electricity generated by eligible ERRs.

**Tracking System:**

RECs associated with the Product shall be tracked using WREGIS. In addition to any audit rights that Purchaser may have under the Master Agreement, Seller shall, upon Purchaser’s reasonable request, provide documentation which may include meter data as recorded by a CAISO certified meter, sufficient to demonstrate that the Product has been conveyed and delivered, in accordance with the terms of this Confirmation.

**Representations and Warranties:**

Each Party represents and warrants to the other (i) that it is an “eligible commercial entity” and “eligible contract participant” within the meaning of the Commodity Exchange Act; (ii) this transaction has been subject to individual negotiation by the Parties; and, (iii) all necessary steps have been taken to allow the Green Attributes to be transferred to Purchaser to be tracked in WREGIS.

Seller further represents and warrants to Purchaser that:

- (i) Seller has the right to sell the Product and holds the rights to Seller’s Entitlement Interest in all Product from the Generating Facilities;
- (ii) Seller has not sold the Product or any Green Attribute of the Product to be transferred to Purchaser to any other person or entity;
- (iii) Energy and Green Attributes to be purchased and sold pursuant to this Confirmation are not committed to another party;
- (iv) Seller represents and warrants that electricity from the Generating Facilities is available to be procured by Purchaser, and Seller is not currently selling and will not sell the electricity produced by the Generating Facilities back to the Generating Facilities;



(v) the Product is free and clear of all liens or other encumbrances;  
and

(vi) it will cooperate and work with Purchaser, the CEC, and/or the CPUC to provide any documentation required by the CPUC or CEC to support the Product's classification as a Portfolio Content Category 2 Product as set forth in California Public Utilities Code Section 399.16(b)(2).

Furthermore, Seller hereby sells and conveys all Green Attributes associated with the Product produced from the Generating Facilities (other than resource adequacy attributes and ancillary services) to Purchaser as part of the Portfolio Content Category 2 Product being delivered.

**Change in Law  
Provisions:**

The Product shall be Regulatorily Continuing requiring that Seller make commercially reasonable efforts to obtain compliance with Changes in Law in the California RPS, provided that such costs should not be greater than **\$X.XX** (the "Capped Amount"). This provision shall not apply to any Product that was Delivered and Accepted prior to any Change in Law if such Product complies with the California RPS that existed when it was Delivered and Accepted.

This Confirmation is executed for the express purposes of complying with the California RPS and Section 399.16(b)(2) of the California Public Utilities Code. The Parties acknowledge that the CEC and/or CPUC may be modifying mandatory contract language, altering the procurement and product qualification rules, and updating the relevant RPS Eligibility Guidebook in a manner consistent with that legislation. If any statutes, rules, regulations, permits or authorizations are enacted, amended, granted or revoked which have the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Transaction becomes impossible or impracticable, or otherwise revokes or eliminates the California RPS or language required to conform to the California RPS, the Parties hereto agree to negotiate in good faith to amend this Confirmation to conform with such new statutes, regulations, or rules in order to maintain the original intent of the Parties under this Agreement.

**Reporting  
Obligation:**

Purchaser shall have no responsibility (whether regulatory or financial) for greenhouse gas emissions associated with the Product, and any such obligation shall be fulfilled by or at the direction of Seller at its own cost.

**Review:** To monitor compliance with this Confirmation, each Party reserves the right to review during normal business hours and at its own expense, for up to two (2) years following delivery of the Product under this Confirmation, and with reasonable advance notice to the other Party, and to the extent that such other Party is in possession of such information, information required to verify that the Product sold under this Confirmation was not otherwise sold by Seller to a third party.

**Confidentiality:** Except as provided in this *Confidentiality* section and the California Public Records Act, and subject to and without limiting Section R-7, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, Governmental Authority or agency having jurisdiction over a Party, including the California Public Records Act, that Party may release Confidential Information, or a portion thereof, as required by the Applicable Law, statute, ordinance, decision, order or regulation. A Party may disclose Confidential Information to accountants in connection with audits. In the event a Party is required to release Confidential Information, such Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses), at its sole cost, to cause the recipient of the Confidential Information to treat such information in a confidential manner, and to prevent such information from being disclosed or otherwise becoming part of the public domain. Parties acknowledge that Purchaser is obligated to provide Confidential Information to the CPUC and CEC for regulatory compliance purposes for the California RPS program, and Seller waives the prior notice requirement and authorizes such disclosures to the CPUC and CEC.

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Governing Law:**

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(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in the foregoing section (a).

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This Confirmation constitutes a sale of a nonfinancial commodity for deferred shipment or delivery that the parties intend to be physically

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Confidentiality. Section 30, Confidentiality, of the WSPP Agreement is amended for purposes of this Confirmation by inserting at the end of Section 30.1(6) prior to the semicolon the following: “or to Deliver RECs pursuant to the requirements of WREGIS”.

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**“WREGIS”** mean the Western Renewable Energy Generation Information System, or its successor organization.

The Parties agree that the terms and conditions stated herein accurately reflect the agreement reached by the Purchaser and Seller.

IN WITNESS WHEREOF, the Parties have signed the Confirmation effective as of the Effective Date.


EXHIBIT A

<b>Unit Name:</b>
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:

<b>Unit Name:</b>
RPS ID:
Facility Location:
Facility Location:
Facility Location:
Facility Location:
Facility(ies) Directly Interconnected to a CBA
CBA's of Interconnection:
Facility Generation Capacity:
Facility Fuel Type:



## Staff Report Item 19

**TO:** East Bay Community Energy Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** Formation of EBCE Executive Committee

**DATE:** January 17, 2018

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### **Recommendation**

Appoint an Executive Committee of the Board of Directors to provide in-depth review of certain operational and policy matters of the EBCE, as directed by the Board from time to time. The Executive Committee will be comprised of 5 Board members who can serve the anticipated term of at least one year.

### **Background**

The EBCE Joint Powers Agreement Section 4.6 provides that the Board will establish an Executive Committee comprised of a smaller number of Directors and that the Board may delegate authority to the Executive Committee subject to the limitations in the Agreement.

The purpose of the EBCE Executive Committee is to provide input and support to the CEO on operational and policy matters that benefit from more focused discussion and vetting prior to coming before the full Board for action. Other CCAs utilize executive committees in this manner.

### **Analysis & Discussion**

Chair Scott Haggerty, Jesse Arreguin, Diane Martinez, Al Mendall and Dan Kalb have expressed interest and willingness to serve on the Executive Committee.

The Executive Committee is subject to the Brown Act, with noticed and public meetings, and should establish a regular meeting time at its first meeting, if possible. Initially, staff recommends the Executive Committee schedule quarterly regular meetings with no less than two meetings held per year. Additional meetings can be added as special or adjourned meetings.



Staff proposes that the Executive Committee focus on five functional areas as follows:

- 1) EBCE Finance and Administration
- 2) EBCE Energy Procurement and Energy Risk Management
- 3) EBCE Regulatory and Legislative Engagement
- 4) EBCE Marketing and Customer Engagement
- 5) EBCE Rates, Customer Programs and Local Development

In addition to these five areas, the Executive Committee could also review personnel materials or any other items at the discretion of the Board.