



Board of Directors Meeting

Wednesday, June 19, 2019

6:00 pm

City of San Leandro

Council Chambers

835 E. 14th Street,

San Leandro, CA 94577

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.

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. Please bring at least 25 copies.

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. The Board Chair may increase or decrease the time allotted to each speaker.

4. Chair Elections

CONSENT AGENDA

5. Approval of Minutes from June 5, 2019

6. Out of State Travel (Informational Item)

7. Contracts entered into (Informational Item)

8. Air District Control Grant

Adopt a resolution authorizing the CEO to execute a Consulting Services Agreement with ARUP North America, LTD, to conduct services necessary to assist with completion of Bay Area Air Quality Management District Climate Grant Tasks and deliverables.

9. Revision to NEM tariff

Approve a Resolution to amend the Electric Schedule NEM - Net Energy Metering Service so that it is aligned with both customer expectations and existing operations

10. EBCE Ticket policy

Adopt a resolution to adopting a Complimentary Ticket Policy to guide the distribution of tickets EBCE receives, and a resolution adopting an Event Sponsorship Policy to guide EBCE in determining which events EBCE may sponsor.

11. Amendment to Legal Services Agreement with Wilson Sonsini Goodrich Rosati

Approve and delegate authority to the Chief Executive Officer to negotiate and execute an amendment to the Legal Services Agreement with Wilson Sonsini Goodrich Rosati (WSGR) for services related to power procurement. The amendment would increase the contract amount not to exceed \$250,000 and extend the contract term through June 30, 2020.

12. Energy Efficiency Data Sharing (Action Item)

Approve staff recommendation to allow data sharing pilot program with energy efficiency Pay for Performance contractors to proceed.

13. 2019-2020 Value Proposition - Public Comment Review

Accept an update from staff on the 2019-2020 Value Proposition public comment staff actions taken and comments received

REGULAR AGENDA

14. CEO REPORT

- A. Executive Committee Meeting;
- B. Marketing and Outreach update;
- C. Local Development Business Plan Update and
- D. Update on Opt-out

15. Community Advisory Committee Report

16. Regulatory/Legislative update and Legislative Position on SB 155 (Action Item)

Staff recommends that EBCE take an “oppose unless amended” position on SB 155 (Bradford).

17. Community Innovation Grant Awards (Action Item)

Approve the recommendation to award six \$40,000 grants for a total of \$240,000 in Community Innovation Grants

18. PG&E Time-Of-Use Rate Transition (Action Item)

Receive report on planned PG&E Time-of-Use (TOU) rate transition, and approve resolution for EBCE participation in a transition of residential and non-residential customers to a default TOU rate in concert with the efforts of PG&E.

19. Salka and EDPR Contract Approvals (Action Item)

Approve two resolutions authorizing the CEO to execute a 20-year Power Purchase Agreement based on a 57.5Mwac local Alameda County Wind Project (“Alameda Wind PPA”) with Salka as the developer and a 20-year Power Purchase Agreement based on a 100MW solar PV + 30MW storage Project located in Fresno County (“Solar+Storage PPA”) with EDPR as the developer.

The Alameda Wind PPA is expected to begin to deliver all associated output, which includes energy, RECs, and RA in Dec 2020 for a period of 20 years and the Solar+Storage PPA is expected to begin to deliver all associated output in Dec 2022 for a period of 20 years. Both counterparties were awarded as part of a competitive solicitation, deemed the CA Renewable Energy RFP. We anticipate bringing forward additional projects for approval from this RFP in the future.

20. FY 2020 Budget and Value Proposition (Action Item)

- A. Approve East Bay Community Energy’s Fiscal Year 2020 Budget; and
- B. Approve Staff proposal to make no change to East Bay Community Energy’s customer value proposition of a 1.5% discount on Bright Choice, price parity with PG&E for Brilliant 100 and \$0.01/kWh premium for Renewable 100

21. Selection of Auditor (Action Item)

Seek Board approval to delegate authority to the Chief Executive Officer to negotiate and execute a contract with Piseni & Brinker LLP for a three (3) year term of service plus two (2) optional years as EBCE’s financial auditor.

22. Community Advisory Committee Appointments

23. Board Member and Staff Announcements including requests to place items on future Board Agendas

24. Adjournment - to Date: Wednesday, July 17, 2019
Location: City of Hayward
Council Chambers
777 B Street
Hayward CA 94544



Consent Item 6

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: Out of State Travel (Informational Item)

DATE: June 19, 2019

RECOMMENDATION

Accept the report on out of state travel.

1. Director of Power Purchase - American Wind Energy Association Windpower 2019 Conferences and Exhibition - Houston, Texas, 5/20/19 - 5/21/19 (\$982)



Consent Item 7

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: Contracts Entered into
DATE: June 12, 2019

RECOMMENDATION

Accept the CEO's report on contracts entered into between May 10, 2019 through June 12, 2019;

1. C-2019-36, Consulting Services Agreement with Obatala Mawusi (Oakland) for videographer services, not to exceed \$10,000.
2. C-2019-37, Consulting Services Agreement with Greycliff Advisors (Montana) for market outreach related to renewable energy procurement, not to exceed \$10,000
3. C-2019-39, Consulting Services Agreement with Studio T SQ (Oakland), for Architect services for 1999 Harrison, not to exceed \$30,000.
4. C-2019-40, Third Amendment to Legal Services Agreement with Keyes & Fox (Oakland), to allow Keyes & Fox to represent Authority in its compliance with the advice letter filing related to criteria pollutant emissions required by CPUC decision 19-04-040, does not add any additional funds to contract.
5. C-2019-41, Consulting Services Agreement with Crossborder Energy (Berkeley), to assist EBCE & other Cal-CCAs with issues related to PG&E's treatment of certain costs as "non-bypassable charges" and the allocation of certain Diablo Canyon costs between the Energy Resource and Recovery Account or the Utility Balancing Account, not to exceed \$10,000.
6. C-2019-42, Consulting Services Agreement with NewGen Strategies & Solutions (Colorado), for testimony in PG&E's general rate case on behalf of EBCE and other Cal-CCAs.

7. C-2019-44, Consulting Services Agreement with Glass House Communications (Oakland) for communications services, not to exceed \$9,000.



Consent Item 8

TO: East Bay Community Energy Board of Directors
FROM: JP Ross
SUBJECT: Air Quality District Grant (Action Item)
DATE: June 19, 2019

Recommendation

Adopt a resolution authorizing the CEO to execute a Consulting Services Agreement with ARUP North America, LTD, to conduct services necessary to assist with completion of Bay Area Air Quality Management District Climate Grant Tasks and deliverables.

Background and Discussion

In January 2019 EBCE was awarded a Bay Area Air Quality Management District (“BAAQMD”) grant to identify municipal facilities in Alameda and San Mateo counties Designated to serve the community in time of emergency, and size on-site solar photovoltaic and battery energy storage systems to increase resiliency in these communities. The project term is through the end of April 2020. EBCE and its project partner Peninsula Clean Energy (“PCE”) are currently working with local government partners to catalog municipal facilities, identify critical loads at priority sites, and size systems using a modeling tool (SolarResilient.org) developed by the City and County of San Francisco (“San Francisco”) under a similar initiative. A high-level cost estimate for each site will be developed and EBCE/PCE will work with stakeholders to identify financing and procurement pathways to move projects from feasibility assessment to implementation.

To complete the grant tasks and deliverables, EBCE seeks to leverage the competitive solicitation issued by San Francisco to enter into a contract with ARUP North America, Ltd. (“ARUP”). ARUP is a consulting firm that has extensive experience conducting solar and battery energy storage for resiliency feasibility assessments and financial analysis. ARUP supported development of San Francisco’s SolarResilient.org modeling tool and created a first-of-its-kind methodology for determining the value of resiliency.

Fiscal Impact

The total value of the BAAQMD grant is \$300,000. EBCE is seeking to allocate no more than \$150,000 of this funding to ARUP.

Attachment(s):

- A. Resolution authorizing the CEO to execute a Consulting Services Agreement with ARUP North America, LTD

RESOLUTION NO.
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO
EXECUTE A CONSULTING SERVICES AGREEMENT WITH ARUP NORTH AMERICA, LTD. TO
CONDUCT SERVICES NECESSARY TO ASSIST WITH COMPLETION OF BAY AREA AIR
QUALITY MANAGEMENT DISTRICT CLIMATE GRANT TASKS AND DELIVERABLES

WHEREAS, The East Bay Community Energy Authority (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

WHEREAS, On July 18, 2018, the Board approved the Local Development Business Plan (“LDBP”) and budget. The LDBP identifies a series of local development early actions, outlines a series of policy principles, and defines a set of metrics to measure the impact on Alameda County.

WHEREAS, EBCE was awarded a Bay Area Air Quality Management District (“BAAQMD”) Climate grant totaling \$300,000 to complete a solar and battery energy storage feasibility assessment on critical municipal facilities designated to serve the community in time of emergency to enhance resiliency in Alameda and San Mateo counties.

WHEREAS, ARUP North America, Ltd. (“ARUP”) is a firm that has extensive experience conducting solar and battery energy storage for resiliency feasibility assessments and financial analysis. ARUP has also developed a first-of-its-kind methodology for determining the value of resiliency.

WHEREAS, The City and County of San Francisco (“San Francisco”) selected ARUP through a competitive solicitation process for resiliency feasibility assessments and financial analysis. EBCE seeks to leverage the competitive solicitation issued by San Francisco to enter a contract with ARUP pursuant to its Administrative Procurement Policy. The Administrative Procurement Policy allows EBCE to engage with a single consultant that was selected through the competitive solicitation process completed by another governmental agency, provided that that agency’s procurement follows California law.

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

Section 1. The CEO or his or her designee is hereby authorized to negotiate and execute the Agreement in substantially the same form attached as Exhibit A, which shall be effective for a period of 12 months and shall not exceed \$150,000 in total compensation, to assist EBCE with completion of BAAQMD grant tasks and deliverables. The CEO is further authorized to execute any clarifying or clerical changes to the Agreement, which must be approved by General Counsel.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Solar + Storage for Resiliency: Consultant Services Approval

PRESENTED BY: JP Ross

DATE: June 20, 2019



SUMMARY

- EBCE was awarded an Air District grant (January 2019); \$300,000 budget
- Project term: 1.5 years
- Project goals:
 - Work with municipal stakeholders to identify critical facilities designated to serve the community in time of emergency
 - Identify critical loads at facilities
 - Size solar + battery energy storage systems using modeling tool developed by the City and County of San Francisco
 - Complete financial analysis
 - Work with stakeholders to identify pathways to move projects from feasibility assessment to deployment/implementation

CONSULTANT SERVICES

- Consultant services are needed to assist EBCE with project tasks and deliverables:
 - Critical Facility Site Screening
 - Site Solar + Storage System Sizing
 - Site Financial Analysis
 - Financing and Rate Design Analysis
 - Deployment Plan
 - Project Report
- The City and County of San Francisco (SF) completed a first-of-its-kind Solar + Energy Storage for Resiliency feasibility assessment in 2018.
 - SF retained ARUP as their prime contractor
 - EBCE would like to *piggyback* on SF's agreement to retain ARUP's experience/expertise to complete tasks and deliverables noted above

CONSULTANT SERVICES

- General council reviewed SF's agreement and determined:
 - The agreement between SF and ARUP was competitively procured
 - EBCE is seeking similar services from ARUP
 - Nothing in SF's agreement prohibits another agency from using its terms and prices
 - EBCE's procurement policy permits the authority to *piggyback* on other governmental agencies' agreement that were competitively procured
- Recommendation: Approve contract with ARUP; \$150,000 (hourly; NTE)



Consent Item 9

TO: East Bay Community Energy Board of Directors
FROM: Annie Henderson, VP Marketing and Account Services
SUBJECT: Amendments to Net Energy Metering (NEM) Tariff for Solar Customers
DATE: June 19, 2019

Recommendations

Approve a Resolution to amend the Electric Schedule NEM - Net Energy Metering Service so that it is aligned with both customer expectations and existing operations

Background

At its February 21, 2018 meeting, the EBCE Board adopted an initial NEM policy, and also directed staff to amend that policy, as necessary, after finalization of Local Development Business Plan (LDBP). Staff brought an amended policy to the board on December 5, 2018, that included amendments regarding the NEM program details, tariff, and the 2019 bi-monthly NEM customer enrollment.

At its February 20, 2019 meeting, the EBCE Board approved an additional amendment to the NEM tariff to revise the surplus payment calculation for customers receiving over \$2,500 in retail credits and provide a review of financial outcomes for customers that have both made a payment to EBCE since the previous cash-out process, or start of service with EBCE, and have a positive balance during the current cash-out process.

Following the February Board approval, staff realized that there is a need to clarify a type of credit and correct an error in the tariff regarding the cash-out process.

Analysis

The cash-out process is detailed in the section entitled "Billing" in part "d" of the Electric Schedule NEM - Net Energy Metering Service. Both recommended edits are in this section.

The first edit is in the initial description of the EBCE Annual Cash-Out. The following is the current tariff, with proposed additions in bold and underlined text:

*During the April billing cycle of each year, all current EBCE NEM customers with a **cash-out** credit balance of more than \$100 will be offered a direct*

payment by check for this balance. Any **cash-out** credit balance will be determined as of the final date of the customer's March-April billing Cycle (i.e. the first bill period ending on or after April 1).

“Credit balance” here could be misinterpreted any current positive dollar credit balance that resides on the EBCE page of a NEM customer bill. EBCE offers three levels of cash-out payment depending on customer classification and the interconnection date. For two of these levels, the cash-out credit is different from the month-to-month credit balance: (1) for NEM customers interconnected prior to June 1, 2018 it is the product of the surplus kilowatt-hours and PG&E’s Net Surplus Generation rate; and (2) for municipal/low-income NEM customers interconnected after June 1, 2018, the cash-out credit is the EBCE retail rate plus \$0.01 per kilowatt-hour.

To avoid confusion, staff recommends adding “cash-out” before credit balance to clarify the type of credit balance.

The second edit is in the section of the tariff that describes the review of financial outcomes of NEM customers that were interconnected prior to June 2018. The following is the current tariff language, with edits in bold, underline, and strikethrough:

*Annually in May, EBCE will review the financial outcomes of “existing” NEM accounts (interconnected before June 2018) that have 1) made payment to EBCE in the prior 12 months and 2) held a **positive** balance ~~of at least \$100~~ in April. EBCE will assess whether these accounts would have had better financial outcomes on PG&E service, and if so, issue a credit or check for the difference. This applies to all rates schedules and service levels.*

There should not be a minimum balance stated here, as all customers will have their monthly credit balance converted to a cash-out credit balance during the cash-out process. Staff recommends that the tariff is edited to read “held a positive balance in April,” removing “of at least \$100” and adding “positive” for clarity.

Fiscal Impact of Recommendation

These tariff edits do not have a fiscal impact; the edits are clarifying operations as they already occur today.

CEQA

Not a project

Attachments

- A. Exhibit A: Revised EBCE Electric Schedule NEM - Net Energy Metering Service
- B. Resolution Adopting Amended Electric Schedule NEM - Net Energy Metering Service

RESOLUTION NO.
A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO FURTHER AMEND THE NET
ENERGY METERING POLICY

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 (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. EBCE desires to encourage customers to construct new on-site energy generation systems and to retain current Net Energy Metering (NEM) customers by minimizing any adverse financial impacts from becoming an EBCE customer.

Section 3. The Board of Directors approved an Initial NEM Policy on February 21, 2018, an amended policy on December 5, 2018, and a second amendment on February 20, 2019.

Section 4. In April 2019, EBCE staff initiated the inaugural cash-out process for NEM customers and identified components of the NEM tariff that needed additional clarification in regards to the type of credit balance included in the cash-out process.

Section 5. The Board hereby adopts the amended Electric Schedule NEM - Net Energy Metering Service, attached hereto as Exhibit A, effective immediately.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

Exhibit A

ELECTRIC SCHEDULE NEM - NET ENERGY METERING SERVICE

APPLICABILITY: This net energy metering (NEM) schedule is applicable to a customer who uses an eligible Renewable Electrical Generation Facility, as defined in PG&E's Electric Schedule NEM (<http://www.pge.com/tariffs>), within the capacity limits described in PG&E's Electric Schedule NEM that is located on the customer's owned, leased, or rented premises, is interconnected and operates in parallel with PG&E's transmission and distribution systems, and is intended primarily to offset part or all of the customer's own electrical requirements (hereinafter "eligible customer generator" or customer").

This rate schedule is available on a first-come, first-served basis to customers that provide PG&E with a completed PG&E NEM Application and comply with all PG&E NEM requirements as described in PG&E Electric Schedule NEM. This includes customers served by NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation) and Multiple Tariff facilities as described by PG&E Electric Schedule NEM.

TERRITORY: The entire EBCE service area.

RATES: All rates charged under this schedule will be in accordance with the eligible customer generator's otherwise-applicable EBCE rate schedule (OAS), which includes their rate schedule and EBCE service level (i.e. Bright Choice, Brilliant 100, or Renewable 100). An eligible customer-generator served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to EBCE or PG&E. Charges for energy (kWh) supplied by EBCE, will be based on the net metered usage in accordance with this tariff.

BILLING: Customers with NEM service will be billed as follows:

a) For a customer with Non-Time of Use (TOU) Rates:

Any net consumption or production shall be valued monthly as follows:

If the eligible customer-generator is a "Net Consumer," having overall positive usage over a billing cycle, the eligible customer-generator will be billed in accordance with the eligible customer-generator's OAS.

If the eligible customer-generator is a "Net Generator," having overall negative usage over a billing cycle, any net energy production shall be valued at the OAS plus any additional incentive payment as applicable (e.g. for new installations at low income or municipal accounts). The calculated value of any net energy production shall be credited to EBCE customers as described in Section (c).

b) For a customer with TOU Rates:

If the eligible customer-generator is a Net Consumer (as defined above) during any discrete TOU period, the net kWh consumed during such period shall be billed in accordance with applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.

If the eligible customer-generator is a Net Generator (as defined above) during any discrete TOU period, the net kWh produced during such period shall be valued in consideration of the applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS, plus any additional incentive payment as applicable (e.g. for new installations at low income or municipal accounts). The

Exhibit A

calculated value of any net energy production during a specific TOU period shall be credited to EBCE customers as described in Section (c).

c) Monthly Settlement of EBCE Charges/Credits:

NEM customers will receive a statement in their monthly PG&E bills indicating any accrued charges for their usage during the current billing cycle. Customers who have accrued credits during previous billing cycles will see these credits applied against current charges. Any remaining balance is due and must be paid during each monthly billing cycle.

When a customer's net energy production results in a net bill credit over a billing cycle, the value of any net energy production during the billing cycle shall be noted on the customer's bill and carried over as a bill credit for use in subsequent billing period(s).

Monthly settlements are valued as follows:

Customer Type	Bill Credit per kWh
Existing NEM Customer as of 6/1/18	Retail*
New NEM Customers after 6/1/18	Retail
New Low Income and Municipal Customers after 6/1/18	Retail + \$0.01

**Equivalent to the generation rate you are charged for power received from EBCE*

d) EBCE Annual Cash-Out:

During the April billing cycle of each year, all current EBCE NEM customers with a [cash-out](#) credit balance of more than \$100 will be offered a direct payment by check for this balance. Any [cash-out](#) credit balance will be determined as of the final date of the customer's March-April billing Cycle (i.e. the first bill period ending on or after April 1). Customers who participate in the EBCE Cash-Out or transfer process will have an equivalent credit removed from their NEM account balance at the time of check issuance or transfer. In the event that customer's credit balance is less than \$100, such credits will continue to be tracked by EBCE and will remain on the customer's account for future use (i.e., reduction of future EBCE charges).

Customers who close their electric account through PG&E or move outside of the EBCE service area prior to the April billing cycle of each year are also eligible for the annual EBCE Cash-Out process.

Annually in May, EBCE will review the financial outcomes of "existing" NEM accounts (interconnected before June 2018) that have 1) made payment to EBCE in the prior 12 months and 2) held a [positive](#) balance [of at least \\$100](#) in April. EBCE will assess whether these accounts would have had better financial outcomes on PG&E service, and if so, issue a credit or check for the difference. This applies to all rates schedules and service levels.

Annual cash-out credits are valued as follows:

Customer Type	Annual Payout Credit per kWh
Existing NEM Customer as of 6/1/18	PG&E Net Surplus Compensation (NSC)
New NEM Customers after 6/1/18	The greater of retail capped at \$2,500 or the PG&E NSC
New Low Income and Municipal Customers after 6/1/18	Retail + \$0.01

**Equivalent to the generation rate you are charged for power received from EBCE*

Exhibit A

e) Return to PG&E Bundled Service:

EBCE customers with NEM service may opt out and return to PG&E bundled service at any time. Customers should be advised that PG&E will perform a true-up of their account at the time of return to PG&E bundled service, and that PG&E's standard terms for transitional rates apply to customer returns with less than a six-month advance notice if they have been an EBCE customer for 60 days or more.

If an EBCE NEM customer opts out of the EBCE program and returns to bundled service, EBCE will cash-out any remaining generation credits on the account (using the approach detailed in section d above) and mail a check to the billing address.

f) PG&E NEM Services:

EBCE NEM customers are subject to the conditions and billing procedures of PG&E for their non-generation services, as described in PG&E's Electric Schedule NEM and related PG&E tariff options addressing NEM service. Customers should be advised that while EBCE settles out balances for generation on a monthly basis, PG&E will continue to assess charges for delivery, transmission and other services. Most NEM customers will receive an annual true-up from PG&E (on their NEM anniversary with PG&E) for these non-generation services. Customers are encouraged to review PG&E's most up-to-date NEM tariffs, which are available from PG&E.

g) Aggregated NEM

Per the California Public Utilities Commission Section 2827(h)(4)(B), aggregated NEM customers are "permanently ineligible to receive net surplus electricity compensation." Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for EBCE's annual Cash-Out as in section (d). All other NEM rules apply to aggregated NEM accounts.



Staff Report Item 10

TO: East Bay Community Energy Board of Directors
FROM: Inder Khalsa, EBCE General Counsel
SUBJECT: Complimentary Ticket Distribution and Event Sponsorship Policies
DATE: June 19, 2019

Recommendation

Adopt a resolution to adopting a Complimentary Ticket Policy to guide the distribution of tickets EBCE receives, and a resolution adopting an Event Sponsorship Policy to guide EBCE in determining which events EBCE may sponsor.

Background

I. Complimentary Ticket Policy

The Fair Political Practices Commission (“FPPC”) adopts regulations that implement the Political Reform Act. In general, gifts to a public official that exceed \$50 in value are required to be reported on an official’s annual Statement of Economic Interests (commonly known as a “Form 700”) and an official may not accept gifts that exceed \$500 from a single source in a calendar year (through 2020).

The FPPC, however, has adopted a regulation (Regulation 18944.1), that provides that when a public agency distributes a ticket or pass to a certain type of event and when the official uses that ticket or pass, such ticket or pass does not have to be reported as a gift and is not subject to the annual gift limit if the agency adopts a policy for the distribution of such tickets. This policy, however, must comply with certain criteria set forth in Regulation 18944.1. Regulation 18944.1 was recently updated on May 16, 2019.

EBCE does not currently have a policy relating to the complimentary distribution of tickets. From time to time, EBCE receives complimentary tickets to events which may be distributed to agency officials. Staff recommends adopting a ticket distribution policy so that these tickets may be distributed to EBCE officials in accordance with FPPC regulations and guide EBCE in distributing such tickets. The policy will also ensure that tickets are distributed in a manner that promotes the public purposes of the EBCE.

This policy will give EBCE discretion over who uses the tickets, require that tickets be distributed to serve a public purpose of EBCE, restrict the disproportionate use of tickets by

particular individuals, and outlines reporting requirements accompanying the distribution of tickets.

II. Event Sponsorship Policy

Article 16, Section 6 of the California Constitution limits the gift of public funds. This limitation has been interpreted as precluding public entities from making payments to persons or entities without there being a public purpose furthered by making the payment. EBCE, as a public entity, is subject to this requirement.

From time to time EBCE receives requests to sponsor, and has the opportunity to sponsor, various events and programs in the community. The sponsorship policy will assist staff in determining which events to sponsor.

Sponsorship opportunities will be reviewed by General Counsel and approved by the CEO - or a designee - if under \$5,000 or by the Board if \$5,000 or more, and sponsorships may not be executed if they create a prohibited conflict of interest.

Conclusion

The Complimentary Ticket Policy should be adopted by approving the resolution to guide the distribution of tickets EBCE receives and to comply with the FPPC ticket distribution regulations (2 Cal. Code Regs., Section 18944.1).

The Event Sponsorship Policy should be adopted by approving the resolution to guide EBCE in determining which events EBCE may sponsor and to comply with the state Constitutional gift of public funds prohibition (Cal. Const., Art. 16, Sec. 6).

Enclosures

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority Adopting a Complimentary Ticket Policy
- B. Complimentary Ticket Policy
- C. Resolution of the Board of Directors of the East Bay Community Energy Authority Adopting an Event Sponsorship Policy
- D. Event Sponsorship Policy

RESOLUTION EBCE R-2019-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING A
COMPLIMENTARY TICKET POLICY**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County as a community choice aggregation agency (“CCA”); and

WHEREAS, pursuant to the Joint Powers Agreement the EBCE and its officers and employees shall comply with the Political Reform Act (Government Code Section 81000 et seq.) and the Board may adopt additional conflict of interest regulations; and

WHEREAS, occasionally the EBCE receives complimentary tickets or passes to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes; and

WHEREAS, Fair Political Practices Commission Regulation 18944.1 requires public agencies to adopt a written policy governing the distribution of complimentary tickets and passes that includes a statement describing the public purpose to be accomplished by such policy; and

WHEREAS, it is in the interest of EBCE to establish a ticket or pass distribution policy that facilitates the distribution of tickets or passes; and

WHEREAS, it is the purpose of the Complimentary Ticket Policy to establish a fair and equitable process for the distribution to EBCE officials of complimentary tickets and passes received by EBCE to a facility, event, show or performance for entertainment, amusement, recreational or similar purposes in compliance with the requirements of Fair Political Practices Commission Regulation 18944.1.

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

SECTION 1. The Board hereby adopts Policy # ____, “Complimentary Ticket Policy,” attached hereto as Exhibit A, and resolves that the distribution of tickets to EBCE officials shall be governed by this Policy.

SECTION 2. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Exhibit A

Complimentary Ticket Policy

**Policy No.
Resolution no.**

**Agenda: June 19, 2019
Item: 10**

1. Purpose.

The purpose of this Complimentary Ticket Policy (“Policy”) is to establish a fair and equitable process for the distribution of complimentary tickets or passes to EBCE in compliance with the requirements of Section 18944.1 of the Fair Political Practices Commission (“FPPC”) Regulations. This Policy is subject to the California Political Reform Act of 1974, Government Code § 81000, et seq. (“Political Reform Act”) and the FPPC Regulations, Title 2, Division 6 of the California Code of Regulations, Sections 18110 et seq., as they now exist or may hereafter be added or amended.

2. Definitions.

- a. “Event” means an occasion, show, or performance for an entertainment, amusement, recreational, or similar purpose to which admission is granted with a ticket or pass.
- b. “Official” means any member of the EBCE Board of Directors or any EBCE employee.
- c. “Ticket or Pass” means either a “ticket” or a “pass” as defined in FPPC Regulation 18946, as amended from time to time, but which are currently defined as:
 - i. “Ticket.” A “ticket” is anything that provides access, entry, or admission to a specific future event or function and for which similar tickets are sold to the public to view, listen to, or otherwise take advantage of the attraction or activity for which the ticket is sold and includes any benefits that the ticket provides.
 - ii. “Pass.” A “pass” is a ticket that provides repeated access, entry, or admission to a facility or series of events and for which similar passes are sold to the public.

3. Applicability.

This Policy shall only apply to distribution of a ticket or pass to an event or function provided by EBCE to an Official, or at the behest of an Official.

4. Ticket Distribution.

The ticket or pass shall not be earmarked by the original source for use by the Official who uses the ticket or pass. EBCE shall determine in its sole discretion which Official may use the ticket or pass. Specific guidelines for the dissemination of tickets or passes to Events may be established by the Chief Executive Officer or designee pursuant to an administrative procedure.

5. Public Purposes.

Tickets or passes may be provided to an Official subject to this Policy to support any of the following public purposes:

- a. As a part of EBCE's community outreach efforts;
- b. Representing EBCE as an event to sustain or build relationships with businesses or local, regional, state, or federal agencies;
- c. The Event will provide educational information that will benefit the EBCE or Official attending the Event;
- d. The Official's written job duties require the Official to appear at the Event.
- e. Attendance of an Official of the EBCE at the Event will in some other way support the purpose of the EBCE; or
- f. To support general employee morale, retention or to reward public service. [This public purpose may not be used for tickets or passes distributed to members of the Board of Directors, the Chief Executive Officer, or a department head in compliance with FPPC Regulation §18944.1 (e).]

6. Requirement of Public Purposes.

The distribution of any ticket or pass to, or at the behest of, an Official must accomplish a stated public purpose of the agency listed in Section 5 of this Policy.

7. Prohibition Against Transfer.

A ticket or pass distributed to an Official pursuant to this Policy may not be transferred by the Official to any person, except to members of the Official's immediate family or no more than one guest solely for their attendance at the event.

8. Disproportionate Use Prohibited.

The disproportionate use of tickets or passes by a member of the Board of Directors, the Chief Executive Officer, or a department head is prohibited.

9. Record and Reporting.

This Policy shall be posted on the EBCE website within 30 days of adoption or amendment. The record of the distribution of a ticket or pass pursuant to this Policy shall be maintained as a public record and be subject to inspection and copying under California Government Code

Section 81008. In addition, the record of the distribution of a ticket or pass pursuant to this Policy shall be posted on a Form 802 provided by the FPPC on the EBCE website, within 45 days after the distribution.

RESOLUTION EBCE R-2019-_____

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY ADOPTING
AN EVENT SPONSORSHIP POLICY**

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed pursuant to a Joint Powers Agreement to study, promote, develop, conduct, operate, and manage energy programs in Alameda County as a community choice aggregation agency (“CCA”); and

WHEREAS, as a public agency, EBCE is subject to state Constitutional restrictions on the expenditure of public funds which forbid public agencies from gifting public funds; and

WHEREAS, an appropriation of public funds for use by a private party is not an unconstitutional gift if it serves a public purpose; and

WHEREAS, occasionally the EBCE has opportunities to sponsor events that serve such public purposes, including but not limiting to marketing EBCE’s energy programs to current and prospective customers; and

WHEREAS, it is in the interest of EBCE to establish an event sponsorship policy to help guide which events EBCE may sponsor.

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

SECTION 1. The Board hereby adopts Policy # ____, “Event Sponsorship Policy,” attached hereto as Exhibit B, and resolves that the expenditure of funds to sponsor events be governed by this Policy.

SECTION 2. This resolution shall become effective immediately upon its passage and adoption.

ADOPTED AND APPROVED this 19TH day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Exhibit B

Event Sponsorship Policy

Policy No.

Resolution No.

Agenda: June 19, 2019

Item: 10

Purpose:

From time to time East Bay Community Energy (“EBCE”) receives requests to sponsor, and has the opportunity to sponsor, various events and programs in Alameda County. EBCE desires to sponsor events which further the public purposes of EBCE, including but not limited to events that can promote, implement, operate, or administer EBCE’s energy programs. It is in the interest of EBCE to establish an event sponsorship policy to guide EBCE in determining which events it may sponsor so that sponsorship expenditures made by EBCE do not violate the state Constitutional gift of public funds prohibition (Cal. Const., Art. 16, Sec. 6).

Policy:

1. **Public Purpose.** The state Constitution provides that public agencies may only spend public funds on public purposes. Therefore, EBCE shall only expend funds on sponsorships that advance the purposes for which it was established. Those purposes include, but are not limited to: promoting, developing, conducting, operating, and managing energy and energy-related climate change programs of EBCE.
2. **Sponsorship Agreements.**
 - a. EBCE must enter into a sponsorship agreement with the entity seeking event sponsorship.
 - b. Sponsorship agreements must identify the public purpose for EBCE prompting the expenditure as the consideration for making it. For example, the description can list tangible benefits of sponsorship for EBCE such as a table or literature distribution booth at the event which helps promote EBCE energy programs to current or potential customers.
3. **Sponsorship Review Process.**
 - a. Sponsorship agreements for events at an expenditure amount of \$5,000 or less may be executed by the Chief Executive Officer or his/her designee without Board approval.
 - b. Sponsorship agreements for events at an expenditure amount exceeding \$5,000 require approval by the Board of Directors.
 - c. All event sponsorship agreements require General Counsel review and approval to ensure a public purpose is accomplished through the sponsorship before EBCE may enter into a sponsorship agreement.
 - d. Prior to executing any sponsorship agreement, the individual executing shall ensure: (i) that the sponsorship compensation has been budgeted for in the current EBCE budget, (ii) that such funds are unexpended and unencumbered

sufficient to pay the expense of the sponsorship, and (iii) that the sponsorship agreement has been approved by the General Counsel or his/her designee.

4. Sponsorship Limits.

- a. EBCE shall not sponsor an event unless it is determined that a public purpose, as described in Section 1 of this Policy, will be accomplished.
- b. EBCE shall not sponsor an event which would create a conflict of interest under the following authorities: (i) the Political Reform Act (California Government Code Section 81000 et seq.); (ii) Government Code Section 1090; and (iii) the Common Law Doctrine Against Conflicts of Interest.



Consent Item 11

TO: East Bay Community Energy Board of Directors

FROM: Howard Chang, COO

SUBJECT: Amendment to Legal Services Agreement with Wilson Sonsini Goodrich Rosati

DATE: June 19, 2019

Recommendation

Approve and delegate authority to the Chief Executive Officer to negotiate and execute an amendment to the Legal Services Agreement with Wilson Sonsini Goodrich Rosati (WSGR) for services related to power procurement. The amendment would increase the contract amount not to exceed \$250,000 and extend the contract term through June 30, 2020.

Background and Discussion

In October 2018, EBCE executed a Legal Services Agreement with WSGR to provide legal services in the power procurement area. The total compensation under this Agreement was \$100,000. The agreement was intended to cover legal services to support the Oakland Clean Energy Initiative.

The OCEI negotiations have been successful and have included review and negotiation of more than one counterparty related to the OCEI. Given the successful work and experience of WSGR, staff would like to expand the scope of work to include other procurement transaction outside of OCEI and continue to utilize WSGR for the remaining OCEI work that will extend into the new fiscal year.

Fiscal Impact

The fiscal impact is an increase in budget of \$150,000. Such funds are accounted for in the approved 2018-2019 legal budget and the pending 2019-2020 legal budget.

Attachment

- A. Resolution Approving Amended agreement with Wilson Sonsini Goodrich Rosati
- B. Amendment Legal Services Agreement with Wilson Sonsini Goodrich Rosati

RESOLUTION EBCE R-2019

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING AN AMENDMENT TO THE LEGAL SERVICES AGREEMENT WITH WILSON SONSINI GOODRICH & ROSATI P.C.

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

Section 1. On October 3, 2018, East Bay Community Energy Authority (“EBCE”) entered into an agreement for legal services related to power procurement and other matters with the law firm Wilson Sonsini Goodrich & Rosati (Legal Service Agreement).

Section 2. The parties desire to amend the Legal Services Agreement to modify the term through June 30, 2020 and to increase the total compensation by \$150,000 to a total not to exceed amount of \$250,000.

Section 3. The CEO is directed to negotiate and execute the First Amendment to Legal Service Agreement, 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 Legal Services Agreement.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

**First Amendment to Legal Services Agreement with
Wilson Sonsini Goodrich & Rosati P.C.**

This First Amendment to the Agreement with Wilson Sonsini Goodrich Rosati, P.C. for Legal Services (“Amendment”) is made this 7th day of June, 2019, by and between the East Bay Community Energy Authority, a Joint Powers Agency formed under the laws of the State of California (“EBCE”) and Wilson Sonsini Goodrich Rosati, P.C (“WSGR”), for the purposes of adding additional funding. EBCE and WSGR shall be collectively referred to as “Parties.”

Recitals

- A. EBCE and WSGR entered into that certain agreement for legal services dated October 3, 2018, wherein WSGR agreed to provide legal services related to power procurement and matters related to the Oakland Clean Energy Initiative.
- B. EBCE desires to continue to use WSGR’s expertise in the area of power procurement, and WSGR has the expertise and manpower available to assist EBCE in this area.

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

- 1. Section 1 of the Agreement is amended to state the following: The term of this Agreement commences on October 3rd, 2018, and will expire on June 30, 2020 unless further extended by written amendment or terminated pursuant to Section 19 of this Agreement.
- 2. Section 3 of the Agreement is amended in part to increase the total compensation of the Agreement to \$250,000 (adding an additional \$150,000).
- 3. Exhibit A is amended to include services related to short term energy procurement transactions taking the form of EEI and WSPP contract forms.
- 4. All other terms and conditions in the Agreement not otherwise modified by this Amendment will remain in full force and effect.

In witness whereof, the Parties have entered into this Amendment on the date written above.

East Bay Community Energy Authority,
A Joint Powers Authority

Wilson Sonsini Goodrich Rosati
A Professional Corporation

Scott Haggerty
Chair of the Board of Directors

Peter Mostow
Partner



Consent Item12

TO: East Bay Community Energy Board of Directors
FROM: JP Ross
SUBJECT: Energy Efficiency Data Sharing (Action Item)
DATE: June 19, 2019

Recommendation

Approve staff recommendation to allow data sharing pilot program with energy efficiency Pay for Performance contractors to proceed.

Background and Discussion

The Local Development Business Plan identified the opportunity for EBCE to leverage our integrated data platform to enable Energy Efficiency (EE) Program Administrators to increase program participation in state supported programs by residents and businesses in EBCE's service territory.

The CPUC has issued a decision (D.12-08-045) detailing the conditions under which CCAs can share "covered information", which is defined as customer usage data that can be tied to a specific CCA customer. The decision stipulates that such data can be shared with third parties without prior customer notification only when the purpose is a "primary purpose", which includes planning, implementing, or evaluating Demand Response, Energy Management, or Energy Efficiency programs with a party that is under contract with the CCA.

In accordance with this decision, EBCE has developed a non-disclosure agreement (NDA) that can be entered into when sharing data with administrators and implementors of programs serving the Primary Purposes listed above. The agreement governs how third parties can use the data, and their obligations to EBCE. The agreement also includes co-marketing language, which will enable EBCE to partner with EE providers, if desired, to add the EBCE logo and information on program materials to increase awareness of EBCE products and services. In addition, EBCE will be tracking EE Program activities and benefits delivered by the data sharing service.

ABAG, the Association of Bay Area Governments (ABAG) is an administrator of EE programs across the nine Bay Area Counties. ABAG uses StopWaste, an Oakland based organization to implement EE programs in Alameda County. EBCE has completed a Non-Disclosure Agreement

with StopWaste with the intent to share usage information to enable StopWaste to more effectively deliver EE programs to Alameda County residents, businesses and governments.

In addition to non-profit administrators of EE programs, there are now for-profit companies delivering EE services to EBCE customers through new “Pay for Performance” programs. Pay for Performance programs deliver incentives only when energy savings are realized on the bill as opposed to paying incentives up front for expected future savings.

EBCE proposes a pilot program to test sharing covered information with private EE providers as well. In addition to requiring that such parties enter into the same Non-Disclosure Agreement mentioned above, EBCE has developed a specific process to leverage the power of usage data to increase participation and benefits to customers while protecting customer information:

- 1) The EE provider requests usage information for a list of addresses known to the provider, and which meet the criteria of the customer segment or EE program the provider is targeting;
- 2) EBCE provides anonymized usage data for the Service Accounts it has identified that match the addresses provided;
- 3) The EE provider analyzes the usage profiles provided by EBCE to determine which records would be most suitable for enrollment in the program, and delivers the list of targets back to EBCE;
- 4) EBCE matches the final target list to the customer addresses, and delivers the final list of customer addresses back to the EE provider;
- 5) The provider markets its program services and benefits to the targeted customers.

Note that EBCE will not be providing customer contact information to the EE service providers. The outreach will be based on publicly available data, and addresses and contact information that are already known to the provider.

EBCE plans to monitor the activity and participation in all programs using data from our systems. EBCE will test marketing activities to determine if co-marketing with EBCE logo and information can increase program participation rates and awareness of EBCE products and services.

Fiscal Impact

There will no fiscal impact other than staff time invested.



Staff Report Item 13

TO: East Bay Community Energy Board of Directors
FROM: Kelly Brezovec, Customer Care Manager
SUBJECT: 2019-2020 Value Proposition - Public Comment Review (Informational Item)
DATE: June 19, 2019

Recommendation

Accept an update from staff on the 2019-2020 Value Proposition public comment, staff actions taken, and comments received

Background

In the May 24, 2019 Executive Committee meeting, the Chief Executive Officer (CEO) presented East Bay Community Energy’s initial draft 2019-2020 budget for feedback and identified staff’s intention to hold a series of public meetings to present this budget along with a review of EBCE’s value proposition.

Prior to presenting the budget to the Executive Committee, at its May 15, 2019 meeting, the EBCE Board approved an EBCE Value Proposition Update/Rate Setting Process. Staff has completed the first half of the process as outlined.

Date	Item
May 15, 2019	Process Approval by Board of Directors
May 24, 2019	Discount Options presented to Executive Committee for initial feedback
May 28 - June 7, 2019	Up to three (3) public workshops held to review, discuss, and collect feedback on discount options
June 7, 2019	Written comments due from public on discount options
June 14, 2019	Staff proposal included in posted BOD packet

June 17, 2019	Staff presents proposal to CAC
June 19, 2019	BOD reviews and approves staff proposal on discount
July 1, 2019	Anticipated final PG&E Rates and PCIA
July 2, 2019	EBCE begins to update back-end systems per final PG&E Rates, PCIA, and approved discount
July 15, 2019 (estimated)	EBCE launches new rates with July 1 effective date
July 17, 2019	Staff provides update to board on status of new EBCE rates based on value proposition approved in June 2019 and presents rate sheets

Discussion - Public Comment Period

Staff held three public workshops, advertised via an email to EBCE’s “sign up for updates” list, Facebook promoted events, and content in the What’s New section on our main homepage. There was an evening webinar, a Saturday morning in-person meeting held within walking distance of the Union City BART station, and a lunchtime webinar.

The below email was sent, on Friday, May 24, 2019, to the 4,000 constituents that have signed up for EBCE’s email list. Nearly 1,000 people (24% of recipients) opened the email and 46 of them clicked on the available links.



East Bay Community Energy (EBCE) is committed to a robust and transparent rate setting process. We invite you to share your thoughts on EBCE’s 2019-2020 electric generation rates using one or more of the following methods:

In-person at our June 1 public forum:
 Saturday, June 1, 2019, 10:00 AM - 11:30 AM
 Union City’s Kennedy Youth Center - 1333 Decoto Rd, Union City, CA 94587
 Less than a ½ mile walk from Union City BART station

Online at a webinar:

- Wednesday, May 29 at 6 PM - [Click here to RSVP](#)
- Wednesday, June 5 at noon - [Click here to RSVP](#)

Written comments may be emailed to PublicComment@ebce.org, or mailed to:
 East Bay Community Energy Public Comment
 1111 Broadway, 3rd Floor
 Oakland, CA 94607

Written comments shall be no longer than five pages. All comments will be posted to ebce.org/rates for six months.

Please provide your insights and feedback no later than 5:00 PM on Friday, June 7, 2019. EBCE staff will review public comments and summarize as part of our recommendation to the Board of Directors regarding 2019-2020 rate setting. Thank you for your participation.

Background documents:

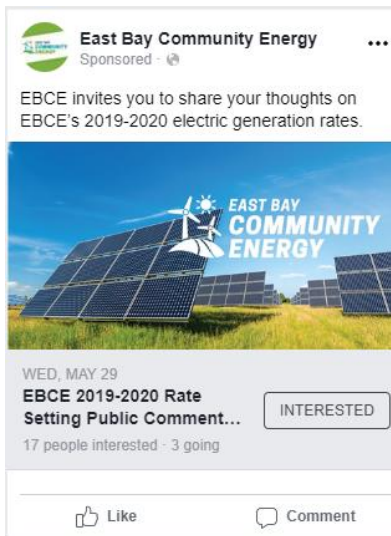
- [Rate Setting Policy Board Report, presented at the February 7, 2018 Board of Directors Meeting](#)
- [Renewable 100 Product Approval Board Report, presented at the April 18, 2018 Board of Directors Meeting](#)
- [EBCE Value Proposition Update/Rate Setting Process Board Report, presented at the May 15, 2019 Board of Directors Meeting](#)
- [2019-2020 Budget Report, presented at the May 24, 2019 Executive Committee Meeting](#)

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EBCE staff also created public events and advertised the dates on Facebook, reaching an additional 2,000 Alameda County adult residents.



Eleven individuals signed up for the webinars. Five individuals participated and did not provide a public comment. A recording of the webinar was posted to our website to allow interested parties to view outside of the scheduled presentations.

The in-person event was held within walking distance of the Union City BART station on Saturday, June 1 at 10:00 am. There were no participants.

Staff received two written comments via email.

Summary of Public Comments Received

Staff received comments from two Berkeley residents. The comments are attached as Exhibit A and Exhibit B.

Tom Kelly called on EBCE to increase the renewable content in Bright Choice and suggested that Bright Choice is eliminated and replaced with a 50% renewable, 100% carbon-free iteration of Brilliant 100 at a 2% discount to PG&E's generation price.

Richard Rollins requested additional information regarding financials for each EBCE product and a presentation of rate, budget, and power mix scenarios.

Staff have reviewed these comments and are taking these ideas into consideration for this and future rate setting opportunities that focus on the power mix.

Attachment(s):

- A. Public Comment from T. Kelly of Berkeley
- B. Public Comment from R. Rollins of Berkeley

Email received by publiccomment@ebce.org on Wednesday, June 5, 2019:

Thank you for providing the opportunity for interested stakeholders to comment on East Bay Community Energy's (EBCE) 2019-2020 Rate Setting process.

When the EBCE Board set the agency's first rate structure in February 2018, the Board spent a great deal of time discussing the program's energy mix for its default product and spent very little time on a discussion of rates. The Board directed that EBCE's default product (*Bright Choice*) be 85% carbon free* (38% renewable and 47% hydro) and be discounted 1.5% from PG&E's standard rates. The staff's original recommendation for *Bright Choice* was 70% carbon free (35% renewable and 35% hydro) at a 2% discount from PG&E. The Board increased the default's carbon free content in response to an [announcement by PG&E](#) that it had achieved a carbon free power mix of nearly 80% in 2017. EBCE's Implementation Plan (Plan) submitted to the California Public Utilities Commission (CPUC) in August 2017 stated that EBCE would offer "a default EBCE service option that at a minimum matches PG&E's renewable energy share and exceeds its share of GHG-free energy by 10%" (Community Choice Aggregation Implementation Plan and Statement of Intent, August 2017 at page 15).

The Board did not discuss the staff's recommendation for the power mix and pricing for the only other product available at the time (*Brilliant 100*). The staff recommendation for *Brilliant 100* was 40% renewable and 60% hydro-electric power at a price equal to PG&E's rates.

The issue of pricing is addressed in the agency's Joint Power Agreement which calls for a price that is "lower or competitive with PG&E for similar products" (East Bay Community Energy Authority, Joint Powers Agreement, Recitals, paragraph 6 (a)).

Since EBCE set its rates and power mix in February 2018, we have learned that PG&E's renewable content has increased and its carbon emissions have decreased significantly. This means that EBCE is obligated to review and adjust its power mix for its default product to be consistent with its commitments made in its Plan. Once the amount of renewable and carbon free content have been determined for its default product, rates can be set accordingly.

There is always uncertainty about the renewable and carbon free content of electricity sold in the previous year to retail customers. The California Energy Commission (CEC) audits the retail electric sales and publishes a Power Content Label (PCL) that generally reflects the power sources of each utility's or CCA's aggregated retail sales. The PCL, however, is not published until the Fall of the year following the year when the sales took place. For example, a PCL for electric sales in 2018 will not be available until October-November 2019. I have just learned, however, that the CEC does have some preliminary data on the 2018 retail electric sales that the Commission has shared with at least two other CCAs, namely Clean Power Alliance and CleanPowerSF. Attached is a comparison of CleanPowerSF's power content to PG&E's 2018 data. Please note that PG&E's renewable power (39%) is greater than EBCE's default product (38%).

We also know from documents filed with the CPUC by PG&E in its 2019 Energy Resource Recovery Account (ERRA) application that PG&E is forecasting that its aggregated carbon emissions for 2019 will be approximately 11 lbs. CO₂e/MWh compared to EBCE's estimated forecast of 142 lbs. CO₂e/MWh.

The solution to the fact that EBCE's default product has fallen behind PG&E on renewable content and greenhouse gas emissions is straight-forward. EBCE should eliminate *Bright Choice* entirely and make *Brilliant 100* the default. Ideally, the default could be 45%-50% renewable and 55%-50% hydro and offered at a discount of at least 2%. This would be a win for the elimination of carbon emissions, a price reduction for all customers, the elimination of the threat of *Bright Choice*'s carbon content coming back to haunt EBCE, and it would give the program time to evolve into providing a 100% renewable product for all customers. The effect on EBCE's surplus (profit, reserve) would be minimal. EBCE staff should provide the Board with several scenarios like the one I've described to allow the Board to make an informed decision, rather than unilaterally determining that the power mix will not be considered at this time. Note, too, that at least 3 other Bay Area/regional CCAs offer a carbon free default product along with a discount on the rate.

*The 47% carbon free hydro approved by the Board in February 2018 has been changed to 24% hydro and 23% "unspecified power" delivered by an Asset Controlling Supplier (ACS). Although the majority of the ACS power comes from hydro, a percentage of the power comes from natural gas sources. This adds an additional 12

lbs. CO₂e/MWh to the carbon emissions produced by *Bright Choice*. Per current CEC rules, the actual carbon free content of *Bright Choice* is 62%, not 85% as directed by the Board.

Sincerely,

Tom Kelly
KyotoUSA
Berkeley, CA

CleanPowerSF Rates and Renewable Content - Residential

	CleanPowerSF Green	CleanPowerSF SuperGreen	PG&E Default	PG&E Solar Choice
Renewable Energy Content	48%	100%	39%	100%
Electricity Generation	\$21.56	\$26.08	\$33.69	\$38.47
PG&E Electricity Delivery	\$35.79	\$35.79	\$35.79	\$35.79
Additional PG&E Fees*	\$10.25	\$10.25	N/A	\$10.07
AVERAGE TOTAL COST PER MONTH	\$67.59	\$72.11	\$69.48	\$84.33

COMPARISON OF TYPICAL MONTHLY BILL—RESIDENTIAL

*Additional PG&E Fees refer to the Power Charge Indifference Amount (PCIA) and the Franchise Fee Surcharge (FFS). For more details, view [Understanding Your Bill](#).

The bill above is based on average winter usage of 301 kWh. The E1 rate schedule was used for comparison, PG&E rates effective March 1, 2019 and current CleanPowerSF rates effective July 1, 2018.

Renewable energy content listed for each product identified above as reported in CleanPowerSF's Annual Report to the California Energy Commission Power Source Disclosure Program and PG&E's 10-k filing. Data is subject to an independent audit and verification that will not be completed until October 1, 2019.

June 3, 2019

Email received by publiccomment@ebce.org on Friday, June 7, 2019:

Dear East Bay Community Energy Directors:

Thank you for the opportunity to comment on proposed East Bay Community Energy (EBCE) rates and rate setting process for FY 2019-2020. I understand that setting rates is an integral part of the process to establish the 2019-2020 budget that will be considered by Board at the June 19, 2019 Board Meeting.

My primary concern is that the Board is being asked to consider rates (and the 2019-2020 budget) without important contextual information or presentation of alternate scenarios from which to make decisions or more easily understand staff recommendations. Perhaps most important, the staff proposal to set rates for 2019-2020 without a simultaneous review of the EBCE product power mix is problematic for a number of reasons:

1. **Cost of Energy.**

The proposed cost of energy (\$ 386,609,000) is the single largest expenditure in the proposed 2019-2020 budget. The proposed budget was presented to the Executive Committee on May 24, 2019 (see Staff Report Item 4 and the presentation slides). Slide 5 of the presentation indicated five components of the Cost of Energy budget as follows: Block and Shaped Energy, Renewable Energy, Carbon Free Energy, Resource Adequacy, and CAISO fees. Details of the cost or percentage contribution of each of these components was not presented to the Executive Committee or discussed, nor was the cost or percentage contribution of prior year expenditures for these components.

Staff should present to the Directors and the public a comparison of past year expenditures with proposed 2019-2020 budget. Without a review of past expenditures for the components of energy cost, comparison to proposed budget for each component, and an explanation of why the proposed budget differs from past expenditures it is difficult to imagine that Directors can make an informed decision regarding rates. If actual dollar comparisons reveal information that could adversely impact ongoing negotiations, then percentage deviations between past year expenditures and proposed budgets could be used to illustrate the relative amount of change for each component of cost.

Review of the component costs of energy as a part of the budgeting process is essential because the cost of energy, in part or whole, is inextricably linked to its greenhouse gas (GHG) emissions intensity and its eligibility as a California-RPS energy source. **I strongly recommend that the EBCE Board request such energy component cost information from staff and consider it an essential part of the 2019-2020 rate setting and budgeting process for EBCE.**

The importance of more detailed and transparent information regarding the components of energy cost can best be understood by seeking answers to questions such as:

- What percentage of past year energy cost was for qualified California-RPS energy? What was the cost? What was the EBCE sales revenue for this energy? What was the margin?
- What percentage of past year energy cost was for carbon free energy (not RPS qualified)? What was the cost? What was the EBCE sales revenue for this energy? What was the margin?
- What was the past year margin for the EBCE Bright Choice product? How does the proposed margin for 2019-2020 change, and why?
- What was the past year margin for the EBCE Brilliant 100 product? How does the proposed margin for 2019-2020 change, and why?
- What was the past year margin for the Renewable 100 product? How does the proposed margin for 2019-2020 change, and why?
- etc.

2. Rates, Emissions, and Value Proposition

The value proposition and EBCE rates are referenced to and based on PG&E rates. The value position was presented to the Executive Committee on May 24, 2019 (see Staff Report Item 4 and the presentation slides 15 to 18). Contrary to the EBCE Board discussions and deliberation that occurred in 2018, when PG&E rates and emissions intensity served as a basis for EBCE rate setting and power mix decisions, the proposed rates and the presentation to the Executive Committee did not reference the latest PG&E power mix (or estimated emissions intensity). Instead, the currently proposed 2019-2020 rates are, by default, based on parity with PG&E emissions intensity of 2017.

The approved CPUC forecast of PG&E emissions intensity for 2019 (refer to Appendix A of the linked document: <https://pgera.azurewebsites.net/Regulation/ValidateDocAccess?docID=543405>) is 0.005 MT CO₂e/MWh (11 lbs CO₂e/MWh); the stated target for EBCE emissions intensity is 142 lbs CO₂e/MWh. Such a dramatic disparity between EBCE and PG&E emissions intensity must be considered during the rate setting process. **If PG&E emissions intensity is no longer relevant to EBCE power mix decisions and rate setting, the Board must establish a new benchmark along with a schedule for reductions of GHG emissions resulting from EBCE energy procurement decisions.**

3. Scenario analysis

A significant shortcoming of the proposed rates, emissions intensity, and resulting energy cost budget is the lack of staff presentations of possible scenarios. **The EBCE Board of Directors should request that staff prepare and present several different scenarios so that the Board has more information regarding the impacts of various possible decisions that affect rates, emissions, and budget.**

Possible scenarios include:

- Change the Bright Choice power mix to match the PG&E estimate of 11 lbs CO₂e/MWh.
- Increase the renewable percentages of both Bright Choice and Brilliant 100 to at least 50% while decreasing the emissions intensity of Bright Choice.
- Eliminate Bright Choice and make Brilliant 100 the default product that replaces Bright Choice. What is the revenue neutral discount (relative to PG&E) that can be given to Brilliant 100?
- Eliminate Bright Choice, increase the renewable percentage of Brilliant 100 to at least 50%, and make Brilliant 100 the default product that replaces Bright Choice.
- Others??

Without such scenario development and analysis it is impossible to understand how the Board can make informed decisions about emissions intensity, rates, and budget.

Thank you for the opportunity to provide these comments.

Sincerely,
Richard Rollins
1372 Rose Street
Berkeley, CA
925-250-5957



Staff Report Item 14

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: CEO Report (Informational Item)
DATE: June 19, 2019

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

East Bay Community Energy did not hold an executive committee meeting in March.

New Staff

Mike Susko

Alex DiGiorgio

Marketing and Outreach Update

Attached to this report is a presentation outlining key marketing and outreach activities.

Regulatory and Legislative Update

Attached to this report is a presentation outlining key regulatory and legislative activities.



Account Services and Marketing Update

PRESENTED BY: ANNIE HENDERSON

DATE: June 19, 2019



Enrollment

Enrollment Stats as of June 12, 2019

Accounts Enrolled	~544,000				
Actual Total Cost Savings to Date	\$5.762M				
Estimated Cost Savings for 2019	\$7.670M				
	<i>By Sector Count</i>	<i>By Overall Count</i>	<i>By Sector Load</i>	<i>By Overall Load</i>	
Overall Opt Out Rate	-	3.65%	-	3.49%	
Residential Opt Out Rate	3.78%	3.41%	4.15%	1.60%	
Commercial Opt Out Rate	2.40%	0.24%	3.08%	1.89%	

Account Services

- NEM Customers
 - Enrolling **second group** of NEM customers in June
 - Completing first “**Annual Cash-Out**”; processed checks and credits for annual surplus payments totaling ~\$20,000 for 2,500 customers
- **Special Note:** The Joint Rate Mailer is typically required to be mailed by July 1 each year. CPUC has approved an extension due to lack of certainty around rates. EBCE hopes to send out the Joint Rate Mailer in September or October.

Marketing

- RFP for Graphic and Web Design Services
 - Received ten (10) responses
 - Have selected a local firm and will bring the contract to the board in July
- Second Round of Market Research Started
 - Conducting another 200 intercept surveys, plus 50 phone surveys of customers who opted out
- Posted Understanding Your Bill video to website



Outreach

- Alameda County Fair
- Summer Events calendar
- First customer newsletter going out in June
- Collaborating on Public Safety Power Shutoff (PSPS) with County services and PG&E





Staff Report Item 16

TO: East Bay Community Energy Board of Directors

FROM: Melissa Brandt, Sr. Dir. of Public Policy and Deputy General Counsel

SUBJECT: Regulatory/Legislative update and Legislative Position on SB 155
(Action Item)

DATE: June 19, 2019

Recommendation

Staff recommends that EBCE take an “oppose unless amended” position on SB 155 (Bradford).

Background and Discussion

Senate Bill (SB) 155 (Bradford) details a few new requirements for CPUC action, a couple of which are not problematic. First, it requires the CPUC to notify load-serving entities (LSEs) and provide recommendations if they are at risk of non-compliance with RPS requirements. Second, the CPUC is required to enforce existing law that beginning in 2021 at least 65% of RPS procurement be from contracts of 10 years or more in duration.

More problematic is the requirement that the CPUC enforce LSE Integrated Resource Plans (IRPs), as this could be viewed as the CPUC making specific resource decisions and requiring non-IOU LSEs to procure specific resources, versus the higher-level planning document the IRP was intended to be. Instead of merely ensuring that LSE plans sum up to enabling the state to meet its goals, this new language could be relied on to give CPUC enforcement rights to ensure that an LSE procure exactly what has been laid out in its IRP. This would reduce a CCA’s flexibility and autonomy, which risks increasing the CCA’s procurement costs while potentially affecting a CCA’s programmatic goals and/or other alternatives to procurement.

It is the author’s intent to make more explicit the CPUC’s existing authority to enforce the IRP. Legislators are looking for a way to ensure more state control over non-IOU LSE decision-making and trying to ensure that the CPUC has more enforceability over non-IOU LSEs. EBCE staff recommend seeking amendments to the language in Sec. 454.54 that provide clarity around what CPUC is enforcing, so that it is clear that IRPs are not procurement plans.

SB 155 passed out of the Senate and will next be heard in the Assembly Utilities and Energy Committee on June 26.

Fiscal Impact

None.

Attachment(s):

None.



Regulatory/Legislative Update

June 19, 2019



Bill Tracker - Asm

Bill No	Author	Summary	Second House Cmte Status	EBCE Position	Notes
AB 56	E. Garcia	Statewide central electricity procurement entity	Pending cmte referral	OPPOSE UNLESS AMENDED	Sent amendments to author. Oppose coalition letter sent.
AB 868	Bigelow	Requires IOUs that deenergize to consult with those likely affected in developing notice and action protocols	NONE; HELD ON SUSPENSE IN ASM	SUPPORT	Bill not moving forward.
AB 1362	O'Donnell	Requires the CPUC to establish a centralized clearinghouse of residential electric rate tariffs and programs to enable customers and local governments to compare rates, services, environmental attributes, etc.	Pending cmte referral	MOVE TO NEUTRAL	Bill was amended to address CCA concerns

Bill Tracker - Sen

Bill No.	Author	Summary	Second House Cmte Status	EBCE Position	Notes
SB 49	Skinner	Requires EE standards also reduce the emissions of GHG associated with wasteful, uneconomic, inefficient, or unnecessary energy consumption.	Asm Energy hearing 6/26	SUPPORT	<i>Support letter sent 4/3</i>
SB 155	Bradford	Requires CPUC to enforce IRPs as procurement plans	Asm Energy hearing 6/26		Recommend oppose unless amended
SB 167	Dodd	Requires PUC to include impacts on medical baseline customers of IOU wildfire mitigation plans	Referred to Asm Energy Cmte, no date set	SUPPORT	
SB 255	Bradford	Expands CPUC supplier diversity program to CCAs, ESPs, wholesale electric generators	Pending cmte referral	SUPPORT	
SB 350	Hertzberg	Authorizes PUC to consider multiyear centralized RA mechanism	Asm Energy hearing 7/3	WATCH	Awaiting more info from Sen Hertzberg
SB 520	Hertzberg	Provides that IOUs are POLR unless provided otherwise in an agreement approved by the CPUC	Referred to Asm Energy Cmte, no date set	OPPOSE UNLESS AMENDED	Proposed amendments would allow CCAs to be the primary energy provider and default POLR

Major Ongoing Regulatory Proceedings

PCIA/PG&E generation rate update

- 2019 rates adopted; will go into effect 7/1
- New PCIA rate methodology to go into effect next year

Integrated Resources Plan

- Next steps

Resource Adequacy

- Track 2: Central Buyer
- Track 3: Sales Framework, Forecasts

Direct Access Reopening in response to SB 237

- Decision on reopening issued 6/3;
 - 3% of EBCE load likely to depart in 2021 based on 2018 lottery
 - new lottery will be run in 2019 for departure in 2022
- Recommendations on further reopening later this year/early next

Renewables Portfolio Standard Procurement Plan

- Annual Plan due June 21

Revised PCIA and PG&E Generation Rate

- PG&E's new 2019 PCIA and generation rates approved on 6/10
- Rate change effective 7/1
- Overall, versus 2018 rates:
 - Increase in PG&E's average gen rate for bundled customers more than offsets PCIA increases
 - PCIA *drops* for residential and ag but is up from 9% (small commercial) to 75% (streetlights; which are still the lowest PCIA in absolute terms)

Integrated Resources Planning (IRP)

- Decision issued 5/1
 - Opens a “procurement track”
 - Focus is on 1) backstop procurement when an LSE fails to secure appropriate resources or meet commitments and 2) procurement that may require collective action by multiple LSEs
 - Should begin to identify more precisely where additional investments are needed
- To have its IRP certified, EBCE filed supplemental NO_x and PM emissions estimates on 6/14.
- EBCE is leading an effort to conduct a joint CCA IRP for the 2019-2020 planning cycle

Resource Adequacy (RA)

- Track II: Central Buyer
 - Workshops held to discuss central buyer models
 - CalCCA has developed a more detailed residual proposal
 - PD expected Q4
- Track III: Misc
 - Proposed Decision expected to be voted on 6/27
 - Adopts proposal for valuing RA for wind and solar supply-side resources
 - Changes to forecasting process should prevent last-minute adjustments to requirements

Direct Access Reopening

- SB 237 (2018, Hertzberg) mandated that the CPUC:
 - Allocate an additional 4,000 GWh for Direct Access transactions
 - Allocation by IOU service territory
 - 2-year roll-out; 2,000 GWh statewide in each of 2021 and 2022
- Based on the current DA waitlist, ~3% of EBCE load could be eligible to choose Direct Access, departing 2021
- The waitlist has not been developed for 2022

Renewables Portfolio Standard Procurement Plan

- RPS Procurement Plans filed annually w CPUC
 - Describes EBCE's progress towards meeting annual RPS targets, and need for additional RPS-eligible resources through 2030
 - In 2019, EBCE expects to achieve >38% RPS, compared to a statewide requirement of 31%.
- Ruling issued April 2019 requires new information from CCAs
 - Information on RPS costs, EBCE's plans to address future reliability needs, information on bid selection protocols
- Increasing overlap with IRP proceeding



Staff Report Item 15

TO: East Bay Community Energy Board of Directors
FROM: JP Ross
SUBJECT: Community Innovation Grant Awards (Action Item)
DATE: June 19, 2019

Recommendation

Approve the recommendation to award six \$40,000 grants for a total of \$240,000 in Community Innovation Grants

Background and Discussion

The Local Development Business Plan identified the opportunity for EBCE to create a Community Investment Fund as a multi-faceted grant program to accelerate innovative products, services or programs.

The 2019 Community Innovation Grants are for non-profit and community-based organizations to develop projects designed to deliver energy-related social and environmental benefits to residents of Alameda County. 501(c)(3) non-profit and community-based organizations could apply for awards up to \$40,000 each. While applicants were not required to have offices located within EBCE's service territory, applications were evaluated based on local contributions and benefits. Projects were evaluated on alignment with EBCE's goals and mission.

The grant solicitation was issued on April 15. EBCE hosted a webinar on April 23 and applications were due by May 10. EBCE received twenty-six applications.

Applications were evaluated by a three-person review team comprised of one Board member, one Community Advisory Committee member and one staff member. Applications were evaluated in a three-part process:

- 1) 3 applications were selected at random for review and discussion by the review team to normalize our scoring criteria and build a consistent view of each individual's scoring rationale
- 2) The remaining applications were evenly split among the team for individual review
- 3) The top 10 applications were then reviewed by the whole review team and the winning projects were selected

The scoring criteria used is shown in the Table below.

Objectives and Scoring

Criteria	Definition(s)	Weight
Primary Project Objectives (meets all two)		70%
Community Benefits	Delivers local energy-related benefits to targeted communities (e.g. low-income, disadvantaged, EJ, and/or hard-to-reach groups) in areas such as job creation, workforce development, economic empowerment, and climate and social resilience.	50%
Innovation and Collaboration	New, community collaborative approaches to eliminating or reducing energy-related environmental or economic community impacts.	20%
Secondary Project Objectives (meets two of the following four)		30%
Local, Clean Energy Projects	Proposes plans to identify or develop local renewable energy, energy efficiency or fuel switching in Alameda County that increases community access to or ownership of clean energy.	15%
Community Health	Reduces GHG, local criteria pollutants or energy bills in communities demonstrating an impact on local community health and quality of life.	15%
Scalability	Is able to be expanded across other EBCE communities and beyond.	15%
Increase Energy Literacy	Proposes plans to increase participation and public understanding of energy concepts and programs.	15%
Project Requirements (must meet both)		
Project Feasibility	Project includes staffing capability. Organization showcases applicable skills to carry project. Budget is less than or equal to \$40,000 and reasonable for project scope.	
Local Impact	Project includes key performance indicators (KPIs) that are identifiable, measurable, enduring, and local to EBCE’s communities.	

The original budget for the 2019 Community Innovation Grants was \$160k with the intent of funding 4 projects. However, the Community Advisory Committee recommended funding additional projects at the June 3 CAC meeting. EBCE staff agreed with the proposal. The review committee then agreed to award 2 additional grants in this cycle and is proposing 6 projects for the Board to Approve.

Proposed Awardees

The following organizations and grants were selected by the team for awards:

West Oakland Environmental Indicators Project - *West Oakland Renewable Power*

- Project will demonstrate a model for developing large scale community solar deployments. With the Port of Oakland as a test site it will demonstrate a model for partnership between local communities and commercial property owners/developers to deliver profits from energy sales to income qualified residents.

Ecology Action - *Innovation in Electric Vehicle Charging for Affordable, DAC and Market Rate Multi-Unit Dwellings.*

- Design a scalable multi-unit dwelling (MUD) EV charging program delivery model for low- and moderate-income residents within EBCE. This is a proof of concept initiative that will result in a fully-tested and vetted program design that will be ready to be implemented by EBCE within one year.

Rising Sun Center for Opportunity - *Climate Careers: Launching Green Jobs and Delivering Community Energy Savings*

- Workforce training program to hire 26 Alameda County youth from low-income households or other disadvantaging circumstances to conduct no-cost Green House Calls (GHCs) in up to 950 hard-to-reach Alameda County households.

People Power Solar Cooperative - *Community-Owned Solar Project*

- People Power Solar Cooperative will organize its second community-owned solar project to provide a critical model for community investment and ownership of renewable energy in California and other states that lack shared solar laws.

Community Impact LAB - *Community Energy Conservation Initiative (CECI)*

- The 10-month initiative will empower and educate Alameda County families and businesses to tackle climate change through energy conservation and literacy. The project includes two conservation challenges which utilize technology to audit and reduce usage, a Clean Energy Mini-Conference and Business/Career Fair, a three-part workshop series and an online educational campaign.

Re-Volv - *Empowering East Bay Communities through Solar*

- Using a unique community-empowerment model, RE-volv will bring solar installations to at least four East Bay nonprofits that serve underserved communities while raising awareness about the benefits of clean energy, and creating dramatic electricity bill savings to benefit the community.

Fiscal Impact

The awards will require \$240k in funding from the FY'19 LDBP Budget.

Attachments



Staff Report Item 18

TO: East Bay Community Energy Board of Directors

FROM: Annie Henderson, VP Marketing and Account Services

SUBJECT: PG&E Time-Of-Use Rate Transition (Action Item)

DATE: June 19, 2019

Recommendation

Receive report on planned PG&E Time-of-Use (TOU) rate transition, and approve resolution for EBCE participation in a transition of residential and non-residential customers to a default TOU rate in concert with the efforts of PG&E.

Background and Discussion

Regulatory Background

In July 2015, California Public Utilities Commission (CPUC) decision ([D.\)15.07-001](#)) provided direction to the investor-owned utilities (IOUs) regarding specific steps that must be taken to reform the residential rate structure resulting in default time-of-use (TOU) rate for residential customers. A primary driver for the transition to a TOU rate is to maximize use of power when renewable energy generation is high and minimize use of power when the grid relies on fossil-fuel generation. PG&E estimates a savings of up to 10,000 tons of CO2 per year across PG&E territory due to load shifting associated with the new TOU rate.

Specific requirements of the decision include:

- Transition to TOU is optional (customer can decline default rate)
- There is to be a “mild differential” between on-peak and off-peak rates
- IOUs must offer one year of bill protection¹
- There must be education and outreach to customers
- Certain customer groups will be excluded from the default transition, including but not limited to:

¹ The decision describes Bill Protection as “If, at the end of the year, a customer would have been better off on the previous rate plan, the customer will be credited the difference on their bill.”

- Customers on the medical baseline allowance program
- Customers requiring third party notification and/or in-person visit prior to disconnection
- Customers that do not have a Smart Meter or interval meter, or less than 12 months of interval data
- Customers enrolled in or eligible for CARE/FERA discount programs and located within hot climate zones (<100 customers in Alameda County)
- Customers already on an optional TOU rate (NEM2.0, E6, EVA/B not eligible)

Community choice energy programs, such as East Bay Community Energy (EBCE), are not required to default customers onto a TOU rate. However, all IOUs, including Pacific Gas & Electric (PG&E), are required to transition customers to a TOU rate. TOU transition applies to both residential and non-residential customers. Non-residential (commercial and industrial) customers are scheduled for rate transition in November 2020 and are not offered bill protection. Residential customers are proposed to transition to TOU rates in May 2021 in Alameda County. PG&E will offer bill protection for its bundled residential customers.

The information provided in this report focuses on the residential rate transition. However, the resolution requests approval for both residential and non-residential participation in the TOU transition.

The current proposed structure of the residential TOU rate is for peak hours (highest cost) between 4 PM and 9 PM every day, including weekends. The [PG&E rate](#) is currently called “Time-of-Use (Peak Pricing 4-9 P.M. Everyday)”. As of early June, there are approximately 2,000 residential customers that voluntarily switched to this TOU rate and are served by EBCE.

Initial Pilots and Default Roll-Out

PG&E conducted pilots in the last few years:

- Phase 1 - Voluntary Opt-In Pilot (2016/2017)
- Phase 2 - Default Pilot (began April 2018)
- Phase 3 - Default Roll-Out (begins October 2020)

Phase 2 wrapped up in April 2019 and analysis of the impacts show an average 4.2% reduction in load per hour per customer with some load shifting but overall load conservation. Phase 2 included customers from three Community Choice Aggregators (CCA): MCE Clean Energy, Sonoma Clean Power (SCP), and Silicon Valley Clean Energy (SVCE). Below are the participation results of the Phase 2 default pilot enrollment.

	PG&E + CCAs		MCE		SCP		SVCE	
Initial Population	160,525	100%	9,921	100%	8,158	100%	8,509	100%

Ineligible	7,540	4.70%	460	4.6%	408	5.0%	366	4.3%
Declined	38,996	24.29%	1,913	19.3%	1,574	19.3%	1,702	20.0%
Transitioned	113,991	71.01%	7,548	76.1%	6,176	75.7%	6,441	75.7%

The goals of the Phase 2 pilot were to test customer messaging, customer notification timing and process, customer enrollment, impacts of bill protection, and overall impact on electricity load.

Marketing, Education, and Outreach

The CPUC has aggregated funds from IOU customers to support an \$8.5M statewide marketing, education, and outreach campaign. The statewide campaign includes two chapters. The first chapter is referred to as the “vision” campaign and provides the context for why a customer should care about when they use electricity. The second chapter is a call to action that includes ideas and tips on how to shift energy usage. The statewide campaign includes multiple channels of paid advertising, public relations and outreach, and engagement with Community Based Organizations (CBOs).

Both the vision and call to action chapters of the campaign are underway now in San Diego Gas & Electric (SDG&E) territory. The vision chapter of the campaign began in March 2019 in PG&E territory. The vision campaign slogan is “[Keep It Golden](#)”. Though the vision chapter does not have a strong call to action, it does direct viewers to the Energy Upgrade California website. There is a [section](#) of the website dedicated to educating customers on when there is the greatest demand for power versus when there is the greatest output from renewable energy resources. The site identifies the period of 4 PM to 9 PM as peak usage hours with the lowest amount of renewable energy available, which is in alignment with the IOUs’ TOU rate structure with peak hours from 4 PM to 9 PM every day.

EBCE customers are already being exposed to the statewide vision campaign.

In addition to the statewide campaign, each IOU will have a marketing campaign in its territory. Customer communications will provide personalized bill impact information to all default eligible customers, rate choices, bill impact information, and tips and tools on ways to save. Customers will receive notifications 90, 60, and 30 days prior to transition, and a welcome packet following transition to the new TOU rate. PG&E’s campaign will begin in October 2020 and run through June 2021.

Fiscal Impact

A default transition of residential customers onto a TOU rate structure has a fiscal impact on EBCE in two ways: 1) cost of bill protection, and 2) reduced revenue.

Customers that receive the bill protection benefit are those that received higher bills on the new TOU rate compared to the previous flat, E1 rate. Some of these customers, the “rate losers,” will select to return to the E1 rate after 12 months on the TOU rate, while others may shift the time of day that they use electricity. Those that do not need bill protection are paying the same, or less, on TOU than they were on the E1 rate. These customers are “rate benefiteres;” they do not need to make any changes to their usage patterns to benefit from the TOU rate. We assume the majority of these customers will remain with TOU and continue to, effectively, pay less for the same amount of electricity over 12 months.

Both PG&E and EBCE have analyzed the potential financial impact and came to very similar conclusions. Below are the assumptions and results:

Assumptions

- ~355,000 eligible EBCE residential customers (as of February 2019)
- All eligible customers participate in transition
- Certain customers are excluded including medical baseline, customers without interval data, and customers already on a TOU rate
- PG&E and EBCE rates as of 1/1/19
- 2018 usage
- Full 12 months of bill protection for each customer
- Customers do not take any action to shift their energy use to other time periods

Results

- Total generation revenue from customers on TOU 4-9 PM Everyday - \$107M
- Cost of Bill Protection - \$300,000
 - Number of customers that pay more on TOU (“rate losers”) - 25,000
- Reduction in Revenue - \$4.8M (4.3% reduction from tiered rate revenue)
 - Number of customers that pay less on TOU (“rate benefiteres”) - 330,000

Additional Considerations

Backend Support

EBCE’s backend system already supports this rate structure. However, the system will need to be updated to switch several hundred thousand customers to a new rate in a single month, implement updates when customers decline the new TOU rate, track the duration of bill protection per customer, and calculate and report the amount of bill protection per customer. Additionally, our call center representatives will need to be trained on this transition and we should anticipate that call volume and duration will increase.

Constraints

PG&E developed an online bill protection calculator and a rate comparison tool to inform customers about the potential financial impact of this rate transition. These tools are presented with the PG&E generation rate as a proxy for EBCE (and other CCA) rates. Due to our current modest discount, this is not a substantial constraint; however, it could further

increase customer confusion. Additionally, EBCE will continue to rely on PG&E for rate information about each customer. This means that a customer must call PG&E to decline the rate transition, and PG&E must pass this information along to EBCE for the correct rate to be applied to the customer’s bill.

Outreach

EBCE’s initial analysis assumes about 25,000 residential customers could pay more on a TOU rate structure assuming no changes in behavior. Targeted marketing and outreach campaigns to this identified population could help to inform and influence behavior to reduce usage and therefore avoid increases to the customer’s bill.

Comparison of Potential Options

		1	2	3	4
		TOU 4-9 + Bill Protection	TOU 4-9, No Bill Protection	Different TOU structure + Bill Protection	No TOU Default
Cost	Avoid pay-out of estimated \$300,000	X	✓	X	✓
	Customers save money by reducing during peak hours	✓	✓	✓	X
Environment	Incentives customers to shift use to when more renewable energy is in power mix	✓	✓	✓	X
Marketing	Consistent message, leverages statewide and PG&E campaigns	✓	X	X	X
Customer Experience	No advantage to switch to PG&E	✓	X	✓	X
	Clear message about when to shift use	✓	✓	X	X
Load	Hours match Alameda County peak	X	X	✓	X
Operations	Systems can currently support	✓ *	✓	X	✓

**Current system will need to be updated to support current aspects of bill protection*

Timeline

Date	Event
January 2019	CPUC hearings
March-April 2019	Briefings filed in CPUC proceedings
March 2019	Default transition begins in SDG&E territory
March 2019	Statewide “vision” marketing campaign begins in PG&E territory

June 2019	CPUC proposed decision
July 2019	CPUC final decision
August 2019	EBCE must approve versions of customer notification
October 2019	PG&E requests EBCE final decision
April 2020	PG&E sets TOU as default rate for new residential customers
October 2020	PG&E call to action marketing campaign begins
November 2020	TOU rate transition for non-residential customers
May 2021	Proposed EBCE TOU rate transition for residential customers
October 2021	Last new residential customer eligible for bill protection
October 2022	Last payout of bill protection

Staff Recommendation

EBCE staff recommends that the EBCE board approves the attached resolution to participate in the transition of EBCE residential customers to the new TOU rate in May 2021 and the transition of EBCE non-residential customers in November 2020, in concert with the PG&E transition. This recommendation is based on agreement with the need to shift usage to times when more renewable energy is available, and the potential for significant customer confusion if EBCE rates do not align with the structure promoted by the statewide and local IOU marketing campaigns.

This item is coming to the board at this time in order to support early alignment with the statewide marketing campaign, better coordination and collaboration with PG&E in drafting joint notifications, and sufficient time to develop EBCE supporting assets such as web pages, collateral, targeted outreach, and call center support.

RESOLUTION NO. ____
A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE EAST BAY COMMUNITY ENERGY AUTHORITY TO
APPROVE PARTICIPATION IN THE DEFAULT TIME-OF-USE RATE TRANSITION

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 (“EBCE”) was formed on December 1, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy and energy-related climate change programs in all of the member jurisdictions.

Section 2. Pacific Gas & Electric (PG&E) is required by the California Public Utilities Commission (CPUC) to transition residential and non-residential customers onto a time-of-use rate. The CPUC mandates PG&E to offer bill protection for one year to residential customers.

Section 3. As part of the mandated transition there will be robust statewide and local marketing, outreach, and education campaigns to encourage customers to reduce their use of electricity between the hours of 4 PM and 9 PM.

Section 4. EBCE supports the use of energy during times when renewable energy assets are generating electricity and encourages the reduction of use at times when there are more greenhouse gas emissions associated with the power on the grid. EBCE wishes to reduce customer confusion and supports a financially neutral transition to the new time-of-use rate.

Section 5. Based on the foregoing, the Board hereby approves the participation of non-residential and residential EBCE customers in a transition to a default time-of-use rate in concert with the efforts of PG&E, including mirroring the peak hours of 4 PM to 9 PM every day of the week and offering bill protection to residential customers for one year.

ADOPTED AND APPROVED this 19th day of June 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Time-of-Use Rate Transition

PRESENTED BY: ANNIE HENDERSON

DATE: JUNE 19, 2019



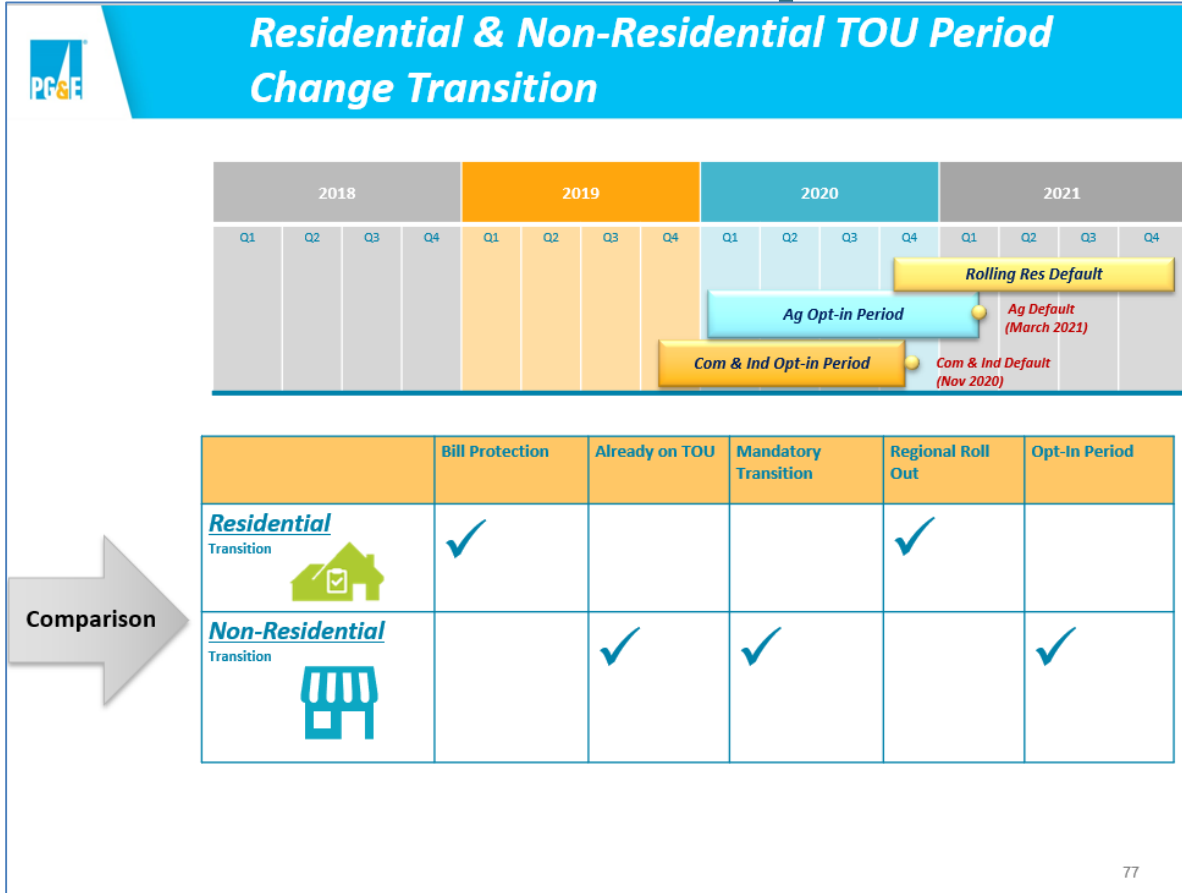
Comparison of Potential Options

		1	2	3	4
		TOU 4-9 + Bill Protection	TOU 4-9, No Bill Protection	Different TOU structure + Bill Protection	No TOU Default
Cost	Avoid pay-out of estimated \$300,000	X	✓	X	✓
	Customers save money by reducing during peak hours	✓	✓	✓	X
Environment	Incentives customers to shift use to when more renewable energy is in power mix	✓	✓	✓	X
Marketing	Consistent message, leverages statewide and PG&E campaigns	✓	X	X	X
Customer Experience	No advantage to switch to PG&E	✓	X	✓	X
	Clear message about when to shift use	✓	✓	X	X
Load	Hours match Alameda County peak	X	X	✓	X
Operations	Systems can currently support	✓ *	✓	X	✓

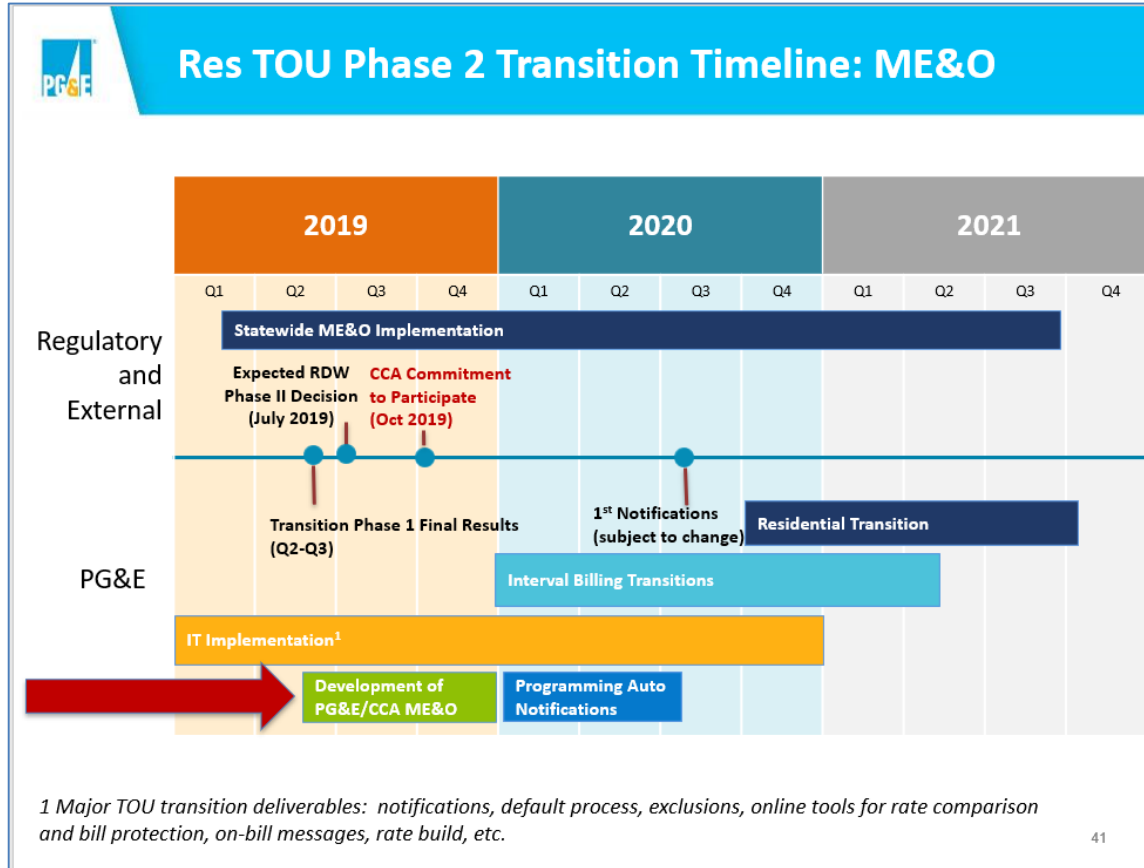
BACKGROUND



PG&E Timeline and Components



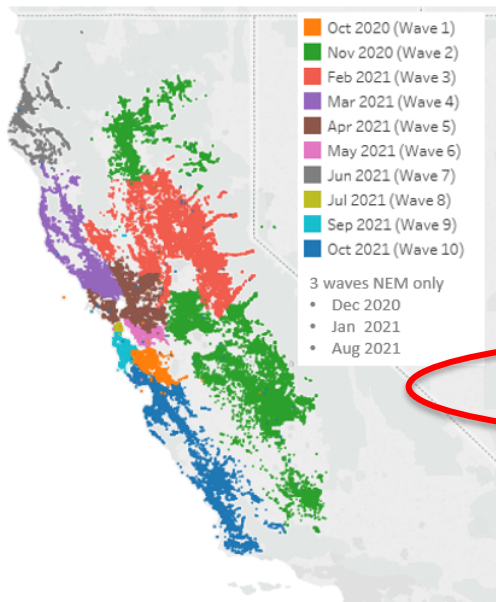
PG&E Timeline



Residential Transition



Residential TOU Full Rollout Plan (13 month rollout)



Counties	Service Provider Territory Included	Totals
Oct 2020 (Wave 1)		
		394,836
Santa Clara	San Jose Clean Energy (SJCE)	227,998
	Silicon Valley Clean Energy (SVCE)	166,838
Nov 2020 (Wave 2)		
Fresno, San Joaquin, Kern, Tuolumne, Shasta, Madera, Merced, Tehama, Plumas, Stanislaus, Mariposa, Kings, Tulare, Lassen		200,876
PG&E Bundled		200,876
Feb 2021 (Wave 3)		
		181,459
Placer, El Dorado, Yolo, Butte, Nevada, Calaveras, Lake, Amador, Sutter, Yuba, Glenn, Colusa, Sacramento, Sierra, Alpine	PG&E Bundled	118,183
	Pioneer Community Energy (PIO)	43,125
	Valley Clean Energy (VCE)	20,151
Mar 2021 (Wave 4)		
Sonoma, Mendocino		136,031
Sonoma Clean Power		136,031
Apr 2021 (Wave 5)		
		409,382
Contra Costa, Solano, Marin, Napa	MCE	307,341
	PG&E Bundled	102,041
May 2021 (Wave 6)		
		398,624
Alameda	East Bay Community Energy (EBCE)	369,913
	PG&E Bundled	28,711
Jun 2021 (Wave 7)		
		38,695
Humboldt, Trinity, Siskiyou	Redwood Coast Energy Authority (RCEA)	37,842
	PG&E Bundled	853
Jul 2021 (Wave 8)		
		261,529
San Francisco	CleanPowerSF (CPSF)	261,529
Sep 2021 (Wave 9)		
		200,182
San Mateo	Peninsula Clean Energy (PCE)	200,182
Oct 2021 (Wave 10)		
		262,936
Monterey, Santa Cruz, San Luis Obispo, Santa Barbara, San Benito	Monterey Bay Community Power (MBCP)	169,088
	PG&E Bundled	91,578
	King City Community Power	2,270

Note: Customer counts are approximate and reflect PG&E's proposed exclusion criteria. Also, assuming NEM customers transition on their true-up date, each wave would have an additional ~10K NEM customers. This table assumes all customers within each CCA territory are enrolled with the CCA service provider.

Pilot Results



Summary

- Statistically and materially significant load reductions seen across all segments during Peak Hours 4-9 PM. Average load reduction is 4.2%/hr/cust
 - Eight segments analyzed (5 PG&E, 2 CCA, 1 NEM)
 - Load Impacts assessed for the first Summer on new rate (Jun through Sep)
 - Peak Load Impacts assessed using standard Demand Response protocol models
- Load Conservation behavior among most segments.
 - Although there is load shifting behavior seen in off-peak hours, story in almost all segments is load conservation (any off-peak hour load shift/increase is offset by peak period reduction gains)
 - For some segments, off-peak usage increase is limited to few hours, while in other cases it is across all off-peak hours
- Impacts smaller than the Opt-In pilot for most segments (and lower than self-enrollments to TOU rates)
- Across all segments
 - Hotter climate regions are associated with higher load impacts
 - Within a climate, CARE customers have lower impacts than non-CARE customers
- The two participating CCA's (+90% moderate) showed reductions similar to PG&E moderate zones

Examples of Statewide Marketing

DDB

TOU STRATEGIC APPROACH

Give Californians context and a reason to care about TOU in order to move them from apathy to meaningful, long-term action.

- Evoke personal connection to the future of CA
- Ensure that everyone understands they need to change behavior to protect CA
- Illuminate that the time you use matters and raise awareness of 4-9PM* peak time

Chapter 1: The Launch Idea Statewide Energy Vision | “The Why”



Chapter 1 “The Why”

Provide the context and inspire customers about “why” the change is needed. A Statewide vision will prime consumer for the TOU conversation by introducing a new understanding of “using energy better.” Ideally, 12 months prior to the transition.

Opportunity – 12 month prior to transition

- Build a strong sense of pride and responsibility to use energy wisely
- Deliver a positive message about protecting our state
- Recognize our individual and social responsibility

Complete

Chapter 2: Behavior Change Idea In Development Peak Shifting | “The How”



Chapter 2 “The How”

Encourage customers to rally and take action. Peak shifting will reinforce the need to use energy differently. Behavioral elements will demonstrate how to “use energy better.” Strategically timed in alignment with when customers are likely to notice an impact in their bill and are most likely to make behavior changes.

Opportunity – 5 months timed around when customers will mostly make changes

- Demonstrate when and how Californians can shift their energy use in a crystal clear way
- Telegraph our message in a memorable way that drives an intent to act

Energy Upgrade California

TOU ME&O Overview

* San Diego Market Only. Other territories are exploring various time frames (4-8, 5-8, etc)

Image from EnergyUpgradeCA.org

When To Use Energy

By making a few small changes to your routine you can help create a big change for California. It's as simple as shifting when you use energy.

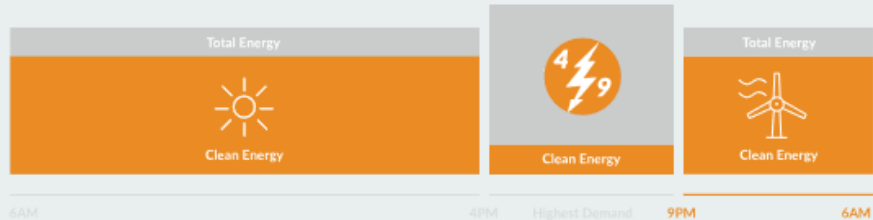
6AM – 4PM

4PM – 9PM

9PM – 6AM

Total Energy Usage and Availability of Clean Energy







At night as we go to bed, our energy use decreases, just as California's clean energy produced from wind farms become available.









Outreach Metrics for PG&E

EUC TOU COMMUNITY OUTREACH METRICS – BY TERRITORY









-  17 events
-  640 doors knocked
-  4,080 texts
-  13,649 phone calls
-  24,789 emails
-  5,000 pieces of collateral distributed



-  147 events
-  152 doors knocked
-  13 texts
-  140 phone calls
-  9,548 emails
-  25,000 pieces of collateral distributed



-  188 events
-  3,228 doors knocked
-  50 texts
-  225 phone calls
-  348,403 emails
-  32,000 pieces of collateral distributed

EUC Program Update

CBO Partners for PG&E

PG&E Territory – UPCOMING EUC TOU COMMUNITY OUTREACH



ASE will be reaching out to school districts in Northern California in preparation for launching the TOU program in the Fall 2019 semester.



The CCB's Annual Conference and Convention is set to take place from June 4-9, 2019 in Fresno, CA.

CCB plans to hold a TOU panel on Friday June 7th, and is coordinating with PG&E to feature an IOU representative.



The American GI Forum is slated to conduct a veteran-specific outreach campaign around the 4th of July.



Staff Report Item 19

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer
SUBJECT: Salka and EDPR Contract Approvals (Action Item)
DATE: June 19, 2019

Recommendation

Approve two resolutions authorizing the CEO to execute a 20-year Power Purchase Agreement based on a 57.5Mwac local Alameda County Wind Project (“Alameda Wind PPA”) with Salka as the developer and a 20-year Power Purchase Agreement based on a 100MW solar PV + 30MW storage Project located in Fresno County (“Solar+Storage PPA”) with EDPR as the developer.

The Alameda Wind PPA is expected to begin to deliver all associated output, which includes energy, RECs, and RA in Dec 2020 for a period of 20 years and the Solar+Storage PPA is expected to begin to deliver all associated output in Dec 2022 for a period of 20 years. Both counterparties were awarded as part of a competitive solicitation, deemed the CA Renewable Energy RFP. We anticipate bringing forward additional projects for approval from this RFP in the future.

Background

The CA Renewable Energy RFP is EBCE’s first long-term renewable energy contract solicitation that was launched in June 2018. The RFP sought several hundred MWs of contracts with renewable energy projects located in CA with a minimum of 20MWs located in Alameda County. EBCE’s objective was to drive investments in new renewable energy projects in Alameda and CA, while securing affordable resources to manage future power price risk. EBCE received a very healthy response to its first RFP both in volume and quality of projects and proposals. EBCE worked with Edison Energy to administer the RFP and complete robust analytics to determine the optimal portfolio to meet its objectives. These contracts represent the second round of PPAs that are coming to the board for approval and are the first wind and solar+storage contracts to be brought forward. Staff anticipates bringing over 300MWs of additional renewable energy projects to the board for further approval in the July board meeting. These two contracts are structured as pnode settled projects.

The Alameda Wind PPA is nearly three times the minimum local Alameda County target of 20MWs that EBCE had established in the RFP. Salka, a San Diego-based company, is the project developer and CastleLake, a Minneapolis-based Private Equity Firm, is the project

owner of the 57.5Mwac wind project, which has a 56.2MW interconnection capacity. The contracting entity is Altamont Winds LLC.

The Solar+Storage PPA is a 100Mwac solar PV project with a 30MW in front of the meter battery storage unit. It is being developed by EDP Renewables North America, the North American Renewables division of Energias de Portugal, an Electric Utility based in Portugal. EDPR is the world's 4th largest wind energy developer. It is located in the Fresno sub-local PG&E area for Resource Adequacy, which EBCE has an obligation to fulfill. Although it is located outside of Alameda County, EDPR has agreed to invest directly into Alameda County and contribute significant funds toward community investment. This is EBCE's first Solar+Storage contract and there are very limited examples of these projects that are currently in operations. EBCE is partnering closely with EDPR to properly configure the system to optimize the RA value and for our usage to shift the generation profile. The contracting entity is EDPR CA Solar Park VI LLC.

Conclusion

These projects reflect EBCE's commitment to creating new renewable energy projects in CA and Alameda County. The projects will help EBCE manage its energy procurement risk, increase clean energy in CA, and create local jobs.

Attachment(s):

- A. EBCE - Reso Approving EDPR CA Solar+Storage Agreement
- B. EBCE - Reso Approving Altamont Winds Agreement
- C. EBCE_LT RFO_Wind PPA_Salka_6-12-19_Redacted
- D. EBCE_LT RFO_Solar + Storage PPA_EDPR_6.13.19_Redacted
- E. CA Renewable Energy RFP board presentation_6.19.19

RESOLUTION EBCE R-2019-

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING
EDP RENEWABLES CA SOLAR AND STORAGE AGREEMENT**

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

WHEREAS, the EBCE issued the California Renewable Energy RFP in June 2018; and

WHEREAS, EDPR CA Solar Park VI LLC, an entity associated with EDP Renewables North America, proposed a 100Mwac solar PV plus storage project in Fresno county; and

WHEREAS, the project is expected to be operational on 12/31/2022.

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

SECTION 1. The material terms of the Agreement by and between EDPR CA Solar Park VI LLC and East Bay Community Energy Authority attached as Exhibit A are hereby approved.

SECTION 2. The CEO is hereby authorized to execute the Agreement in substantially the form attached, with any clarifying or clerical changes proposed by the CEO and approved by General Counsel.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

RESOLUTION EBCE R-2019

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY APPROVING AN
ALAMEDA COUNTY WIND POWER PURCHASE
AGREEMENT WITH ALTAMONT WINDS LLC**

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

WHEREAS, the EBCE issued the California Renewable Energy RFP in June 2018; and

WHEREAS, Salka, together with Castlake proposed the Alameda Wind PPA, a 57.5 MWac generating capacity project located in Alameda County; and

WHEREAS, the project is expected to be operational on 12/30/2020.

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

SECTION 1. The material terms of the Agreement by and between Altamont Winds LLC and East Bay Community Energy Authority attached as Exhibit A are hereby approved.

SECTION 2. The CEO is hereby authorized to execute the Agreement in substantially the form attached, with any clarifying or clerical changes proposed by the CEO and approved by General Counsel.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board

CONFIDENTIAL

Final

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Altamont Winds LLC

Buyer: East Bay Community Energy Authority, a California joint powers authority

Description of Facility: A wind project located in Alameda County, CA with generating capacity of 57.5 MW (AC) limited to delivery capacity of 56.2 MW by interconnection agreements

Milestones:

Milestone	Date for Completion
Evidence of Site Control	■
CEC Pre-Certification Obtained	■■■■
Financing Milestone	■■■■
Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input type="checkbox"/> EIR	■■■■
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	■ ■
Executed Interconnection Agreement	■■■■■■■■ ■■■■■■■■
Financial Close	■■■■
Expected Construction Start Date	■■■■
Full Capacity Deliverability Status Obtained	■■■■
Initial Synchronization	■■■■
Network Upgrades completed	NA

Milestone	Date for Completion
Expected Commercial Operation Date	12/31/20

Delivery Term: The period for Product delivery will be for twenty (20) Contract Years.

Expected Energy¹:

Contract Year	Expected Energy (MWh)
1	██████
2	██████
3	██████
4	██████
5	██████
6	██████
7	██████
8	██████
9	██████
10	██████
11	██████
12	██████
13	██████
14	██████
15	██████
16	██████
17	██████

¹ Expected Energy may be revised, pending receipt of a final Independent Engineer yield assessment, no later than August 30, 2019; in no event, shall the revision of the Expected Energy exceed two percent (2%) either upward or downward.

Contract Year	Expected Energy (MWh)
18	[REDACTED]
19	[REDACTED]
20	[REDACTED]

Guaranteed Capacity: 56.2 (AC) MW

Contract Price:

The Contract Price of the Product shall be [REDACTED]
[REDACTED]

Product:

- Energy
 - Green Attributes (Portfolio Content Category 1)
 - Capacity Attributes (select options below as applicable)
 - Energy Only Status
 - Full Capacity Deliverability Status and Expected FCDS Date:
 - Ancillary Services (As Available)

Scheduling Coordinator: Buyer/Buyer Third Party

Security, Damage Payment, and Guarantor

Development Security: [REDACTED]

Performance Security: [REDACTED]

Damage Payment: See definition of “Damage Payment”

Guarantor: NA as of Effective Date

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of _____, 2019 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.14.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control”, “controlled by”, and “under common control with”, as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility. As of the Effective Date, the Parties agree and acknowledge that there are no Ancillary Services for Seller to provide and thus no value to the Ancillary Services.

“Approved Forecast Vendor” means (x) CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“Available Generating Capacity” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“Bankrupt” means with respect to any entity, such entity that (a) 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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. Pacific Prevailing Time for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” means East Bay Community Energy Authority, a California joint powers authority.

“Buyer Bid Curtailment” means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order; provided that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Buyer Default” means an Event of Default of Buyer.

“Buyer Group” has the meaning set forth in Section 16.1.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“CAISO” means the California Independent System Operator Corporation.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“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; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

“California Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated

with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, Other Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

“**Capacity Damages**” has the meaning set forth in Exhibit B.

“**CEC**” means the California Energy Commission, or any successor agency performing similar statutory functions.

“**CEC Certification and Verification**” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“**CEC Precertification**” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“**CEQA**” means the California Environmental Quality Act.

“**Change of Control**” means, except in connection with transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.

“**Claim**” has the meaning set forth in Section 16.2.

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to [REDACTED]

“**Compliance Actions**” has the meaning set forth in Section 3.14.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.14.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**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 the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating and replacing the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**CPUC**” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**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 issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to [REDACTED] multiplied by the Installed Capacity.

“**Curtailment Order**” means any of the following:

(a) CAISO or another Governmental Authority orders, directs, alerts, or provides notice to a Party, including through a CAISO Operating Order, to curtail deliveries of Facility Energy;

(b) the Participating Transmission Owner orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy;

(c) a curtailment due to scheduled or unscheduled maintenance on the Participating Transmission Owner’s transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point;

(d) a curtailment by a third party (i.e., an entity other than Seller) pursuant to the Interconnection Agreement; or

(e) a curtailment by Seller.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Daily Delay Damages” means an amount equal to [REDACTED]

“Damage Payment” means the dollar amount that equals the amount of the Development Security.

“Day” or **“day”** means a period of twenty-four (24) consecutive hours beginning at 00:00 hours Pacific Prevailing Time on any calendar day and ending at 00:00 hours Pacific Prevailing Time on the next calendar day.

“Day-Ahead Forecast” has the meaning set forth in Section 4.3.

“Day-Ahead Market” has the meaning set forth in the CAISO Tariff.

“Day-Ahead Schedule” has the meaning set forth in the CAISO Tariff.

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be equal to the Day-Ahead Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

“Defaulting Party” has the meaning set forth in Section 11.1(a).

“Deficient Month” has the meaning set forth in Section 4.8(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

“Delivery Point” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“**Development Cure Period**” has the meaning set forth in Exhibit B.

“**Development Security**” means [REDACTED]

“**Early Termination Date**” has the meaning set forth in Section 11.2(a).

“**Effective Date**” has the meaning set forth on the Preamble.

“**Effective FCDS Date**” means the date identified in Seller’s Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Energy to the Delivery Point.

“**Eligible Renewable Energy Resource**” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“**Energy**” means electrical energy (measured in MWh) generated by the Facility.

“**Energy Supply Bid**” has the meaning set forth in the CAISO Tariff.

“**Environmental Costs**” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Facility’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all emission reduction credits, marketable emission trading credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Facility.

“**Event of Default**” has the meaning set forth in Section 11.1.

“**Excess MWh**” has the meaning set forth in Exhibit C.

“**Executed Interconnection Agreement Milestone**” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“**Facility**” means the wind electric generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

“**Facility Energy**” means the Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Industry Practices to account for Electrical Losses and Station Use.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Financial Close**” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“**Financing Milestone**” means the date set forth on the Cover Sheet for Seller to satisfy the following requirements demonstrating the Facility’s eligibility for the PTC: delivery of evidence to Buyer that the Facility commenced construction in 2016.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unplanned reduction, interruption or suspension of all or a portion of Energy deliveries from the Facility to the Delivery Point due to events or conditions outside the control of Seller and are not the result of a Force Majeure Event or Planned Outage.

“**Forecasting Penalty**” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility, multiplied by (B) the absolute value of the Real-Time Price in such hour.

“**Forward Certificate Transfers**” has the meaning set forth in Section 4.8(a).

“**Full Capacity Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party hereto.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), 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, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents

the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility 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 Facility for compliance with local, state, or federal operating or air quality permits.

“**Green Tag Reporting Rights**” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“**Gross Negligence**” means conduct by a breaching party that evinces a reckless disregard for the rights of others or ‘smacks’ of intentional wrongdoing, where recklessness means an extreme departure from the standards of ordinary care, such that the danger was either known to the breaching party or so obvious that the breaching party must have been aware of it.

“**Grossed Up PTC Amount**” shall mean an amount equal to the then current dollar per MWh value of the PTC associated with the Energy that could have been delivered grossed up as follows: For purposes of determining the gross up, Seller shall be deemed to be subject to tax at the highest statutory corporate income tax rates for the highest income bracket (federal, state or local, as applicable) for the Seller or its parent, as appropriate, that are in effect or scheduled to be in effect for the tax year in which the receipt of such Tax Benefits payment is taxed. By way of example, as of the date of this Agreement, the corporate federal income tax rate is twenty one percent (21%).

“**Guaranteed Capacity**” means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet.

“**Guaranteed Commercial Operation Date**” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Construction Start Date**” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to [REDACTED] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

“**Guarantor**” means, with respect to the Party providing Performance Security in the form of a Guaranty, any Person that:

(a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued,

(b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer;

(c) has a Credit Rating of [REDACTED]

(d) has a tangible net worth of at least [REDACTED]

(e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction; and

(f) executes and delivers a Guaranty for the benefit of the other Party.

“**Guaranty**” means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably agreed to by the Parties.

“**Hazardous Substance**” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“**Imbalance Energy**” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“**Indemnifiable Loss(es)**” has the meaning set forth in Section 16.3.

“**Indemnified Party**” has the meaning set forth in Section 16.3.

“**Indemnifying Party**” has the meaning set forth in Section 16.3.

“**Initial Synchronization**” means the initial delivery of Facility Energy to the Delivery Point.

“**Installed Capacity**” means the actual generating capacity of the Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance tests, and as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto. If the generating capacity of the Facility is greater than 56.2 MW, the Installed Capacity shall be 56.2 MW.

“**Interconnection Agreement**” means the interconnection agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“**Interconnection Facilities**” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“**Interest Rate**” has the meaning set forth in Section 8.2.

“**Interim Deliverability Status**” has the meaning set forth in the CAISO Tariff.

“**Inter-SC Trade**” or “**IST**” has the meaning set forth in the CAISO Tariff.

“**Investment Grade Credit Rating**” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“**ITC**” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“**Law**” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“**Lender**” means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a Qualified Issuer in a form substantially similar to the letter of credit set forth in Exhibit K or in such other form as is reasonably agreed by the Parties.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“Local Capacity Area Resources” has the meaning set forth in the CAISO Tariff.

“Locational Marginal Price” or **“LMP”** has the meaning set forth in the CAISO Tariff.

“Losses” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Exhibit G.

“Major Project Development Milestone” has the meaning set forth in Exhibit B.

“Major Subcontractors” means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of [REDACTED] for performance of any part of the Work at the Site.

“Master File” has the meaning set forth in the CAISO Tariff.

“Milestones” means the development activities for significant permitting, interconnection, and construction milestones set forth on the Cover Sheet.

“Monthly Delivery Forecast” has the meaning set forth in Section 4.3(b).

“Moody’s” means Moody’s Investors Service, Inc.

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

“MWh” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

“NERC” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 16.2.

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**Operating Committee**” means one representative each from Buyer and Seller appointed pursuant to Section 6.3.

“**Operating Procedures**” or “**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit O.

“**Other Attributes**” means any and all attributes, products or services, associated with the existence or operation of the Facility that may be claimed or tracked other than (a) Energy, (b) Green Attributes, (c) Capacity Attributes and (d) Renewable Energy Incentives.

“**Outage Schedule**” has the meaning set forth in Section 4.3(d).

“**Pacific Prevailing Time**” means the prevailing standard time or daylight savings time, as applicable, in the Pacific time zone.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities to, at, or from the Delivery Point. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each period consisting of two (2) consecutive rolling Contract Years.

“**Performance Security**” means [REDACTED]

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED]

[REDACTED] and [REDACTED]

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“PNode” has the meaning set forth in the CAISO Tariff.

“Planned Outage” has the meaning set forth in Section 4.6(a).

“Portfolio” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“Product” has the meaning set forth on the Cover Sheet.

“Progress Report” means a progress report including the items set forth in Exhibit E.

“Prudent Industry Practice” means the applicable practices, methods and standards of care, skill and diligence engaged in or approved by a significant portion of the wind electric generation industry during the relevant time period with respect to grid-interconnected, utility-scale wind generating facilities in the Western United States, that, in the exercise of reasonable judgment and in light of the facts known at the time the decision was made, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, and standards of economy and expedition. Prudent Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of others. Prudent Industry Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“Qualifying Capacity” has the meaning set forth in the CAISO Tariff.

“Qualified Issuer” means (a) Deutsche Bank AG or an Affiliate thereof, so long as it has a Credit Rating of at least BBB+ from S&P or Baa1 from Moody’s or (b) 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- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s.

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

“Real-Time Forecast” means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

“Real-Time Market” has the meaning set forth in the CAISO Tariff.

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax Benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 or Greater Bay Area Local Capacity Area Resource.

“Resource Adequacy” means the procurement obligation of load serving entities, as such obligations are described in CPUC Decisions D.04-10-035 and D.05-10-042 and subsequent CPUC decisions addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003, R.05-12-013, R.10-04-012 and R.11-10-023 or by any successor proceeding, and the Resource Adequacy supply obligations of generators provided in the CAISO Tariff, including Section 40 of such Tariff.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.).

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“Security Interest” has the meaning set forth in Section 8.9.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Site**” means the necessary real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“**Site Control**” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Station Use**” means:

(a) The Energy produced by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“**System Emergency**” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“**Tax**” or “**Taxes**” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“**Tax Benefits**” means an amount equal to: the Grossed Up PTC Amount.

“**Tax Credits**” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“**Terminated Transaction**” has the meaning set forth in Section 11.2(a).

“**Termination Payment**” has the meaning set forth in Section 11.3.

“**Test Energy**” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“**Test Energy Rate**” has the meaning set forth in Section 3.6.

“**Transmission Provider**” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“**Transmission System**” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“**Turbine**” means each wind turbine generating system, including the tower, pad, transformer and controller system, to be installed as part of the Facility.

“**Turbine Limitations**” means the Turbine manufacturer’s operating limits of the Turbines.

“**Ultimate Parent**” means one or more entities managed by Castlake, L.P., a Delaware limited partnership.

“**Variable Energy Resource**” or “**VER**” has the meaning set forth in the CAISO Tariff.

“**WECC**” means the Western Electricity Coordinating Council.

“**WREGIS**” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise

or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the terms “include” and “including” or similar words shall be deemed to be followed by the words “without limitation” and any list of examples following such terms shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Industry Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings;

(l) “or” is not necessarily exclusive; and

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the “Contract Term”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product (other than Test Energy) are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement has been delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement has been delivered to Buyer;

(d) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(f) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and

submission of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Daily Delay Damages, and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under the Agreement solely as a result of missing any Milestone.

**ARTICLE 3
PURCHASE AND SALE**

3.1 Purchase and Sale of Product.

(a) In accordance with and subject to the terms and conditions of this Agreement, at all times during the Delivery Term Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, all of the Facility Energy delivered to the Delivery Point and all of the Product produced by or associated with the Facility.

(b) Notwithstanding the foregoing:

(i) Seller's obligation to sell and deliver Facility Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) a Buyer Bid Curtailment, (C) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Order, (D) a Curtailment Period; provided that such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement, (E) a period of Seller suspension due to a Buyer Default pursuant to Section 11.1 or (F) as necessary to maintain health and safety pursuant to Section 6.2; and

(ii) Buyer's obligation to accept Facility Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Period, (C) a Curtailment Period, or (D) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1; and

(iii) Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period; provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (C) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1.

(c) Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale in the market or to any third party, and retain and receive any and all related revenues.

(d) Subject to Buyer's obligation to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 Compensation. Buyer shall pay Seller for the Product in accordance with Exhibit C.

3.3 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5, and Sections 3.5(b) and 3.14, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration on terms acceptable to Seller.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the original economic balance or the other material terms of this Agreement.

3.6 **Test Energy.** No less than five (5) Business Days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis until the Commercial Operation Date. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the "**Test Energy Rate**"). Buyer may not curtail Test Energy absent a Curtailment Order. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. As between Buyer and Seller, Seller is responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Buyer shall be entitled to all Capacity Attributes, if any, associated with the Facility during the Delivery Term. The consideration for all such Capacity Attributes is included within the Contract Price. Seller transfers to Buyer, and Buyer accepts from Seller, any right, title, and interest that Seller may have in and to Capacity Attributes, if any, existing during the Delivery Term.

(c) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(d) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer. Buyer may, at its own risk and expense, report to any person or entity that Capacity Attributes belong exclusively to Buyer.

(e) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the CAISO so that the Capacity Rights are able to be recognized and counted for Resource Adequacy purposes, (B) assist Buyer in making such annual submissions to CAISO associated with establishing the correct quantity of Capacity Rights, (C) coordinating with Buyer on the submission to the CAISO submissions (or corrections), as required by the CAISO Tariff, and (D) providing CAISO all necessary information for annual and other outage planning. Seller shall deliver such documents, instruments, submissions and information as may be requested by Buyer in connection with the Capacity Attributes and Resource Adequacy; provided that in responding to any such requests, Seller shall have no obligation to provide any consent, certification, representation, information or other document, or enter into any agreement, that adversely affects, or could reasonably be expected to have or result in an adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(f) Subject to Section 3.12 and at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied

provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of **Exhibit M** at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’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. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Seller shall also take all other commercially reasonable actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 Change in Law.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions to implement changes in Law. Seller agree to use commercially reasonable efforts to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, Capacity Attributes as may be required, including updating the Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) submission of any reports, data, or other information required by Governmental Authorities; or (iii) all other actions that may be required to assure that this Agreement or the Facility is eligible. as an ERR and other benefits under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (including any obligations set forth in Section, [REDACTED]) (any action required to be taken by Seller to comply with such change in Law, a "Compliance Action"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] of Guaranteed Capacity in aggregate at over the Contract Term, and [REDACTED] for any Contract Year (the "Compliance Expenditure Cap"), provided, however, that if the dollar limit for any Contract Year is reached, Seller shall reimburse Buyer during the subsequent Contract Year(s) subject to the dollar limitations for any Contract Year and the aggregate Compliance Expenditure Cap.

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs.

When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

(f) Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party prior to the Construction Start Date, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms acceptable to both Parties in their sole discretion.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS. Seller shall cooperate reasonably with Buyer, at Buyer's expense, in

order for Buyer to register, hold, and manage such Green Attributes in Buyer's own name and to Buyer's accounts.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Buyer at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Industry Practices.

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Generating Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than sixty (60) minutes prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved

Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of such outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.14, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order,

Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.5 **Seller Equipment Required for Curtailment Instruction Communications.** Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Subject to providing Buyer one -hundred twenty (120) days prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer

Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period; provided that Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Buyer's Default or other failure to perform, Buyer Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **WREGIS**. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including 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. Seller shall be deemed to have satisfied the warranty in Section 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through 4.8(g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated,

any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and Exhibit G for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Product delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

4.9 **Green e-Certification**. Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that the Facility is Green e-certifiable.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product

to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation**. The Parties shall cooperate to minimize tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial burden for which the other Party is responsible hereunder. All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Industry Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Operating Committee and Operating Procedures**.

(a) Buyer and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility.

(b) The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement to address: matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. The Operating Committee shall develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement.

(c) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that except to the extent explicitly provided for in this Agreement, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this Agreement.

(d) Prior to the Commercial Operation Date, Buyer and Seller shall cause the Operating Committee to develop detailed procedures regarding the curtailment of the Facility through the Buyer's automatic generation control system, including communication protocols among CAISO, Seller and Buyer.

ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Industry Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit P. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. Seller may elect to install and maintain, at its own expense, backup metering devices.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) Business Days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer

(if any), calculation of Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably agreed by the Parties within sixty (60) days following the Effective Date, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, promptly provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated or payments made pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.


8.4 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount

should have been due. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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. Any invoice or payment 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they may discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 **Seller's Development Security.**

 If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following

have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its status as a Qualified Issuer, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit or Guaranty that meets the requirements set forth in the definition of Performance Security.

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing the Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10





ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) **“Force Majeure Event”** means any act or event that delays or prevents a Party from performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure

Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement; (iv) a Curtailment Order, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to promptly remove such inability and shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

10.3 **Notice for Force Majeure.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) promptly notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) promptly notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

(a) with respect to a Party (the “**Defaulting Party**”) that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) 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, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite diligently seeking a cure);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product (as defined in Exhibit G);

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days following the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) [REDACTED]

(v) [REDACTED]

(vi) [Reserved];

(vii) [Reserved];

(viii) [REDACTED]

(ix) [REDACTED]

(x) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter

of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the failure of the Guarantor to make any payment required under any Guaranty;

(B) the Guarantor becomes Bankrupt;

(C) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(D) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(E) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(xvii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to meet the definition of Qualifying Issuer;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(E) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(F) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-**

Defaulting Party”) shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement (“**Early Termination Date**”) that terminates this Agreement (the “**Terminated Transaction**”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a

Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **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 five (5) Business Days of receipt of the 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. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT.

12.2 **Waiver and Exclusion of Other Damages.** 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.6, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller (subject to any permits that have not yet been obtained by Seller), the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility will be located in the State of California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows: Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the

laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that, throughout the Contract Term, with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).²

(f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in

² Note to Draft: Buyer to revert to Seller.

California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage**. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Reserved**.

13.6 **Workforce Development**. Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided that any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. An assigning Party shall be responsible for the non-assigning Party’s reasonable third party costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys’ fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“**Collateral Assignment Agreement**”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set

forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 Permitted Assignment by Seller. Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller. In addition, Buyer's written consent will not be unreasonably withheld for the transfer or assignment of this Agreement, including through a Change of Control, to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or Change of Control), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least forty-five (45) days before the date of such proposed assignment or Change of Control; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the first sentence of this Section 14.3, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Portfolio Financing.** Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **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 its principles of conflicts of Law. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnity**. Each Party shall defend, indemnify and hold harmless the other Party and its Affiliates and each of its and their directors, officers, agents, attorneys, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees for personal injury or death to persons and damage to the Indemnified Party's real property and tangible personal property or facilities or the property of any other Person to the extent arising out of, resulting from, or caused by (i) an Event of Default or breach of a representation, warranty or covenant under this Agreement in any material respect, (ii) a violation of applicable Laws, (iii) negligent or tortious acts, errors, or omissions or (iv) intentional acts or willful misconduct, of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, or agents, excepting only such losses, to the extent caused by the willful misconduct or Gross Negligence of an Indemnified Party.

16.2 **Indemnity by Seller**. Seller shall defend, indemnify and hold harmless Buyer and its directors, officers, agents, attorneys, employees and representatives ("**Buyer Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees that arise out of or relate to or are in any way connected with (i) Environmental Costs associated with the Facility, including the disposal and transportation of Hazardous Substances by or on behalf of Seller or at Seller's direction or agreement or (ii) resulting from Seller's or its Affiliates' violation of any applicable Law; in each case including any loss, claim, action or suit, for or on account of injury to, bodily or otherwise, or death of, persons, or for damage to or destruction or economic loss of property belonging to Buyer, Seller, Seller's Affiliates, or others, excepting only such losses, to the extent caused by the willful misconduct or Gross Negligence of a member of the Buyer Group.

16.3 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, the Party seeking an indemnity (the "**Indemnified Party**") will promptly Notify the other Party (the "**Indemnifying Party**") in writing of any damage, claim, loss, liability or expense which the Indemnified Party has determined has given or could give rise to an indemnifiable claim (the "**Indemnifiable Losses**") under Section 16.1 or 16.2 (a "**Claim**"). The Notice is referred to as a "Notice of Claim". A Notice of Claim will specify, in reasonable detail, the facts known to the Indemnified Party regarding the Indemnifiable Losses.

16.4 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Seller is not obligated to indemnify Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.5 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim pursuant to Section 16.2, the Indemnified Party receives Notice from the

Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from the Indemnifying Party that the Indemnified Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) Business Days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.6 **Amounts Owed.** Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

16.7 **Rights and Remedies are Cumulative.** Except for express remedies provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in

a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information.** The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with as much advance notice as practicable so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller’s actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has

an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms).

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have consented upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively

revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” 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). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse.** Buyer 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 its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement. Seller shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Buyer shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Seller’s members, Affiliates, equityholders, or the employees, directors, officers, consultants or advisors of Seller or its members, Affiliates or equityholders, in connection with this Agreement (other than in connection with a Guaranty).

19.11 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 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 to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Anti-Corruption**. The Parties acknowledge and agree that they have and will continue to comply with all federal and state Laws to combat corruption in connection with the execution and performance of this Agreement.

19.13 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

ALTAMONT WINDS LLC

By: _____
Name: _____
Title: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Altamont Winds LLC (aka Summit)

Site includes all or some of the following APNs: (To be filled in prior to execution)

County: Alameda County

CEQA Lead Agency: Alameda County

Type of Facility: Wind

Operating Characteristics of Facility: Wind Farm

Guaranteed Capacity: 56.2 MW (AC)

Maximum Capacity: 56.2 MW

Delivery Point: Busbar (2 newly created Pnodes)

Facility Meter: CAISO Approved Meters

P-node: Two, yet to be created (nearest existing node is "ZONDWD_6_B1")

Participating Transmission Owner: PG&E

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract or a turbine supply agreement and a balance of plant contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

- b. **“Major Project Development Milestone”** means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Daily Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Daily Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Daily Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestone; provided that in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. Buyer’s failure to respond to Seller’s Notice within five (5) Business Days shall be deemed approval of Seller’s COD Certificate. If Buyer disagrees that Commercial Operation has occurred following receipt of the Notice, it shall within such five (5) Business Day period, deliver to Seller a valid detailed explanation as to why it believes that Commercial Operation has not occurred. The Seller shall then remedy Buyer’s concern, if valid, and the Notice process of above shall repeat until Buyer has approved Seller’s COD Certificate or a deemed approval occurs. Upon Buyer’s approval or deemed approval, Buyer shall provide Seller with written acknowledgement of the COD. The “**Commercial Operation Date**” shall be the date on which the COD Certificate has been approved or deemed approved. If the iterative process described above occurs three (3) times or more, either Party may resort to the dispute resolution processes provided for in this Agreement.
- a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date .
- b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** [REDACTED]

[REDACTED]

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred and eighty (180) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new

certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED] that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly, and the balance of the Development Security shall be returned to Seller.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C
COMPENSATION

Compensation

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Contract Price.** For each MWh of Facility Energy and Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for such Contract Year, Buyer shall compensate Seller as follows:

(i) For each MWh of Facility Energy, Buyer shall pay the Contract Price;

(ii) For each MWh of Deemed Delivered Energy, subject to paragraph (d) below, Buyer shall pay the Contract Price; and

(b) **Grossed Up PTC Amount.** For the first ten (10) Contract Years only, and subject to paragraph (e) below, until the sum of Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the Expected Energy for such Contract Year, Buyer shall also pay the applicable Grossed Up PTC Amount for Deemed Delivered Energy.

(c) **Excess Contract year Deliveries Over [REDACTED].** If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be \$0.00/MWh.

(d) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(e) **Curtailed Payments.** Notwithstanding any provision in this Agreement to the contrary, Seller shall receive no compensation from Buyer for (i) Facility Energy or Deemed Delivered Energy during any Curtailment Period or (ii) Deemed Delivered Energy in amounts below the Curtailment Cap.

(f) **Test Energy.** Test Energy is compensated in accordance with Section 3.6.

(g) **Tax Credits.** The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the

Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to

scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay any undisputed CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's third party costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other non-proprietary documentation reasonably requested by Buyer.

EXHIBIT F-1

EXHIBIT F-1 (UTC time Coordinated Universal Time)

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-1 (PST Pacific Standard Time)

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus [REDACTED]

D = the Contract Price for the Performance Measurement Period, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Lost Output**” has the meaning given in Section 4.7 of the Agreement.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

“**Replacement Energy**” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Product” means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after a Contract Year which ends each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1.1 The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

1.2 Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.

1.3 Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.

1.4 The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of 2.5 MW for each Turbine (on a Turbine-by-Turbine basis), as adjusted for ambient conditions on the date of the Facility testing.

1.5 Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.

1.6 The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.

1.7 The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

Reserved

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by Altamont Winds LLC (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:
_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority, a California joint powers authority
1111 Broadway, Suite 300
Oakland, CA 94607

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of East Bay Community Energy Authority, a California joint powers authority (“Beneficiary”), 1111 Broadway, Suite 300, Oakland, CA 94607, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on December 31, 2026 (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by physical delivery, facsimile or e-mail. Transmittal by facsimile or email shall be deemed delivered when received.

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXX-XXXX]] [optional if bank needs fax confirmation -, confirmed by [e-mail to [bank email address]] [telephone confirmation to the Issuer at [XXX-XXX-XXXX]].

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*insert bank address information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1111 Broadway, Suite 300, Oakland, CA 94607. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to East Bay Community Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [_____] (the "Effective Date") by and between [_____] a [_____] ("Guarantor"), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

- A. Buyer and [*SELLER ENTITY*], a _____ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 20__.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such

failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's

organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to

reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [*SELLER ENTITY*] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:]

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

EXHIBIT N
NOTICES

<p>ALAMONT WINDS LLC ("Seller")</p>	<p>EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority ("Buyer")</p>
<p>All Notices:</p> <p>1900 West Loop South, Suite 945 Houston, TX 77027 Attn: Legal and Compliance Phone: (832) 804-8860 Facsimile: N/A Email: notices@altamontwinds.com</p> <p>With a copy to:</p> <p>Castlelake, L.P. 4600 Wells Fargo Center 90 South Seventh Street Minneapolis, MN 55402 Attention: General Counsel Email: notices@castlelake.com</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org; legal@ebce.org</p> <p>With an additional copy to:</p> <p>Hall Energy Law PC PO Box 10406 Portland, Oregon 97296 Attn: Stephen Hall Phone: (503) 477-9354 Email: steve@hallenergylaw.com</p>
<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices: Attn: Accounting and Controls Phone: (832) 804-8863 Facsimile: N/A E-mail: ap@altamontwinds.com</p>	<p>Invoices: Attn: Power Resources Phone: E-mail: powerresources@ebce.org; ap@ebce.org</p>
<p>Scheduling: Attn: Commercial and Asset Management Phone: (832) 875-9130 Facsimile: N/A Email: notices@altamontwinds.com</p>	<p>Scheduling: Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com; preschedulers@ncpa.com</p>
<p>Confirmations: Attn: Commercial and Asset Management Phone: (832) 875-9130 Facsimile: N/A Email: notices@altamontwinds.com</p>	<p>Confirmations: Attn: Power Resources Phone: (510) 361-6247 E-mail: powerresources@ebce.org</p>

ALAMONT WINDS LLC (“Seller”)	EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority (“Buyer”)
Payments: Attn: Accounting and Controls Phone: (832) 804-8863 Facsimile: N/A E-mail: ap@altamontwinds.com	Payments: Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 E-mail: AP@ebce.org; jbartlett@ebce.org
Wire Transfer: BNK: US Bank Minnesota ABA: 091000022 ACCT:104794266940	Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: *****3199
With additional Notices of an Event of Default to: Attn: N/A Phone: N/A Facsimile: N/A E-mail: N/A	With additional Notices of an Event of Default to: Howard Chang, Chief Operating Officer 1111 Broadway, Suite 300 Oakland, CA 94607 Phone: (510) 809-7458 Email: hchang@ebce.org ; legal@ebce.org
Emergency Contact: Attn: Commercial and Asset Management Phone: (832) 875-9130 Facsimile: N/A Email: notices@altamontwinds.com	Emergency Contact: Attn: Bill Her, Director of Power Resources Phone: (510) 361-6247 E-mail: bher@ebce.org

EXHIBIT O
OPERATING RESTRICTIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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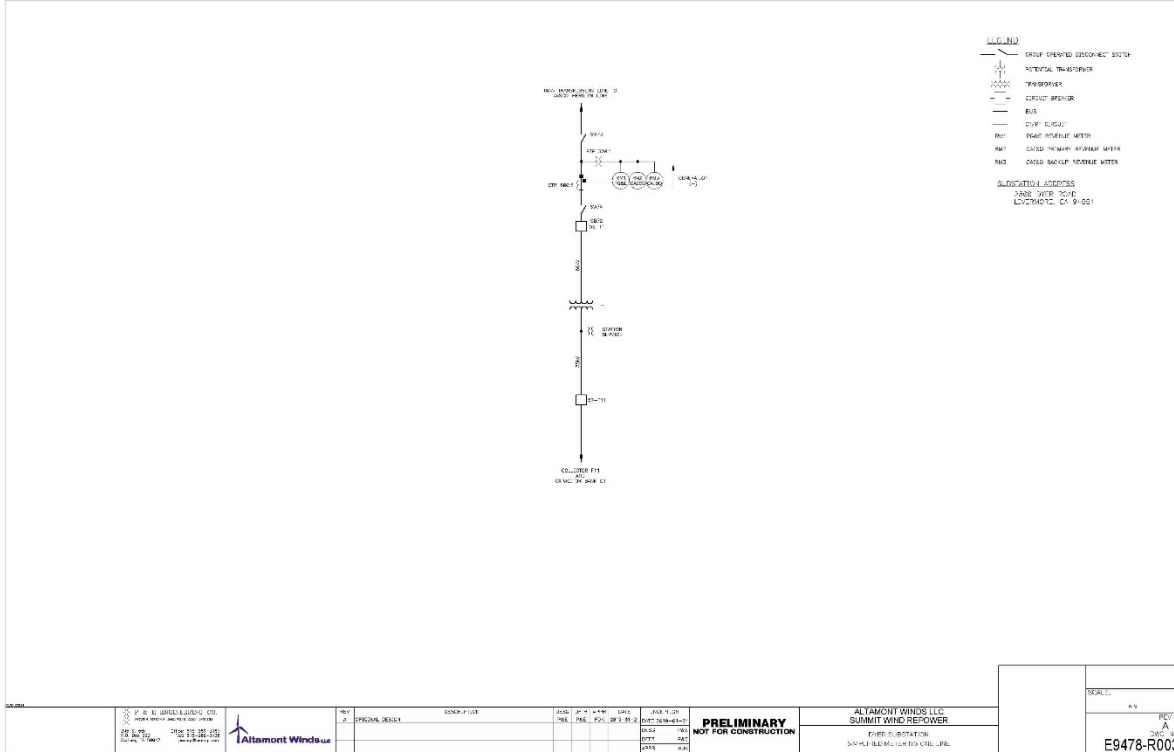
[REDACTED]

[REDACTED]

[REDACTED]

EXHIBIT P

METERING DIAGRAM



P. M. BENTON ENGINEERING CO.
 12345 SOUTH MAIN ST.
 SUITE 100
 FRESNO, CA 93721
 (559) 435-1234
 WWW.BENTONENGINEERING.COM

REV	DESCRIPTION	DATE	BY	APP'D
1	ISSUE FOR PERMITS	08/15/17	PMB	[Signature]
2	REVISION	08/22/17	PMB	[Signature]
3	REVISION	08/29/17	PMB	[Signature]

PRELIMINARY
NOT FOR CONSTRUCTION

ALTAMONT WINDS LLC
SUMMIT WIND FERRIS
 FERRIS SUBSTATION
 5466 E. HILLMAN AVENUE, FERRIS, CA

SCALE:	REV: A CEC: [Signature] E9478-R003
DATE:	
BY:	
APP'D:	

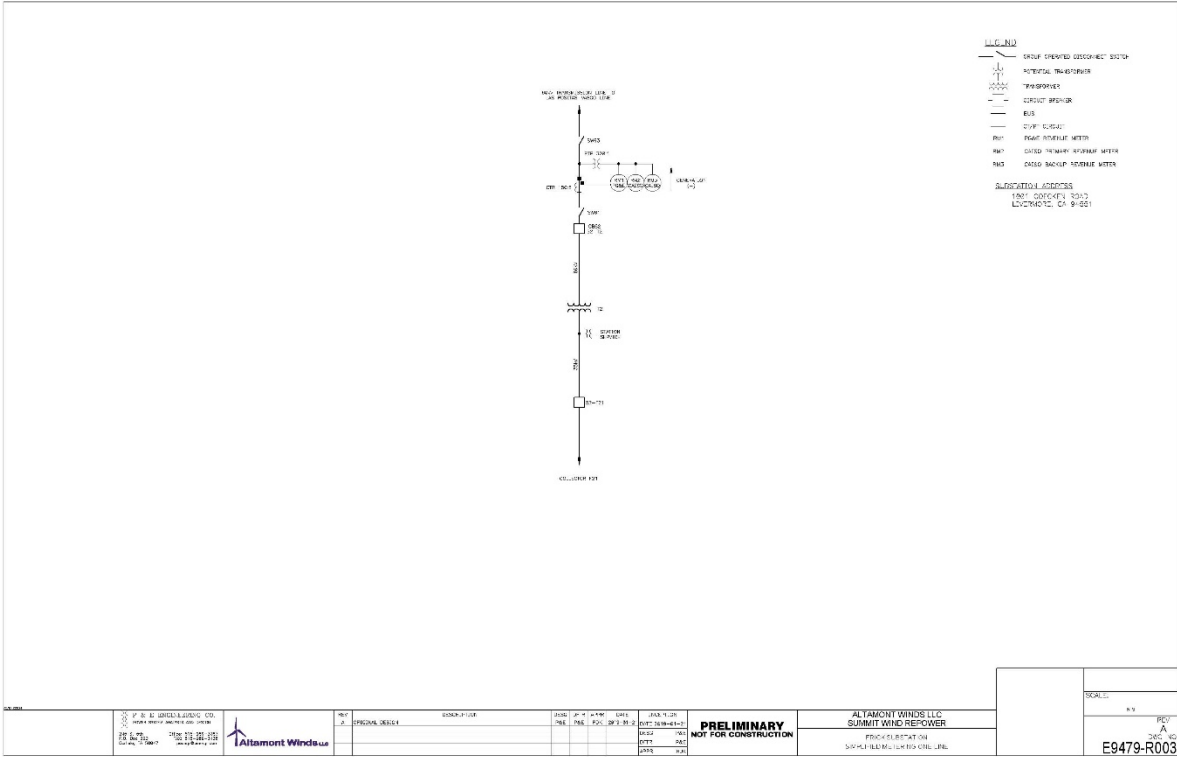


Exhibit P - 2

EXHIBIT Q

WORKFORCE DEVELOPMENT

The General Contractor retained by Altamont Winds LLC will enter into a Project Labor Agreement (“PLA”) with the Building and Construction Trades Council of Alameda County (BTC), AFL-CIO (“Council”), and the labor organizations affiliated with the Council and signatory to the agreement.

The purpose of this Agreement is to promote efficiency of construction operations during the construction of the Summit Wind Repower Project, located at 2800 Dyer Road, Livermore, CA, 94551, and to provide for the peaceful settlement of labor disputes and grievances without strikes, pickets or similar activity, or lockouts, causing disruptions to the construction process, thereby assuring the timely and economical completion of the Project.

The PLA will mutually establish and stabilize wages, hours and working conditions for the workers employed on the Project by the Contractor(s)/Employer(s) and represented by the Union(s) to the end that a satisfactory, continuous and harmonious relationship will exist among the parties to the PLA.

The PLA is not intended to replace, interfere with, abrogate, diminish or modify existing local or national collective bargaining agreements in effect during the duration of the Project.

In addition, Alamont Winds LLC has required that the General Contractor complied with all applicable laws in the State of California, and it will not discriminate against any employee, applicant for employment, or subcontractor because of race, creed, color, religion, sex, orientation and gender identity, age, disability or national origin.

**EDPR - EBCE
ENERGY + STORAGE AGREEMENT
13 JUNE 2019**

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: EDPR CA Solar Park VI LLC

Buyer: East Bay Community Energy Authority, a California joint powers authority

Description of Facility: 100 MW solar photovoltaic electric generating facility combined with a 30 MW / 120 MWh lithium ion battery storage facility.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	██████████
CEC Pre-Certification Obtained	██████████
Financing Milestone	██████████
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	██████████
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	██████████
Executed Interconnection Agreement	██████████
Financial Close	██████████
Expected Construction Start Date	██████████
Guaranteed Construction Start Date	██████████
Full Capacity Deliverability Status Obtained	██████████
Initial Synchronization	██████████
Network Upgrades completed	12/1/2022
Expected Commercial Operation Date	12/31/2022
Guaranteed Commercial Operation Date	██████████

Delivery Term: The period for Product delivery will be for 20 Contract Years.

Expected Energy: *[EDPR will finalize prior to execution]*

Contract Year	Expected Energy (MWh)
1	████████
2	████████
3	████████
4	████████
5	████████
6	████████
7	████████
8	████████
9	████████
10	████████
11	████████
12	████████
13	████████
14	████████
15	████████
16	████████
17	████████
18	████████
19	████████
20	████████

Guaranteed Capacity: 100 MW

Storage Contract Capacity: 30 MW at four hours of continuous discharge

Storage Contract Output: 120 MWh

Storage Facility Loss Factor: 0.87

Storage Minimum Capacity Factor: Seventy percent (70%)

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

Product:

- PV Energy
- Discharging Energy
- Green Attributes (Portfolio Content Category 1)
- Storage Capacity
- Capacity Attributes (select options below as applicable)
 - Energy Only Status
 - Full Capacity Deliverability Status and Expected FCDS Date: 4/30/2021
- Ancillary Services

Scheduling Coordinator: Buyer/Buyer Third Party

Security, Damage Payment, and Guarantor

Development Security: [REDACTED]

Performance Security: [REDACTED]

Damage Payment: See definition of “Damage Payment”

Guarantor: See definition of “Guarantor”

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2019 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, construct, own, and operate the Facility; and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, the Product;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS

1.1 **Contract Definitions.** The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

“**Adjusted Energy Production**” has the meaning set forth in Exhibit G.

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor.

“**Adjusted Qualifying Capacity**” has the meaning set forth in Exhibit S.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“**Agreement**” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

“**Approved Forecast Vendor**” means (x) any of Meteologica or Vaisala or their respective Affiliates or successors or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Availability Adjusted Storage Contract Capacity**” has the meaning set forth in Exhibit P.

“**Available Generating Capacity**” means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

“**Bankrupt**” means with respect to any entity, such entity that (a) 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, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) 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 (f) is generally unable to pay its debts as they fall due.

“**Business Day**” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

“**Buyer**” means East Bay Community Energy Authority, a California joint powers authority.

“**Buyer Bid Curtailment**” means any curtailment of the Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Facility, the Energy or any Products, or in which Buyer fails to do so, including) a situation where all of the following occurs:

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility or Facility Energy, including where the Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely

a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy forecasted to be generated by or delivered from the Facility.

If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy in respect of such period shall not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (i) the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, which instruction shall be consistent with the Operating Restrictions, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order, or (ii) a curtailment of any portion of the Generating Facility or its output or any reduction in PV Energy arising out of Buyer’s issuance of any Discharging Notice or any other instruction, order or other communication requesting or requiring the Storage Facility to be discharged.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) Buyer Default; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

“Buyer Default” means a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer Group” has the meaning set forth in Section 16.1.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

“CAISO Grid” has the same meaning as “CAISO Controlled Grid” as defined in the CAISO Tariff.

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

“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 Renewables Portfolio Standard” or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

“Capacity Damages” has the meaning set forth in Exhibit B.

“CEC” means the California Energy Commission, or any successor agency performing similar statutory functions.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

“CEC Precertification” means that the CEC has issued a precertification for the Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Certification and Verification.

“CEQA” means the California Environmental Quality Act.

“Change of Control” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“**Charging Energy**” means the as-available Energy produced by the Generating Facility and delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter. *[See Section 3.13]*

“**Charging Notice**” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“**Claim**” has the meaning set forth in Section 16.2(a).

“**COD Certificate**” has the meaning set forth in Exhibit B.

“**Commercial Operation**” has the meaning set forth in Exhibit B.

“**Commercial Operation Date**” has the meaning set forth in Exhibit B.

“**Commercial Operation Delay Damages**” means an amount equal to [REDACTED]

“**Compliance Actions**” has the meaning set forth in Section 3.12.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.12.

“**Confidential Information**” has the meaning set forth in Section 18.1.

“**Construction Start**” has the meaning set forth in Exhibit B.

“**Construction Start Date**” has the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

“**Contract Term**” has the meaning set forth in Section 2.1.

“**Contract Year**” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“**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 the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“**Cover Sheet**” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“**CPUC**” means the California Public Utilities Commission or any successor agency performing similar statutory functions.

“**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 issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

“**Curtailment Cap**” is the yearly quantity per Contract Year, in MWh, equal to [REDACTED]

“**Curtailment Order**” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission

(d) facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(e) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

“**Curtailment Period**” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“**Daily Delay Damages**” means an amount equal to [REDACTED]

“**Damage Payment**” means the dollar amount that equals the amount of the Development Security.

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.3(c).

“**Day-Ahead Market**” has the meaning set forth in the CAISO Tariff.

“**Day-Ahead Schedule**” has the meaning set forth in the CAISO Tariff.

“**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall, for any time period, be equal to (i) the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), or, if mutually agreed by the Parties, then (ii) the difference between (a) the total amount of Energy that the Generating Facility would have produced during such Buyer Curtailment Period, as calculated by Seller in a manner reasonably acceptable to Buyer using the best available data obtained through commercially reasonable methods and meteorological data at the Generating Facility during such Buyer Curtailment Period, and any adjustments necessary to accurately reflect the Generating Facility’s capacity to produce and deliver Energy to the Delivery Point, including applicable losses and manufacturers’ warranted power curves, subject to Buyer’s verification not to be unreasonably withheld, *minus* (b) the amount of Energy that the Generating Facility produced and delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference between the foregoing clauses (a) and (b) is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during such Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“**Defaulting Party**” has the meaning set forth in Section 11.1(a).

“**Deficient Month**” has the meaning set forth in Section 4.10(e).

[Note to EBCE: Defined term for Delay Damages not used (either Commercial Operation Delay Damages or Daily Delay Damages referenced in each instance)]

“**Deliverability Allocation**” has the meaning set forth in Exhibit S.

“**Delivery Point**” has the meaning set forth in Exhibit A.

“**Delivery Term**” shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

“Development Cure Period” has the meaning set forth in Exhibit B.

“Development Security” means [REDACTED]

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures. For the avoidance of doubt, except as otherwise provided in this Agreement, such as in the definition of Buyer Curtailment Order, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

“Early Termination Date” has the meaning set forth in Section 11.2(a).

“Effective Date” has the meaning set forth on the Preamble.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

“Eligible Renewable Energy Resource” has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.

“Energy” means electrical energy generated by the Generating Facility.

“Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

“Environmental Costs” means costs incurred in connection with acquiring and maintaining all environmental permits and licenses for the Product, and the Product’s and Facility’s compliance with all applicable environmental Laws, rules and regulations, including capital costs for pollution mitigation or installation of emissions control equipment required to permit or license the Product or Facility, all operating and maintenance costs for operation of pollution mitigation or control equipment, costs of permit maintenance fees and emission fees as applicable, and the costs of all emission reduction credits, marketable emission trading credits, and any costs related to greenhouse gas emissions, required by any applicable environmental Laws, rules, regulations, and permits to operate, and costs associated with the disposal and clean-up of hazardous substances introduced to a Site or the Facility.

“Event of Default” has the meaning set forth in Section 11.1.

“**Excess MWh**” has the meaning set forth in Exhibit C.

“**Executed Interconnection Agreement Milestone**” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

“**Expected Commercial Operation Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.

“**Expected Construction Start Date**” is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period (assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet.

“**Facility**” means the Generating Facility and the Storage Facility.

“**Facility Energy**” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**Facility Meter**” means the revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located at the medium voltage side of the main step up transformer, and Facility Energy will be measured and will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

“**FERC**” means the Federal Energy Regulatory Commission or any successor government agency.

“**Financial Close**” means Seller or one of its Affiliates has obtained debt or equity financing commitments from one or more Lenders sufficient to construct the Facility, including such financing commitments from Seller’s owner(s).

“**Financing Milestone**” means the date set forth on the Cover Sheet for Seller to provide Buyer with a description, in detail reasonably acceptable to Buyer, of Seller’s strategy for establishing the Facility’s eligibility for the ITC.

“**Force Majeure Event**” has the meaning set forth in Section 10.1.

“**Forced Facility Outage**” means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

“Forecasting Penalty” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller’s failure and Buyer’s scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour.

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

“Full Capacity Deliverability Status” means either (i) “Full Capacity Deliverability Status” as such term is defined in the CAISO Tariff or (ii) a Deliverability Allocation of one hundred percent (100%) has been achieved.

“Full Capacity Deliverability Status Finding” means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, (ii)

Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), 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, such as Green Tag Reporting Rights. 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 Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility 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 Facility for compliance with local, state, or federal operating or air quality permits. If the Facility is a biomass or landfill gas 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 Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

“Guaranteed Capacity” means the amount of generating capacity of the Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“Guaranteed Construction Start Date” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“Guaranteed Energy Production” means an amount of Adjusted Facility Energy, as measured in MWh, equal to [REDACTED] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8.

“Guarantor” means, with respect to Seller, (a) Energias de Portugal, Sociedade Anonima, Secursal en España or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (iii) has an Investment Grade Credit Rating, (iv) has a tangible net worth of at least [REDACTED] [REDACTED] (v) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (vi) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Hazardous Substance” means, collectively, (a) any chemical, material or substance that is listed or regulated under applicable Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant” or “pollutant” or words of similar import, (b) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, asbestos, urea formaldehyde foam insulation, and transformers or other equipment that contain polychlorinated biphenyls, and (c) any other chemical or other material or substance, exposure to which is prohibited, limited or regulated by any Laws.

“Imbalance Energy” means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the amount of Scheduled Energy.

“Indemnifiable Loss(es)” has the meaning set forth in Section 16.1.

“Initial Synchronization” means the initial delivery of Facility Energy to the Delivery Point.

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Battery Capacity.

“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Installed PV Capacity” means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for

ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

“Interest Rate” has the meaning set forth in Section 8.2.

“Interim Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Inter-SC Trade” or **“IST”** has the meaning set forth in the CAISO Tariff.

“Investment Grade Credit Rating” means a Credit Rating of BBB- or higher by S&P or Baa3 or higher by Moody’s.

“ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

“Joint Powers Act” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“Joint Powers Agreement” means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

“Law” means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity, cash equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including cash equity and tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity, cash equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in Exhibit K.

“**Licensed Professional Engineer**” means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.

“**Local Capacity Area Resources**” has the meaning set forth in the CAISO Tariff.

“**Locational Marginal Price**” or “**LMP**” has the meaning set forth in the CAISO Tariff.

“**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 this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, 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, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“**Lost Output**” has the meaning set forth in Section 4.7.

“**Major Project Development Milestone**” has the meaning set forth in in Exhibit B.

“**Master File**” has the meaning set forth in the CAISO Tariff.

“**Maximum Charging Capacity**” has the meaning set forth in in Exhibit A.

“**Maximum Discharging Capacity**” has the meaning set forth in in Exhibit A.

“**Milestones**” means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

“**Monthly Storage Availability**” has the meaning set forth in Exhibit P.

“**Moody’s**” means Moody’s Investors Service, Inc., or its successor.

“**MW**” means megawatts in alternating current, unless expressly stated in terms of direct current.

“**MWh**” means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the Real-Time Price at the Facility’s PNode is less than Zero dollars (\$0).

“**NERC**” means the North American Electric Reliability Corporation or any successor entity performing similar functions.

“**Net Qualifying Capacity**” has the meaning set forth in the CAISO Tariff.

“**Network Upgrades**” has the meaning set forth in the CAISO Tariff.

“**Non-Defaulting Party**” has the meaning set forth in Section 11.2.

“**Notice**” shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).

“**Notice of Claim**” has the meaning set forth in Section 16.2.

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**On-Peak Hour**” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

“**Operating Procedures**” or “**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit Q.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

“**Party**” or “**Parties**” has the meaning set forth in the Preamble.

“**Performance Measurement Period**” means each two (2) consecutive Contract Year period during the Delivery Term.

“**Performance Security**” means [REDACTED]

“**Permitted Transferee**” means (i) any Affiliate of Seller or (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than [REDACTED]

and

(b) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Generating Facility, or has retained a third-party with such experience to operate the Generating Facility.

“Person” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“PNode” has the meaning set forth in the CAISO Tariff.

“Planned Outage” has the meaning set forth in Section 4.6(a).

“Portfolio” means the single portfolio of electrical energy generating or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“Portfolio Content Category” means PCC1, PCC2 or PCC3, as applicable.

“Portfolio Content Category 1” or **“PCC1”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 2” or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

“**Product**” has the meaning set forth on the Cover Sheet.

“**Progress Report**” means a progress report including the items set forth in Exhibit E.

“**Prudent Operating Practice**” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“**PTC**” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

“**PV Energy**” means that portion of Energy that is delivered from the Generating Facility directly to the Delivery Point, net of Electrical Losses, and is not Charging Energy.

“**RA Deficiency Amount**” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“**RA Guarantee Date**” means the Commercial Operation Date.

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent to which during any month the Net Qualifying Capacity of the Facility for such month was less than the Adjusted Qualifying Capacity of the Facility for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Planned Outage, (c) a Forced Facility Outage, and (d) the CAISO’s reduction in Facility NQC due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“**Real-Time Forecast**” means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

“**Real-Time Market**” has the meaning set forth in the CAISO Tariff.

“**Real-Time Price**” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

“Remedial Action Plan” has the meaning in Section 2.4.

“Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Renewable Rate” has the meaning set forth on the Cover Sheet.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within NP 15 or Greater Bay Area Local Capacity Area Resource.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

“S&P” means the Standard & Poor’s Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

“Schedule” has the meaning set forth in the CAISO Tariff, and **“Scheduled”** has a corollary meaning.

“Scheduled Energy” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

“Scheduling Coordinator” or **“SC”** means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time.

“**Security Interest**” has the meaning set forth in Section 8.8.

“**Self-Schedule**” has the meaning set forth in the CAISO Tariff.

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.10(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

“**Settlement Interval**” has the meaning set forth in the CAISO Tariff.

“**Settlement Period**” has the meaning set forth in the CAISO Tariff.

“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

“**Site**” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

“**Site Control**” means that Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“**Station Use**” means:

(a) The Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, control systems and other electrical loads that are necessary for operation of the Facility; and

(b) The Energy produced or discharged by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

“**Storage Capacity**” means (a) the maximum dependable operating capability of the Storage Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation

Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

“**Storage Capacity Test**” means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“**Storage Contract Capacity**” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(b) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

“**Storage Facility**” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“**Storage Facility Loss Factor**” is set forth on the Cover Sheet and represents the result of subtracting from the number one (1) the percentage of Electrical Losses associated with converting Charging Energy to Discharging Energy. For example, if the conversion of Charging Energy to Discharging Energy caused a ten percent (10%) loss in Energy, the Storage Facility Loss Factor would be (.90).

“**Storage Facility Meter**” means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“**Storage Facility Metering Points**” means the locations of the Storage Facility Meters shown on Exhibit R.

“**Storage Minimum Capacity Factor**” means the sum of the Monthly Storage Availability for the applicable Contract Year, divided by twelve (12).

“**Storage Product**” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

“**Storage Rate**” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“System Emergency” means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Tax Credits” means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities.

“Terminated Transaction” has the meaning set forth in Section 11.2(a).

“Termination Payment” has the meaning set forth in Section 11.3.

“Test Energy” means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Transmission Provider” means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

“Transmission System” means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Ultimate Parent” means EDP Renewables North America LLC, a Delaware limited liability company.

“Variable Energy Resource” or **“VER”** has the meaning set forth in the CAISO Tariff.

“Workforce Development and Community Investment Funds” has the meaning set forth in Section 13.5.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

“WREGIS Certificate Deficit” has the meaning set forth in Section 4.10(e).

“WREGIS Certificates” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

“WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person’s successors and permitted assigns;

(g) the term “including” means “including without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits required to achieve commercial operations of the Facility have been obtained and all applicable conditions thereof that are capable of being satisfied on or before the Commercial Operation Date have been satisfied and shall be in full force and effect;

(e) Seller has received CEC Precertification of the Facility;

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all undisputed amounts owing under this Agreement, if any, including Daily Delay Damages, and Commercial Operation Delay Damages.

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones or progress relating to tax equity financing for the Facility within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses the Guaranteed Construction Start Date, misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or misses any one (1) Milestone (other than the Guaranteed Construction Start Date) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any

Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

3.1 **Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy delivered may be greater or less than the amount of energy scheduled with the CAISO. To the extent there is such imbalance energy, any payments or charges from the CAISO associated with such imbalance energy shall be solely for the account of Buyer.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections

3.5(b), in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree that (i) Seller shall not be required to bear any costs, losses or liability arising therefrom, (ii) Seller shall not be required to alter the Facility, and (iii) such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to [REDACTED] (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments

necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) **RA Deficiency Amount Calculation.** Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of the difference, expressed in kW, of (i) the Adjusted Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, multiplied

[REDACTED] *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Adjusted Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and the timing requirements of this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.10 **Eligibility.** Subject to Section 3.12 and the timing requirements of Section 3.9, Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is pre-certified or certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy 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. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.12 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (including any obligations set forth in Section [REDACTED] [REDACTED] then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [REDACTED] of Guaranteed Capacity ("**Compliance Expenditure Cap**").

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions.**"

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

3.13 **Project Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities (including enabling the Storage Facility to be charged from the grid); provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) as set forth in a written agreement.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Buyer shall make all necessary arrangements to receive the Metered Energy at the Delivery Point prior to the Commercial Operation Date. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation (but without limiting Buyer's obligation to pay amounts associated with the Storage Facility Loss Factor as expressly provided herein), Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

(a) **Energy.** Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) **Green Attributes.** Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting.** Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use reasonable efforts to provide forecasts that are accurate and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with Prudent Operating Practices.

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy,

by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer; provided that Buyer specifies the method no later than twenty (20) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure and Buyer's scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a Forecasting Penalty for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order, Buyer Curtailment Order or notice is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow

instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance

with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operational Procedures.

4.6 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit G:

(a) **Facility Maintenance.** Subject to providing Buyer one-hundred twenty (120) days' prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, *provided*, that (i) no notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than three percent (3%) of the Installed PV Capacity and three percent (3%) of the Installed Battery Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days' prior Notice to Buyer so long as (X) Seller makes its request more than three (3) days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is acceptable to Buyer. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a “**Planned Outage**”).

(b) **Forced Facility Outage.** Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) **Force Majeure Event.** Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Guaranteed Energy Production**. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer's Default or other failure to perform, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Storage Capacity Tests, Buyer's Default or other failure to perform, and Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.8 **Storage Availability**.

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of [REDACTED] (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjusted Storage Contract Capacity (as determined in accordance with Exhibit P).

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **WREGIS**. Seller shall, at its sole expense, but subject to Section 3.12, take all

actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including 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. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green

Attributes (as defined in Exhibit G) delivered to NP 15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.1.3, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

4.11 **Green-E Certification.** Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that the Facility is Green-E eligible.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

**ARTICLE 6
MAINTENANCE OF THE FACILITY**

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy or Discharging Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

**ARTICLE 7
METERING**

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility to the Delivery Point, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month LIBOR rate published on the date of the invoice in The Wall Street Journal, or, if The Wall Street Journal is not published on that day, the next succeeding date of publication, plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access

to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes.** 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. 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 five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **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 through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and P, 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.

8.7 **Seller's Development Security.** 



[REDACTED]

If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. Seller may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the

Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.8):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default

of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred [REDACTED] then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

- (a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:
 - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;
 - (ii) 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, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not

[REDACTED]

to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

(vi) 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.

(b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:

(i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;

(ii)

[REDACTED]

(iii) if not remedied within ten (10) Business Days after Notice thereof, the failure by Seller to deliver a reasonable Remedial Action Plan required under Section 2.4;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(ix) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in

each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody's;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller occurring before the Commercial Operation Date, including an Event of Default under Section 11.1(b)(ii)) subject to the limitations in Section 11.7, or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

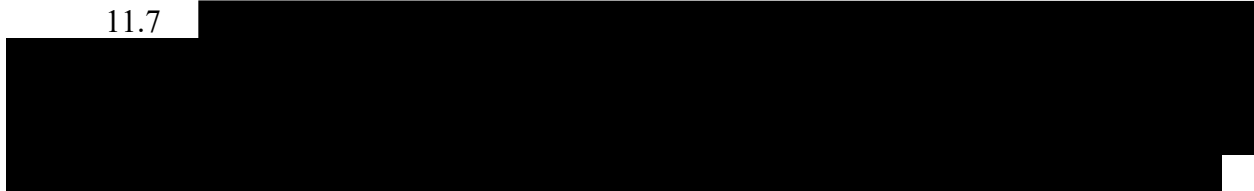
11.4 **Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **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 five (5) Business Days of receipt of the 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. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of liquidated damages is provided, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided

in this Agreement. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7



ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY 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. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE 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, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE

THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [Type of entity], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [*limited liability company*][*corporate*] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of California.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller, or an Affiliate on behalf of Seller if permitted under CEQA, will be the applicant on any CEQA documents.

13.2 **Buyer's Representations and Warranties.** As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this

Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)

(f) Buyer is a “local public entity” as defined in Section 900.4 of the Government Code of the State of California.

13.3 **General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Prevailing Wage.** Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any (“**Prevailing Wage Requirement**”). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller’s obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Workforce Development.** Seller shall perform obligations related to workforce development and community investment to be mutually agreed between the Parties following the Effective Date. Seller agrees to contribute no less than [REDACTED] (“**Workforce Development and Community Investment Funds**”) for such workforce development and community investment activities, subject to mutual agreement by the Parties. Seller will not be required to contribute or invest any Workforce Development and Community Investment Funds if such contribution or investment adversely affects the Seller or the development or financing of the Facility, or conflicts with or violates Law, Prudent Operating Practice, or the business practices, bylaws, charter documents or other agreements of Buyer or Seller.

13.6 **Union Labor.** Seller will cause the contractor under its primary EPC, BOP or construction contract for the Project to enter into a five-party project labor agreement, or other agreement reasonably acceptable to both Parties, at a time of Seller’s choosing consistent with Seller’s construction schedule for the Facility.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of

Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must

itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller. In addition, Buyer's written consent will not be unreasonably withheld for the transfer or assignment of this Agreement, including through a Change of Control, to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law and whether by assignment or Change of Control), if, and only if:

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment or Change of Control; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee

Except as provided in the first sentence of this Section 14.3, any assignment or Change of Control by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **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. The Parties agree that any suit,

action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Mutual Indemnity.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party (the "Indemnified Party"), its directors, officers, agents, attorneys, employees and representatives (collectively, the "Indemnified Group") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, however described, which arise out of or relate to or are in any way connected with a violation of applicable Laws, negligent or tortious acts, errors, or omissions, or intentional acts or willful misconduct, in any of the foregoing cases, of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, or agents, excepting only such losses, to the extent caused by the willful misconduct or gross negligence of a member of the Indemnified Group (collectively, "Indemnifiable Losses").

16.2 Notice of Claim.

(a) **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 15, Buyer will promptly Notify Seller in writing of any damage, claim, loss, liability or expense which Buyer has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("Claim"). The Notice is referred to as a "Notice of Claim". A Notice of Claim will specify, in reasonable detail, the facts known to the Buyer regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct

result of such failure and, provided further, the Seller is not obligated to indemnify the Buyer for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Seller pursuant to Section 16.2(b), the Buyer receives Notice from such Seller that the Seller has elected to assume the defense of such Claim as provided in the last sentence of Section 16.2(b), the Seller will not be liable for any legal expenses subsequently incurred by the Buyer in connection with the defense thereof; provided, however, that if the Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Buyer that the Buyer believes the Seller has failed to take such steps, or if the Seller has not undertaken fully to indemnify the Buyer in respect of all Indemnifiable Losses relating to the matter, the Buyer may assume its own defense, and the Seller will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of the Buyer, the Seller will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Buyer for which the Buyer is not entitled to indemnification hereunder; provided, however, that the Seller may accept any settlement without the consent of the Buyer if such settlement provides a full release to the Buyer and no requirement that the Buyer acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Buyer for which the Buyer is not entitled to indemnification hereunder and the Seller desires to accept and agrees to such offer, the Seller will give Notice to the Buyer to that effect. If the Buyer fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of the Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Buyer up to the date of such Notice.

16.4 **Subrogation of Rights.** Upon making any indemnity payment, the Seller will, to the extent of such indemnity payment, be subrogated to all rights of the Buyer against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that (a) the Seller is in compliance with its obligations under this Agreement in respect of such Indemnifiable Loss, and (b) until the Buyer recovers full payment of its Indemnifiable Loss, any and all claims of the Seller against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to the Buyer's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, the Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.5 **Rights and Remedies are Cumulative.** Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes “**Confidential Information**,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Records Act (Government Code Section 6250 et seq.).

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any

such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. 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 Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 **No Waiver.** Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender).

19.5 **Severability.** In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or FERC acting *sua sponte* shall 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).

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic, facsimile or scanned signatures as originals. Delivery of an executed signature page of this Agreement by electronic transmission (including facsimile and email transmission of a PDF image) shall be the same as delivery of an original executed signature page.

19.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **No Recourse to Members of Buyer.** Buyer 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 its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer’s constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

19.11 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and

Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 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 to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

**EDPR CA SOLAR PARK VI LLC, a
Delaware limited liability company**

By: _____
Name: _____
Title: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Sonrisa Solar Park

Site includes all or some of the following APNs: A full listing of Site APNs and a map of the Site shall be provided by Seller to Buyer on or prior to the date on which Seller provides an executed Form of Construction Start Date Certificate to Buyer.

County: Fresno County, CA

CEQA Lead Agency: County of Fresno Department of Public Works and Planning

Type of Generating Facility: Solar Photovoltaic

Operating Characteristics of Generating Facility: 100 MW AC s-available Solar Photovoltaic

Type of Storage Facility: Electrochemical battery energy storage facility

Operating Characteristics of Storage Facility:

Year 1 Maximum Stored Energy Level (MWh): 120 MWh

Year 1 Maximum Charging Capacity: 30 MW AC

Year 1 Maximum Discharging Capacity: 30 MW AC

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: 100 MW AC

Delivery Point: XXX

Facility Meter: See Exhibit R

Storage Facility Meter Locations: See Exhibit R

P-node: To be assigned by CAISO

Participating Transmission Owner: Pacific Gas and Electric Company

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

a. “**Construction Start**” will occur upon Seller’s execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction at the Site or [_____]. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the “**Construction Start Date**.” The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

b. “**Major Project Development Milestone**” means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Daily Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed, subject to Section 11.7 of this Agreement and the other limitations set forth in this Exhibit B. Daily Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Daily Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestone; _____

_____ On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”). The “**Commercial Operation Date**” shall be the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. No later than five (5) Business Days following delivery of the COD Certificate by Seller, Buyer shall notify Seller in writing that either (i) Buyer agrees that Commercial Operation has been achieved (the “**COD Acceptance**”) or (ii) Buyer does not agree that Commercial Operation has been achieved, stating with specificity what conditions Buyer reasonably believes have not been satisfied (the “**COD Rejection**”), provided, that if Buyer does not respond to Seller within such five (5) Business Day period, Buyer shall be deemed to have delivered a COD Acceptance and the date identified by Seller in the COD Certificate shall, for all purposes hereunder, be deemed to be the Commercial Operation Date. If Buyer delivers a COD Rejection, the Parties shall cooperate in good faith to resolve any issues required to achieve Commercial Operation, and the terms of this Section 2 of this Exhibit B shall re-apply. Notwithstanding any other provision of this PPA, during any such period of cooperation and any re-submission of the COD Certificate by Seller, Seller will not be required to pay any Daily Delay Damages or Commercial Operation Delay Damages.
- c. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- d. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date; [REDACTED]
- [REDACTED] On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. [REDACTED]
- [REDACTED] The Parties agree that Buyer’s receipt of Daily Delay Damages and Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** [REDACTED]

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

a. *Guaranteed Capacity.* If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall [REDACTED]

[REDACTED]

If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED]

[REDACTED] that the Guaranteed Capacity exceeds the Installed PV Capacity, and the

Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

b. *Storage Contract Capacity.* If, at Commercial Operation, the Installed Battery Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall [REDACTED]

[REDACTED] If Seller fails to construct the Storage Contract Capacity by such date, Seller shall pay Capacity Damages to Buyer, in an amount equal to [REDACTED] that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. Buyer Option to Increase Installed Battery Capacity.

Seller agrees that if requested by Buyer, then Buyer and Seller will discuss in good faith the installation of additional storage capacity up to the original Installed Battery Capacity; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties (and Seller's Lenders) as set forth in a written agreement. Without limiting this section, it is the general intent of the Parties that any work performed by Seller to increase installed battery capacity under this section would be billed to Buyer

[REDACTED]

EXHIBIT C
COMPENSATION

Compensation

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy, if any, up to [REDACTED] of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over [REDACTED]. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be \$0.00/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

(d) Curtailment Payments. Seller shall receive no compensation from Buyer for (i) Delivered Energy or Deemed Delivered Energy during any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the Renewable Rate.

(e) Storage Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate multiplied by current Storage Contract Capacity, as adjusted by the Availability Adjusted Storage Contract Capacity of the Storage Facility, as determined under Exhibit P. Without limiting Buyer’s obligation to pay Seller for Discharging Energy included in Adjusted Facility Energy, such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(f) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(g) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of

whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty

related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Prevailing wage reports if required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.
16. Progress with respect to the tax equity arrangements for the Facility.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour][*EDPR to finalize prior to execution*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT F-2
AVAILABLE CAPACITY

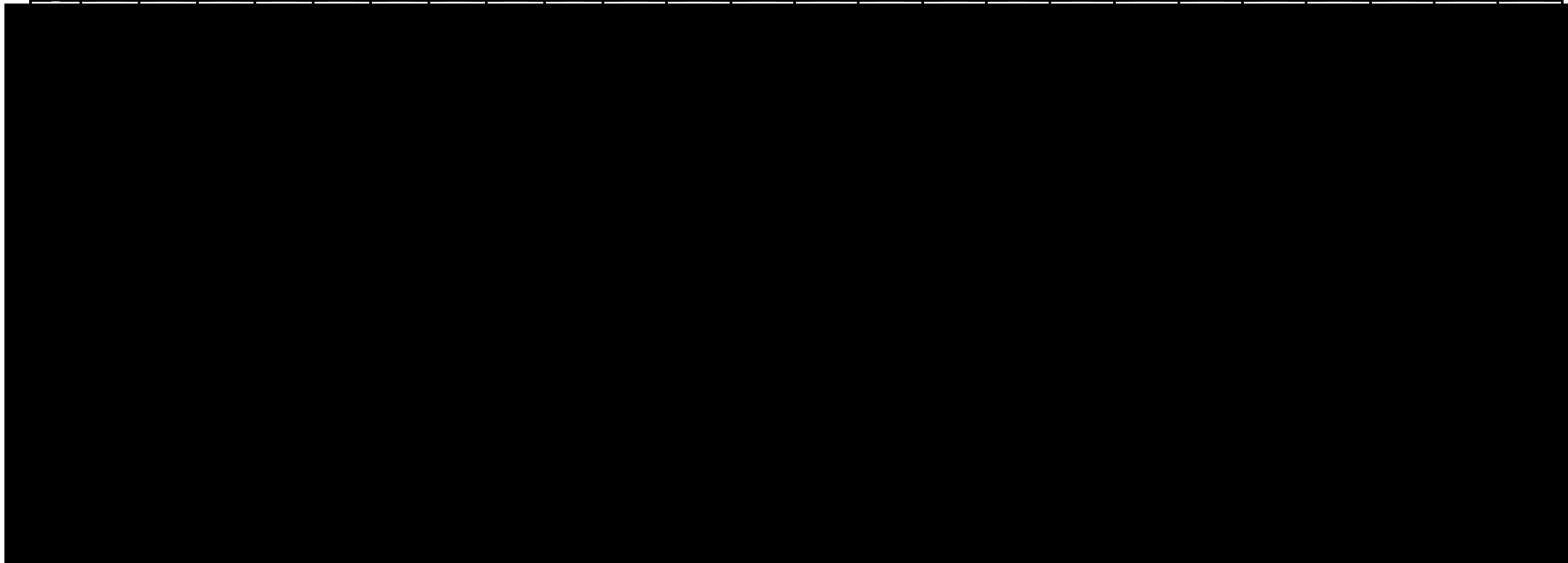
[EDPR to finalize before execution]

The following tables are provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Available Generating Capacity, MWh Per Hour – January

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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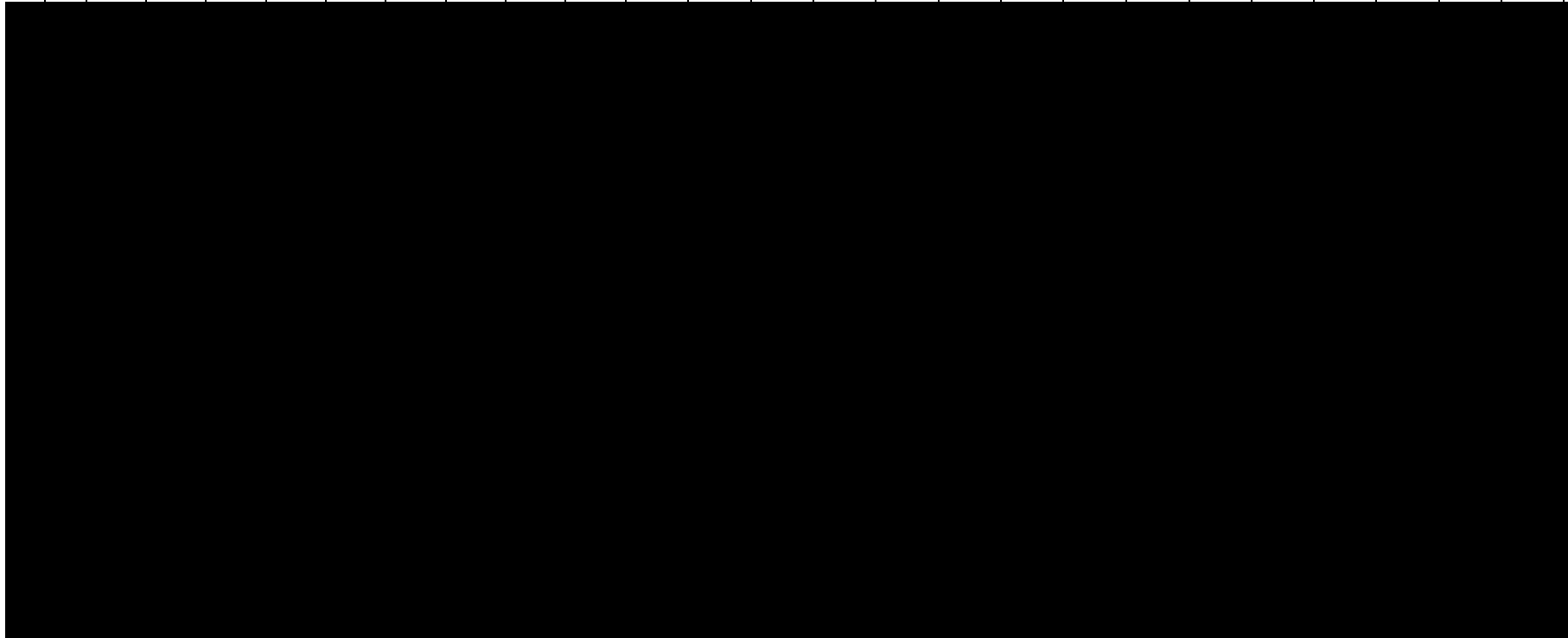




Available Generating Capacity, MWh Per Hour – February

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

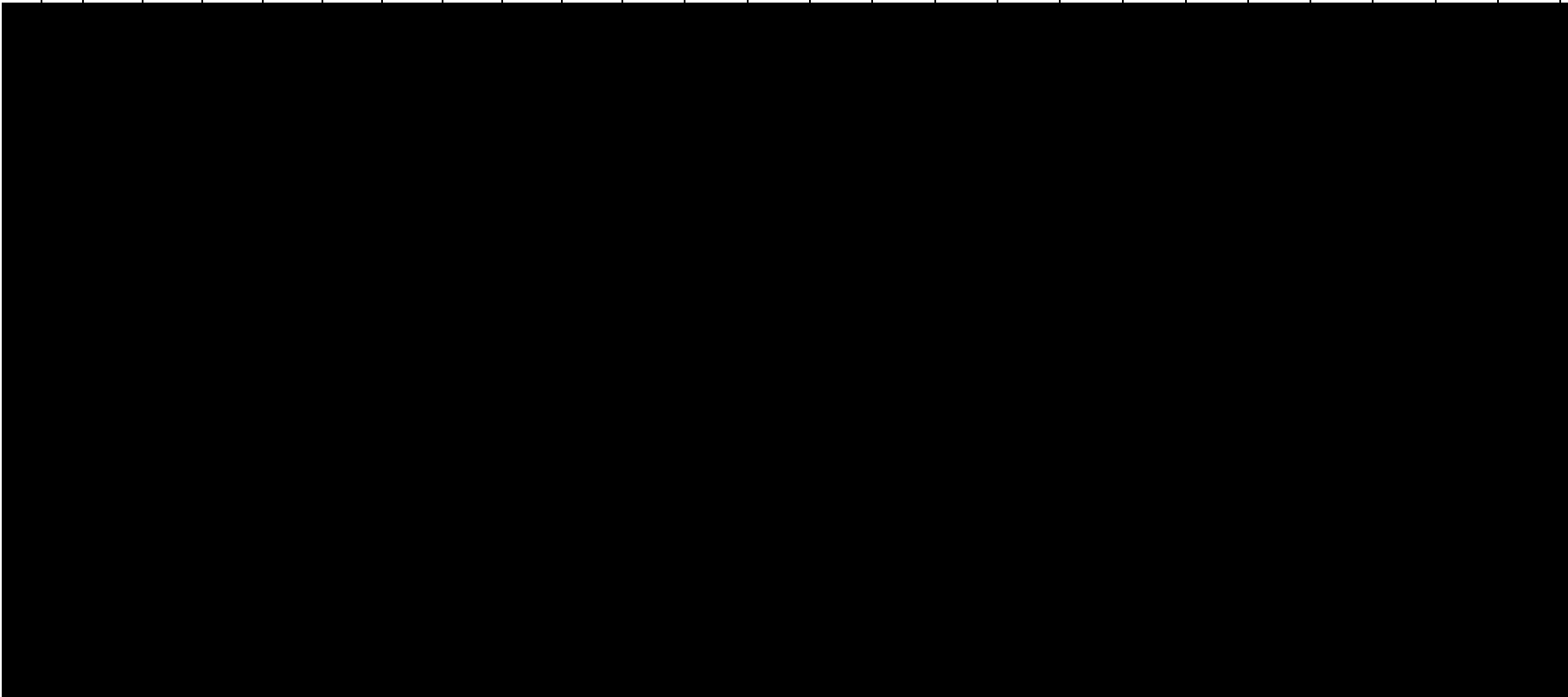
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Available Generating Capacity, MWh Per Hour – March

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

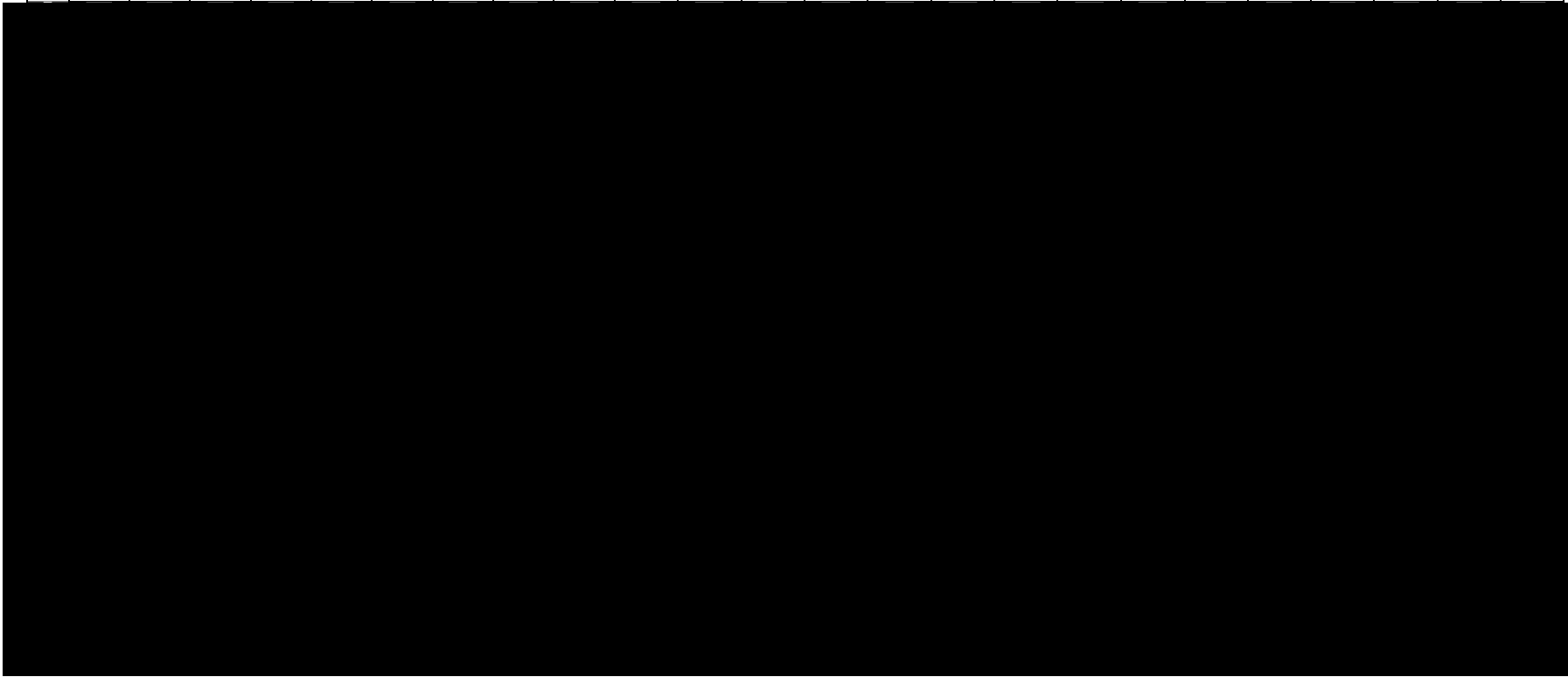
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Available Generating Capacity, MWh Per Hour – April

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

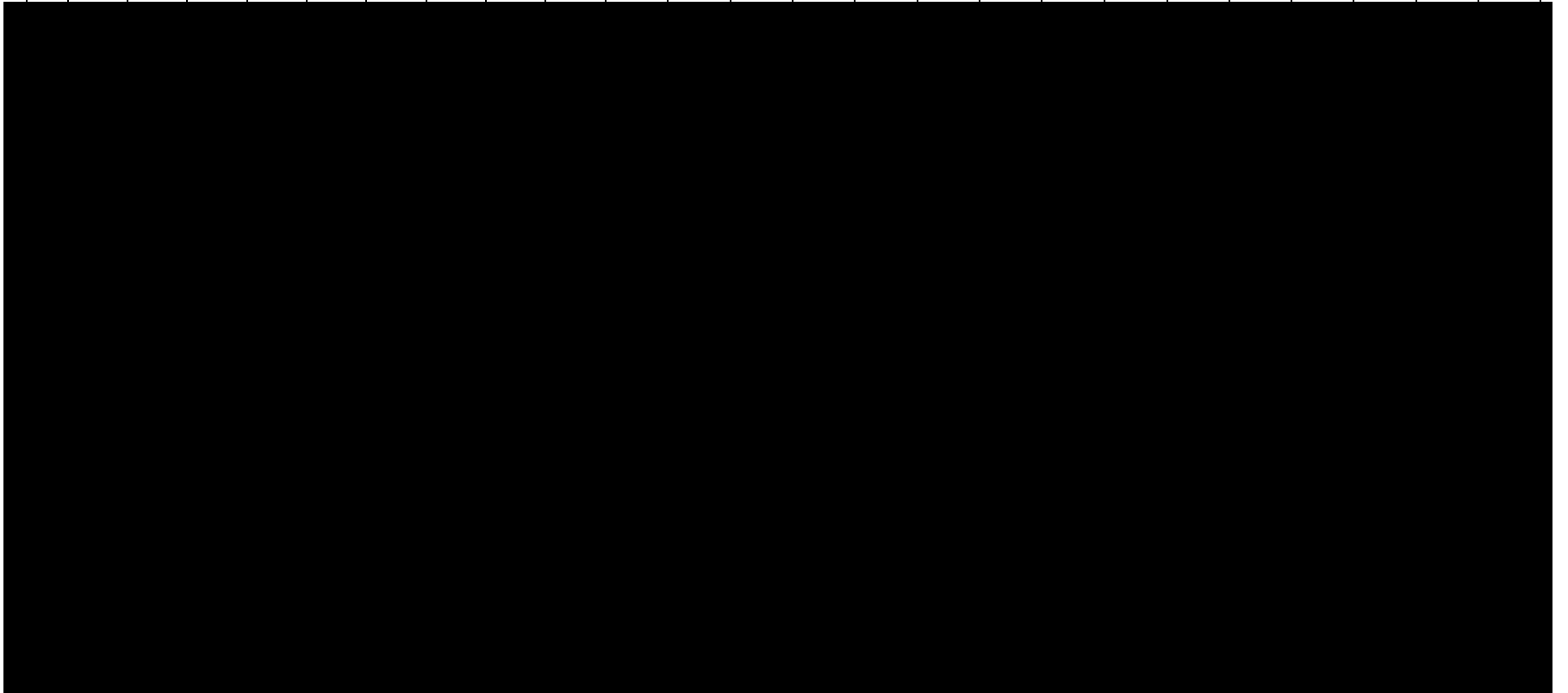
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Available Generating Capacity, MWh Per Hour – May

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

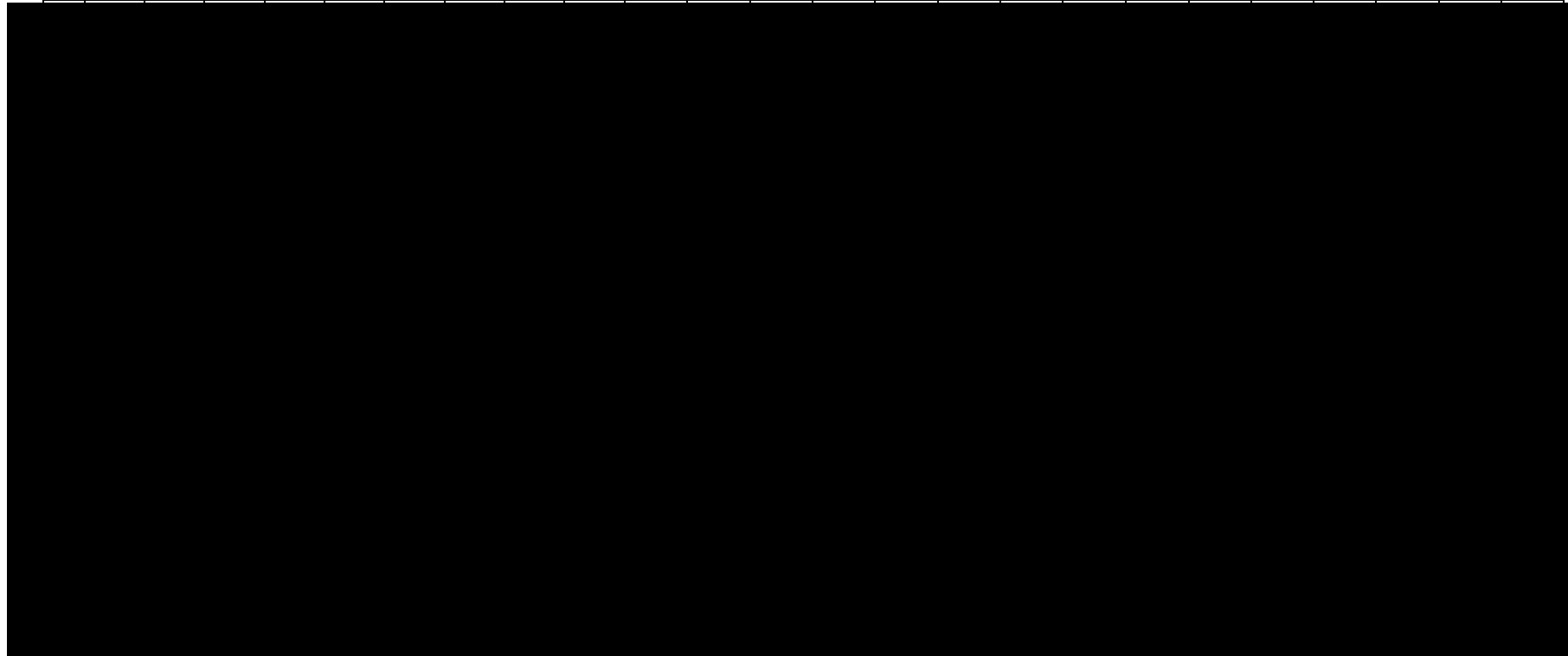
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Available Generating Capacity, MWh Per Hour – June

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

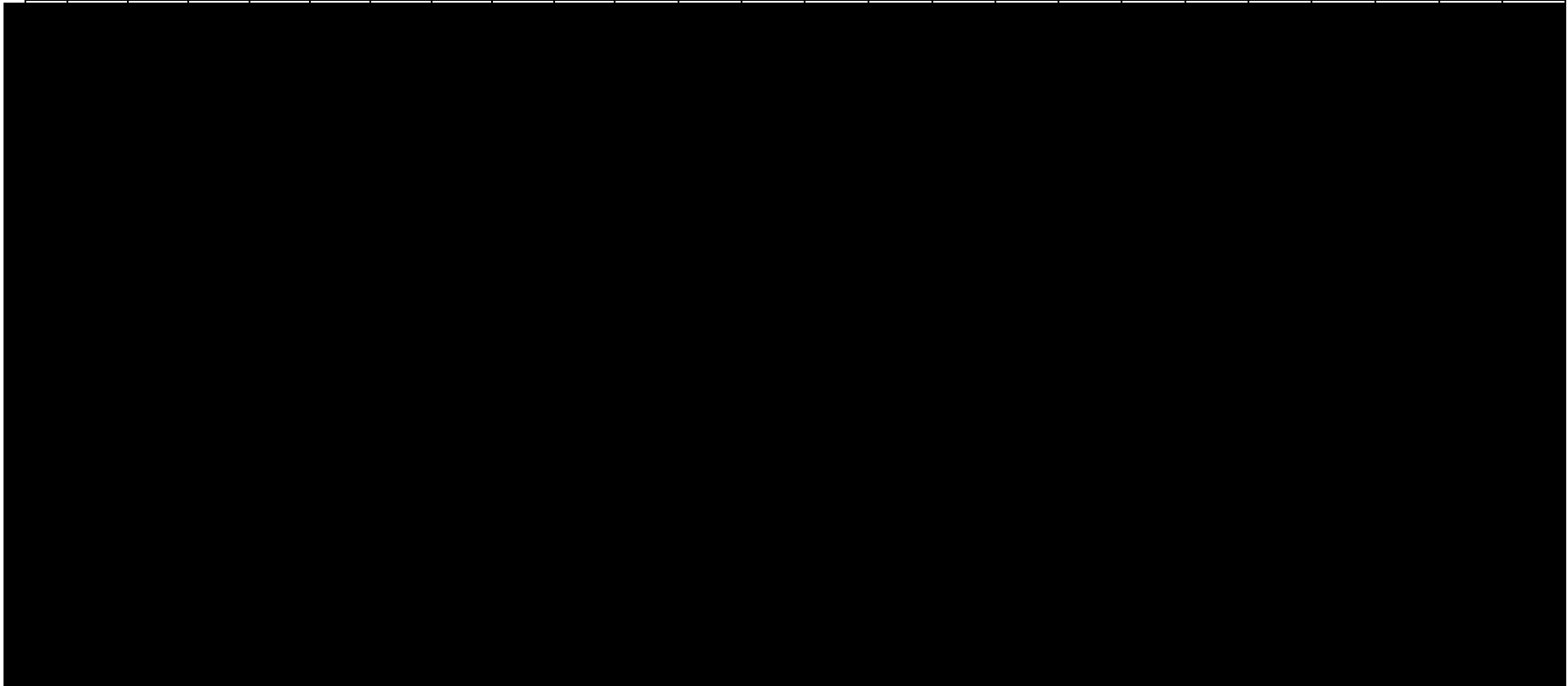
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Available Generating Capacity, MWh Per Hour – July

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

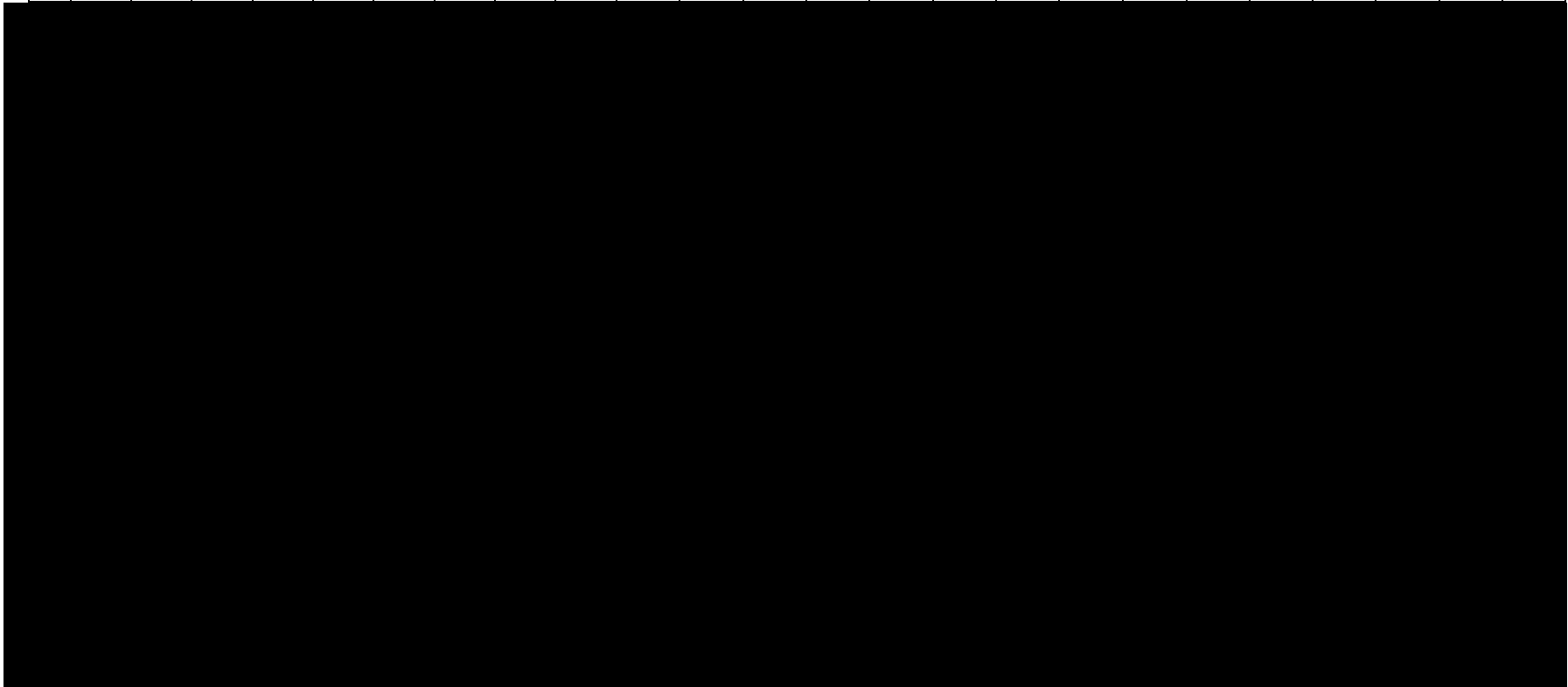
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Available Generating Capacity, MWh Per Hour – August

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

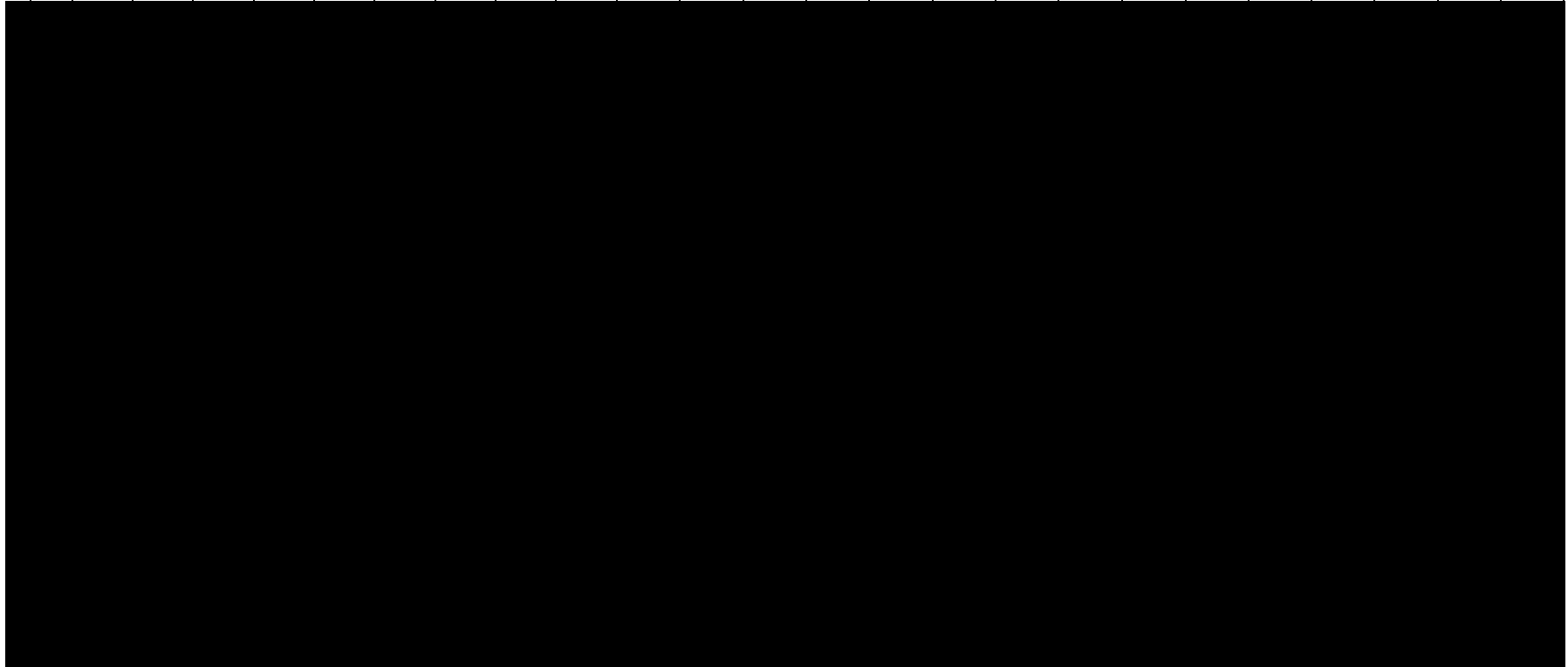
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Available Generating Capacity, MWh Per Hour – September

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

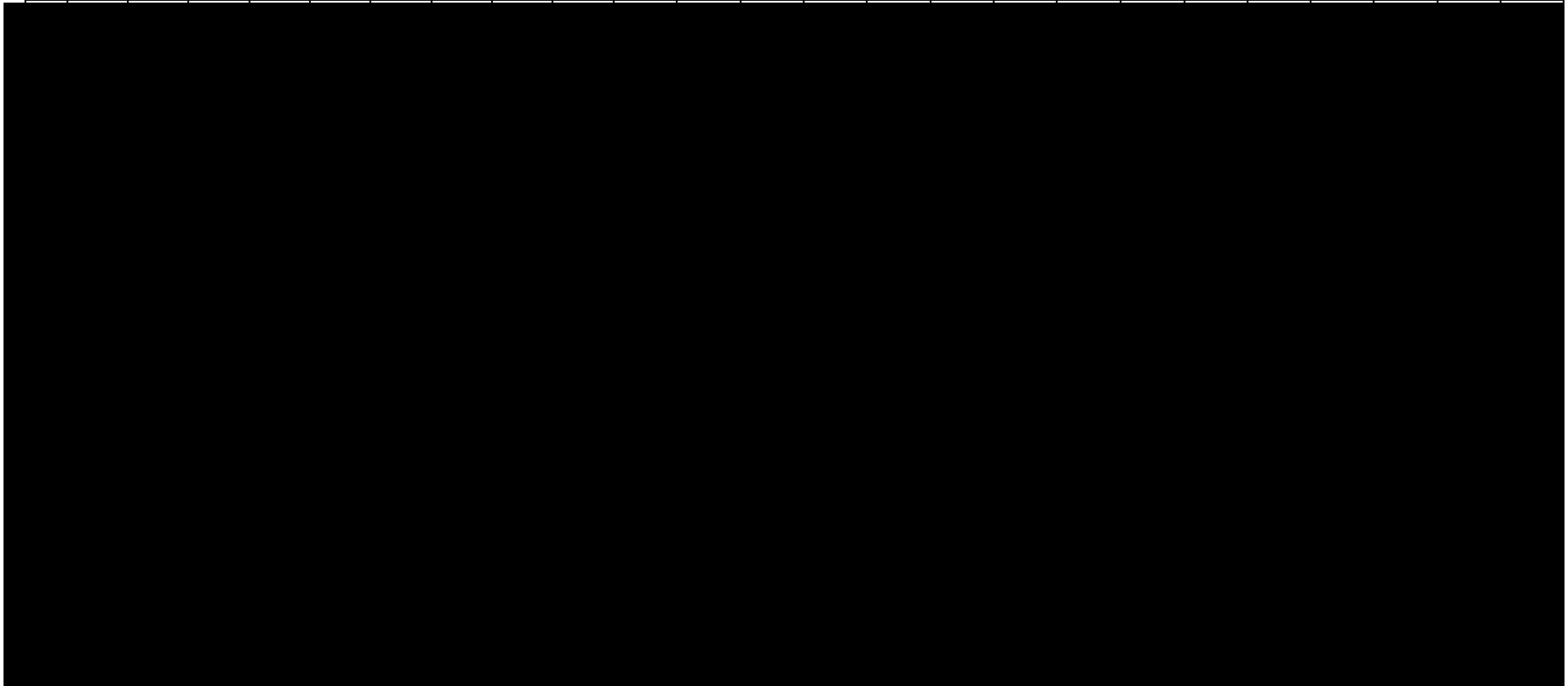
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Available Generating Capacity, MWh Per Hour October

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

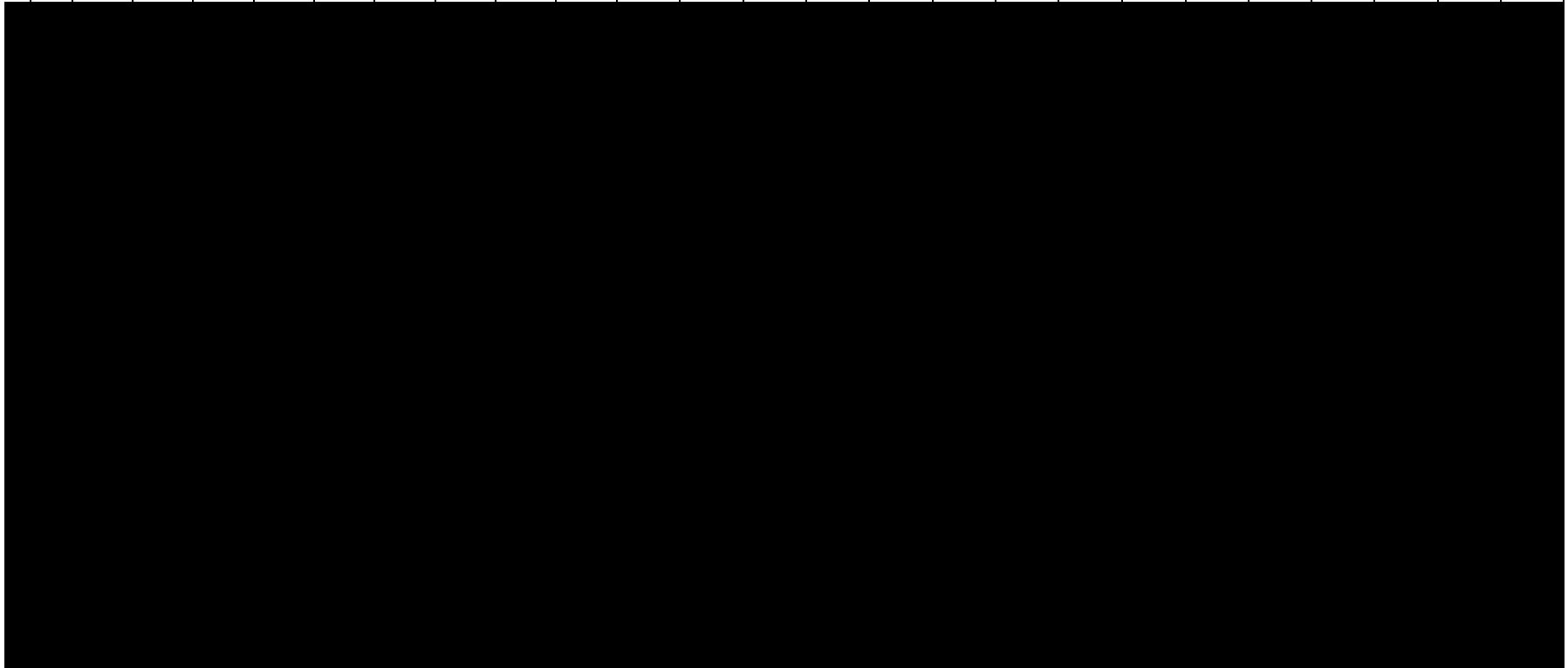
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Available Generating Capacity, MWh Per Hour – November

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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Available Generating Capacity, MWh Per Hour December

The following table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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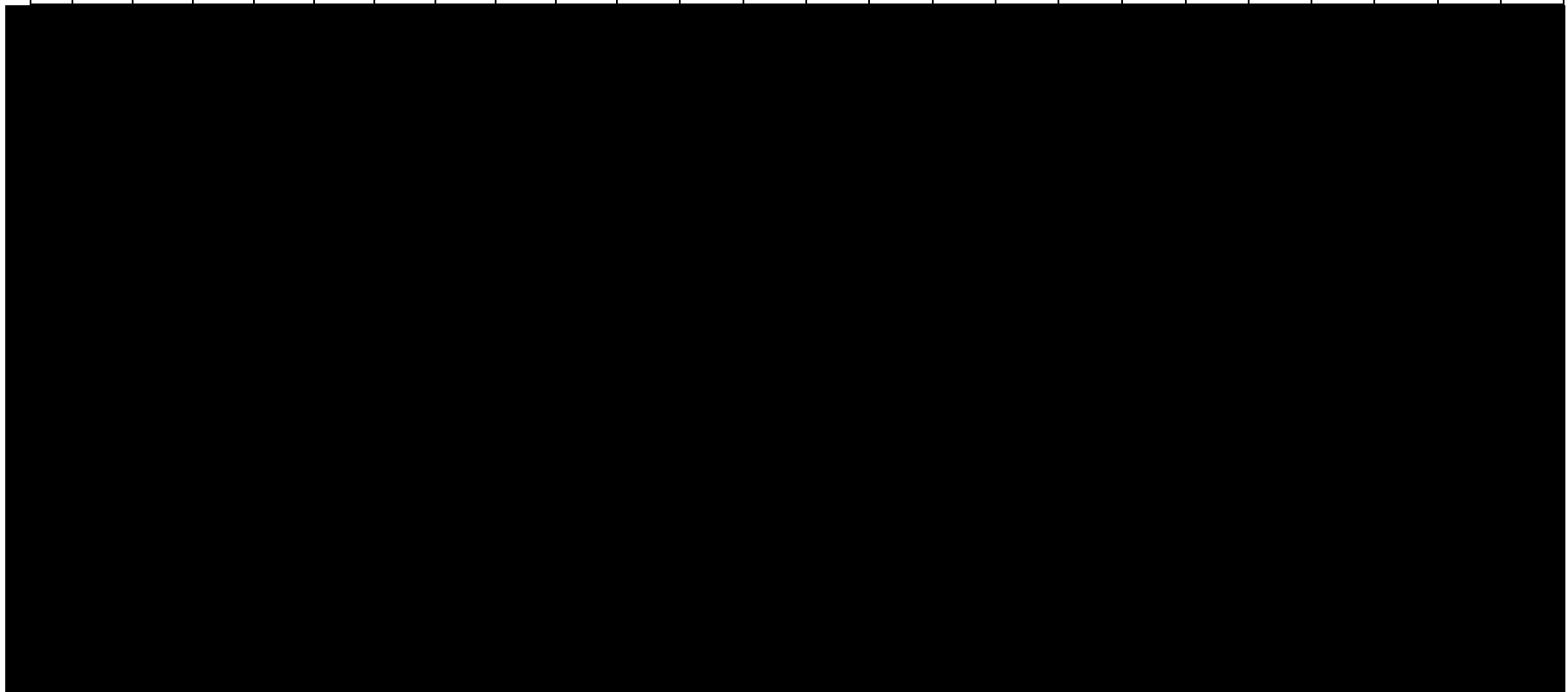


EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Contract Year, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus [REDACTED]

D = the Renewable Rate for the Contract Year, in \$/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Lost Output**” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“**Replacement Ancillary Services**” means Ancillary Services available under the Ancillary Services portion of the Product that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Ancillary Services are being provided.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

“**Replacement Energy**” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Product” means (a) Replacement Energy, (b) Replacement Capacity Attributes, (c) Replacement Green Attributes, and (d) Replacement Ancillary Services.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of _____ [DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
4. The Generating Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
5. The Storage Facility is fully capable of charging, storing and Discharging Energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _____ [DATE]_____.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to East Bay Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of ___ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed PV Capacity**");

(b) The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of ___ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**"); and

(c) The sum of (a) and (b) is ___ MW AC and shall be the "**Installed Capacity**".

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on _____ (the “**Construction Start Date**”);
and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority, a California joint powers authority
1111 Broadway, Suite 300
Oakland, CA 94607

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of East Bay Community Energy Authority, a California joint powers authority (“Beneficiary”), 1111 Broadway, Suite 300, Oakland, CA 94607, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on _____, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each

anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority, 1111 Broadway, Suite 300, Oakland, CA 94607, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of East Bay Community Energy Authority, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to East Bay Community Energy Authority, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [_____] (the “**Effective Date**”) by and between [_____] a [_____] (“**Guarantor**”), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “**Buyer**”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“**Seller**”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “**PPA**”) dated as of [_____] 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “**Guaranteed Amount**”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

failure (the “**Demand Notice**”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “**Payment Demand**”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*]/[*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or

affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Alameda, California. [Jury trial waiver to be included]

Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable

(i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

¹ To be repeated for each unit if more than one.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT N

NOTICES

<p><i>EDPR CA SOLAR PARK VI LLC, a Delaware limited liability company</i> (“Seller”)</p>	<p>EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority (“Buyer”)</p>
<p>All Notices:</p> <p>Street: 808 Travis Street, Suite 700 City: Houston, TX 77002 Attn: Executive Vice President – Asset Operations EDP Renewables North America LLC</p> <p>Phone: (713) 265-0350 Facsimile: (713) 265-0365 Email: brian.hayes@edpr.com</p> <p>With a copy to (at the same address): General Counsel 808 Travis Street, Suite 700 Houston, TX 77002 E-mail: legalnotice@edpr.com</p>	<p>All Notices:</p> <p>Street: 1111 Broadway, Suite 300 City: Oakland, CA 94607 Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: hchang@ebce.org; legal@ebce.org</p> <p>With an additional copy to:</p> <p>Hall Energy Law PC Attn: Stephen Hall P.O. Box 10406 Portland, OR 97296 Phone: (503) 477-9354 Email: steve@hallenergylaw.com</p>
<p>Reference Numbers:</p> <p>Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Reference Numbers:</p> <p>Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>
<p>Invoices:</p> <p>Attn: Settlements Phone: (713) 265-0350 Facsimile: N/A E-mail: settlements@edpr.com</p>	<p>Invoices:</p> <p>Attn: Power Resources Phone: (510) 361-6247 E-mail: powerresources@ebce.org; ap@ebce.org</p>
<p>Scheduling:</p> <p>Attn: ROCC Operator Phone: (713) 356-2573 or (713) 356-2544 Facsimile: N/A Email: rocc@edpr.com</p> <p>With a copy to:</p> <p>Attn: Director of Market Operations Phone: 713-356-2490 Email: MktOps@edpr.com</p>	<p>Scheduling:</p> <p>Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Administration Phone: (916) 781-4290 Email: ken.goeke@ncpa.com; preschedulers@ebce.org</p>

<p><i>EDPR CA SOLAR PARK VI LLC, a Delaware limited liability company</i> (“Seller”)</p>	<p>EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority (“Buyer”)</p>
<p>Payments: Attn: Settlements Phone: (713) 265-0350 Facsimile: N/A E-mail: settlements@edpr.com</p>	<p>Payments: Attn: Jason Bartlett, Finance Manager Phone: (510) 650-7584 E-mail: jbartlett@ebce.org</p>
<p>Wire Transfer: BNK: JPMorgan Chase Bank ABA: 021000021 ACCT: [REDACTED]</p>	<p>Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: *****3199</p>
<p>With additional Notices of an Event of Default to:</p> <p>EDPR CA Solar Park VI LLC Attn: General Counsel 808 Travis Street, Suite 700 Houston, TX 77002 Facsimile: (713) 265-2500 E-mail: legalnotice@edpr.com</p> <p>With a copy to (at the same address):</p> <p>Attn: Executive Vice President – Asset Operations EDP Renewables North America LLC</p> <p>Phone: (713) 265-0350 Facsimile: (713) 265-0365 Email: brian.hayes@edpr.com</p>	<p>With additional Notices of an Event of Default to:</p> <p>Howard Chang, Chief Operating Officer 1111 Broadway, Suite 300 Oakland, CA 94607 Phone: (510) 809-7458 Email: hchang@ebce.org; legal@ebce.org</p>

<p><i>EDPR CA SOLAR PARK VI LLC, a Delaware limited liability company</i> (“Seller”)</p>	<p>EAST BAY COMMUNITY ENERGY AUTHORITY, a California joint powers authority (“Buyer”)</p>
<p>Emergency Contact:</p> <p>Attn: Executive Vice President – Asset Operations EDP Renewables North America LLC</p> <p>Phone: (713) 265-0350 Facsimile: (713) 265-0365 Email: brian.hayes@edpr.com</p> <p>Attn: ROCC Operator Phone: (713) 356-2573 or (713) 356-2544 Facsimile: N/A Email: rocc@edpr.com</p> <p>And for health and safety issues, an additional copy to:</p> <p>Attn: Director of Health and Safety Phone: (713) 265-0350 Email: HealthSafety.EDPRNA@edpr.com</p>	<p>Emergency Contact:</p> <p>Attn: Bill Her, Director of Power Resources Phone: (510) 361-6247 E-mail: bher@ebce.org</p>

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Storage Contract Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than once per Contract Year within the first quarter of each Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

- (1) Time;
- (2) Charging Energy;
- (3) Discharging Energy;
- (4) Stored Energy Level (MWh).

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air Temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Storage Facility: **Under EDPR technical review**

- (1) successfully started;
- (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;

- (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
- (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
- (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.
- (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Charging Capacity, Discharging

Capacity and Stored Energy Level determined by the SCT, including supporting calculations; and

- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Storage Contract Capacity. The total amount of Discharged Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Contract Capacity, which shall be expressed in MW AC, and shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.

EXHIBIT P

STORAGE FACILITY AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “Monthly Storage Availability” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{\text{MNTHHRS}_m}$$

where:

m = relevant month “m” in which availability is calculated;

MNTHHRS_m is the total number of On-Peak Hours for the month;

UNAVAILHRS_m , is the total number of On-Peak Hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, Buyer Default, Storage Capacity Tests, System Emergencies, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS_m for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. [Clarify calculation of availability of the Storage Facility performing at less than the Storage Contract Capacity in an individual hour]

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable “**Availability Adjusted Storage Contract Capacity**” is calculated by multiplying the Storage Contract Capacity by the Availability Adjustment (“**Availability Adjustment**” or “**AA**”), which is calculated as follows:

- (i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

- (ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:

$$AA = 100\% - [(98\% - \text{Monthly Storage Availability}) \times 2]$$

- (iii) If the Monthly Storage Availability is less than 70%, then:

$$AA = 0$$

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date.

EXHIBIT R

METERING DIAGRAM

Seller will, by written notice to Buyer, update this Agreement with (i) a preliminary draft of Exhibit R within thirty (30) days following the Effective Date, and (ii) the final form of Exhibit R no later than the Guaranteed Construction Start Date. Upon Seller's delivery of such notice to Buyer, Seller's proposed draft or form shall constitute Exhibit R for all purposes hereof.

EXHIBIT S

ADJUSTED QUALIFYING CAPACITY

The “**Adjusted Qualifying Capacity**” of the Facility for any individual month shall be equal to:

$$\left[\begin{array}{c} \text{Storage Contract Capacity} \\ \times \\ \text{Storage Deliverability Percentage} \end{array} \right] + \left[\begin{array}{c} \text{Guaranteed Capacity} \\ \times \\ \text{Solar Qualifying Capacity Percentage} \end{array} \right] \times \left[\frac{\left[\begin{array}{c} \text{Guaranteed Capacity} \\ \times \\ \text{Solar Exceedance Percentage} \end{array} \right] - \left[\begin{array}{c} \text{Storage Contract Capacity} \\ \times \\ \text{Storage Deliverability Percentage} \end{array} \right]}{\left[\begin{array}{c} \text{Guaranteed Capacity} \\ \times \\ \text{Solar Exceedance Percentage} \end{array} \right]} \right]$$

where:

“**Guaranteed Capacity**” has the meaning set forth in Section 1.1;

“**Storage Contract Capacity**” has the meaning set forth in Section 1.1;

“**Storage Deliverability Percentage**” means the percentage of Storage Contract Capacity that has been allocated Deliverable MW;

“**Solar Qualifying Capacity Percentage**” means the Solar PV technology factor for each month as published by the most current CPUC Effective Load Carrying Capacity (ELCC) study, or its successor;

“**Solar Exceedance Percentage**” means the percentage of MW capacity under the interconnection request used by the CAISO in determining the maximum Deliverable MW, as may be updated by the CAISO from time to time;

“**Deliverable MW**” means the total amount of MW considered deliverable by the CAISO; and

“**Deliverability Allocation**” means the percentage allocation by the CAISO to the Seller under the relevant annual transmission plan deliverability (TPD) allocation process;

provided, that Seller shall not be obligated to establish a Storage Deliverability Percentage that would result in X being greater than Y, where X is equal to (a) the Storage Contract Capacity *multiplied by* (b) the Storage Deliverability Percentage, and Y is equal to (i) the Guaranteed Capacity *multiplied by* (ii) Solar Exceedance Percentage *multiplied by* (iii) the Deliverability Allocation. For purposes of calculating Adjusted Qualifying Capacity, the Deliverability

Allocation shall be assumed to be equal to one hundred percent (100%).

This Exhibit S may be updated from time to time by Seller, with written notice to Buyer, to reflect any changes that are required to ensure that Adjusted Qualifying Capacity is always equal to the amount of Net Qualifying Capacity for the Facility corresponding to a Deliverability Allocation of one hundred percent (100%), based on the then-current CAISO and CPUC rules and interpretations governing calculation of Net Qualifying Capacity for the Facility and the Parties' allocation of Deliverable MW across the Generating Facility and Storage Facility.

It is the general intent of the Parties that the calculation of Adjusted Qualifying Capacity, and therefore Seller's obligation to Buyer with regards to any RA Shortfall Month or RA Deficiency Amount, shall reflect an assumption that Seller secures a 100% Deliverability Allocation for the Facility. Furthermore, the Parties acknowledge and agree that CAISO could update its methodology for calculating Net Qualifying Capacity and that in such event, the definition of Adjusted Qualifying Capacity will be updated accordingly. Specifically, such updates shall ensure that the Adjusted Qualifying Capacity always reflects an assumption of 100% Deliverability Allocation for the Facility, and that Seller continues to be responsible for damages for any shortfall between Net Qualifying Capacity and Adjusted Qualifying Capacity arising from Seller receiving less than a 100% Deliverability Allocation or any reason listed in (b), (c) or (d) of the definition of RA Shortfall Month.



CA Renewable Energy RFP Overview and Contract Approval

PRESENTED BY: Howard Chang

DATE: June, 19 2019



Introduction

- RFP process and valuation methodology
- Summary of anticipated portfolio
- Request for approval of 2 long-term PPAs
 - 20-year Wind PPA in Alameda County in partnership with Salka and Castlelake
 - 20-year Solar+Battery Storage PPA in Fresno County in partnership with EDPR

East Bay Community Energy

Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable energy sources
- Meet a significant percent of SB350 long term contracting requirements
- Create new CA located renewable energy projects to deliver PCC1 RECs
- Drive CA and Alameda County job creation and community investment
- Contract low cost energy hedges to meet risk management goals

Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered
- Evaluated exhaustive combinations of projects to achieve desired volume targets, while optimizing project risk, location, workforce development, economics, and other characteristics
- Encouraged RFP participants to be creative and provide proposal variations on individual projects and include battery storage
- Sought CA-located projects with a preference for new-build capacity with a target a minimum of 20MW of capacity from projects located in Alameda County

Edison Energy At-A-Glance

Edison creates **competitive advantage** for market leaders by *quantifying energy risk* and designing the portfolio solution to protect shareholder value threatened by complex energy policies, technological advancements, and new products.

We provide a full suite of energy management solutions including specialized delivery of:



Portfolio Advisory & Analytics



Renewables & Sustainability



Supply Solutions



Demand & Engineering Solutions



Installations

OUR CREDENTIALS

\$5 Billion+
of energy
spend managed

7,500+
customer sites
and 250 solar
project sites

>\$3 Billion
in energy
projects funded

12 of the Fortune 50
are
clients

3.3+ gigawatts
of offsite renewable
procurement

600M+ sq. ft.
of facilities
optimized through
energy efficiency

REPRESENTATIVE MARKETS AND NOTABLE CLIENTS



East Bay
Community
Energy



Boston University,
University of
Richmond



Becton
Dickinson,
Novartis



Lincoln Center
Performing Arts,
Tishman Speyer



Fortune 50 Retailer,
General Mills,
Home Depot



Bloomberg,
Iron Mountain



Adventist
Healthcare,
MSKCC

HOW WE CAN HELP

- **Advisory services and advanced analytics that quantify the impact of changing market fundamentals on overall portfolio risk**
- **Design an optimal portfolio of renewable energy assets, long-term planning for battery storage deployments, and risk analysis of proposed state-level regulation**

RFP Solicitation

Request for Proposals

- Established standard offer and encouraged additional bid variations (e.g. size, term length, pricing structure, storage etc.)
- CA-located with a preference for new-build capacity
- Issued on June 4, 2018
- Received 568 unique offers associated with 75 projects, representing 19,770MW of nameplate capacity

Proposal Analysis & Portfolio Design

- All responses evaluated against deterministic electricity forecasts and qualitative considerations to determine short list
- Shortlisted projects performance tested under different market scenarios and ranked based on individual financial profile
- Individual financial profiles then placed into different potential combinations. Resulting portfolios then ranked by key metrics
- Final portfolio of projects selected based on both qualitative considerations and key financial metrics (expected outcomes, volatility around the expected outcomes and extreme downside outcomes)

Selection & Negotiation

- Final negotiations conducted to ensure selections determined based on most competitive offers
- Additional storage analysis conducted on shortlisted counterparties
- Twenty projects shortlisted in the process
- Six projects currently in active negotiations

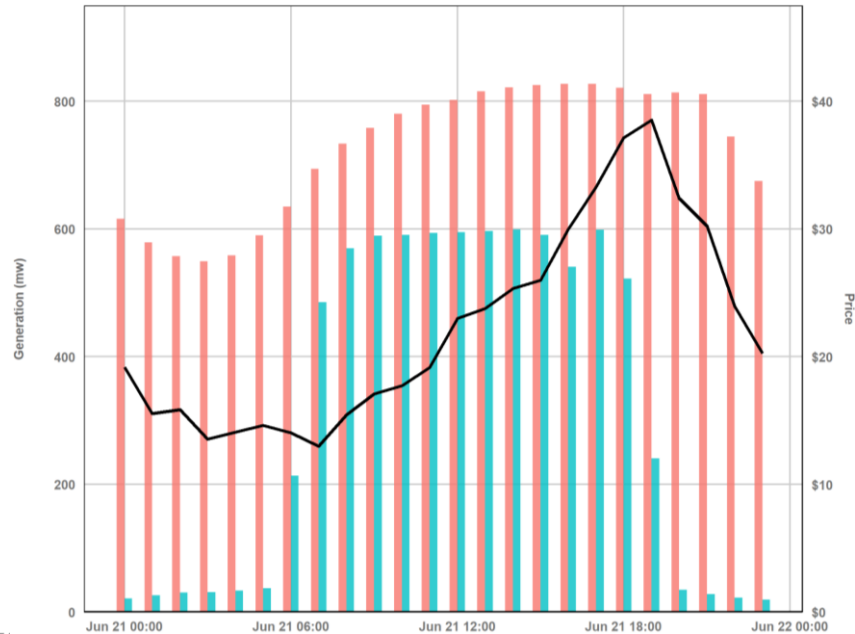
Proposal Analysis Methodology

- The hourly wholesale value of the electricity generated (relative to the contract price) was evaluated under a range of market conditions (~2,000 scenarios per project for the next 15+ years).
 - Considered various natural gas prices, grid fundamentals, renewable penetration, and weather conditions.
- Analysis of basis risk associated with pnodes was completed based on a historical analysis and a forecasted statistical distribution of risk.
- The resulting hourly cash flows were then summed to illustrate the range of potential cash flows in every month and year of the contract for each project.
- Because each proposal provided a unique hourly value profile, the projects were grouped into approximately 18,000 different potential portfolios to represent all possible project/portfolio combinations to meet EBCE's target capacity.
- The financials for each potential portfolio combination project were evaluated by how frequently various levels of gains and losses occurred for that given portfolio. This process also incorporated various risk weightings to consider mitigating downside scenarios.
- EBCE selected the portfolio of projects that provided the best economic value while mitigating downside risk, and addressing qualitative criteria related to location, workforce development, and community investment.

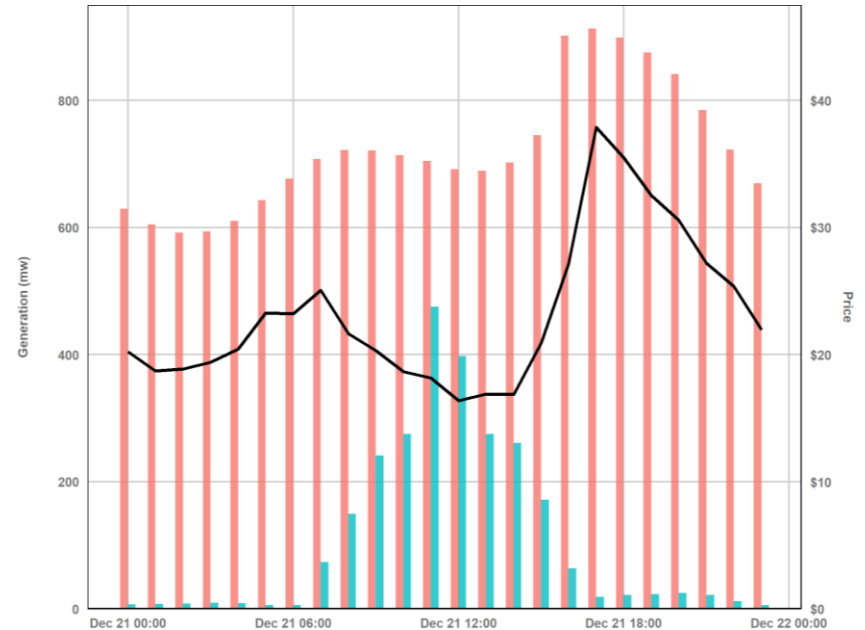
Sample: Historical Hourly Volatility

Due to the intermittency of renewable energy, there will be hours in which EBCE relies heavily on the open market to purchase electricity for customers. There will also be hours in which the renewables account for a greater proportion of the supply mix. Managing this risk will be key for success. Note: This portfolio does not reflect the integration of storage.

Example Summer Day

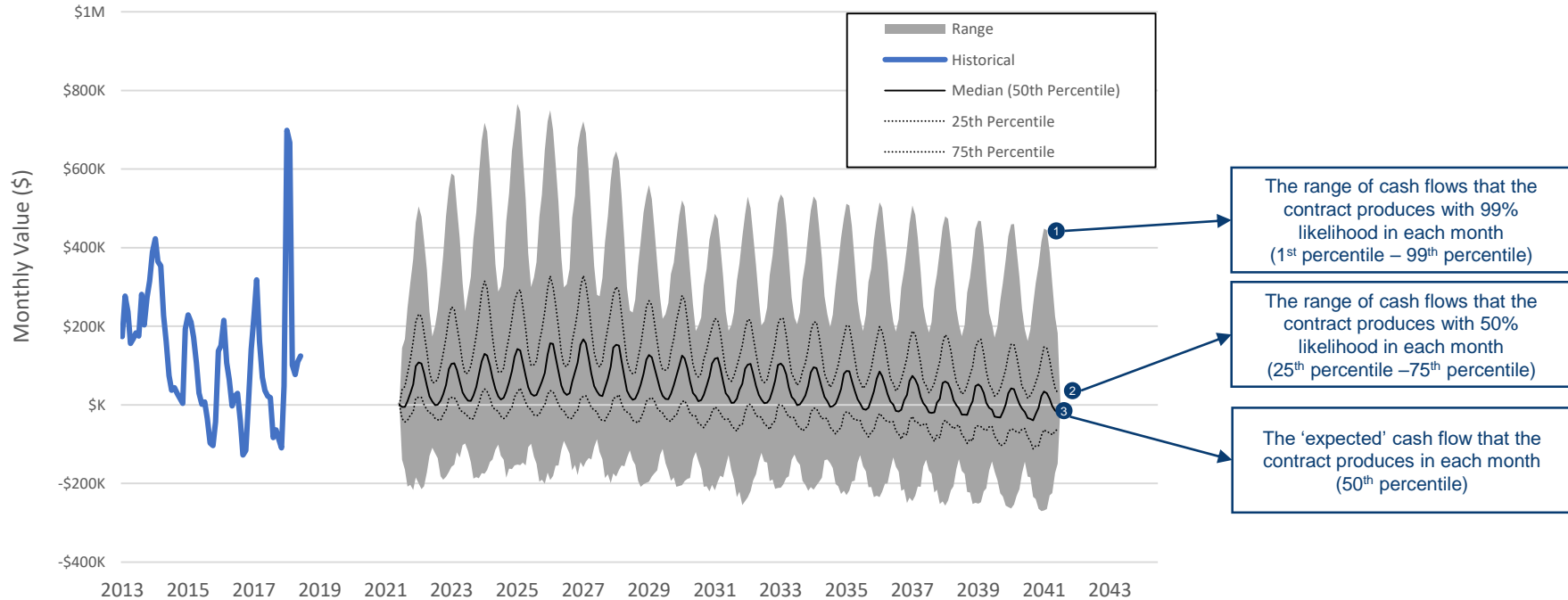


Example Winter Day



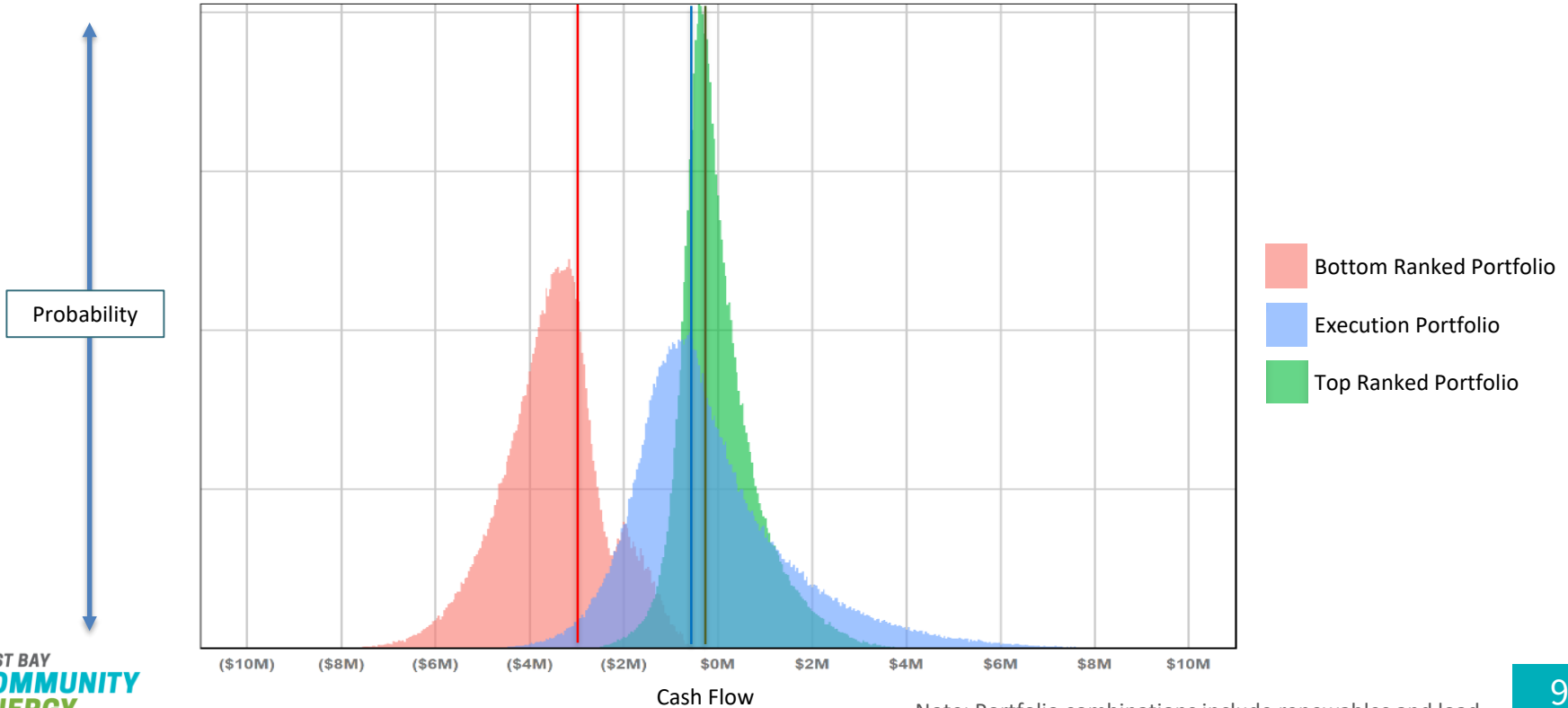
Example: Cash Flow Analysis

Monthly Economics: Historical vs Future



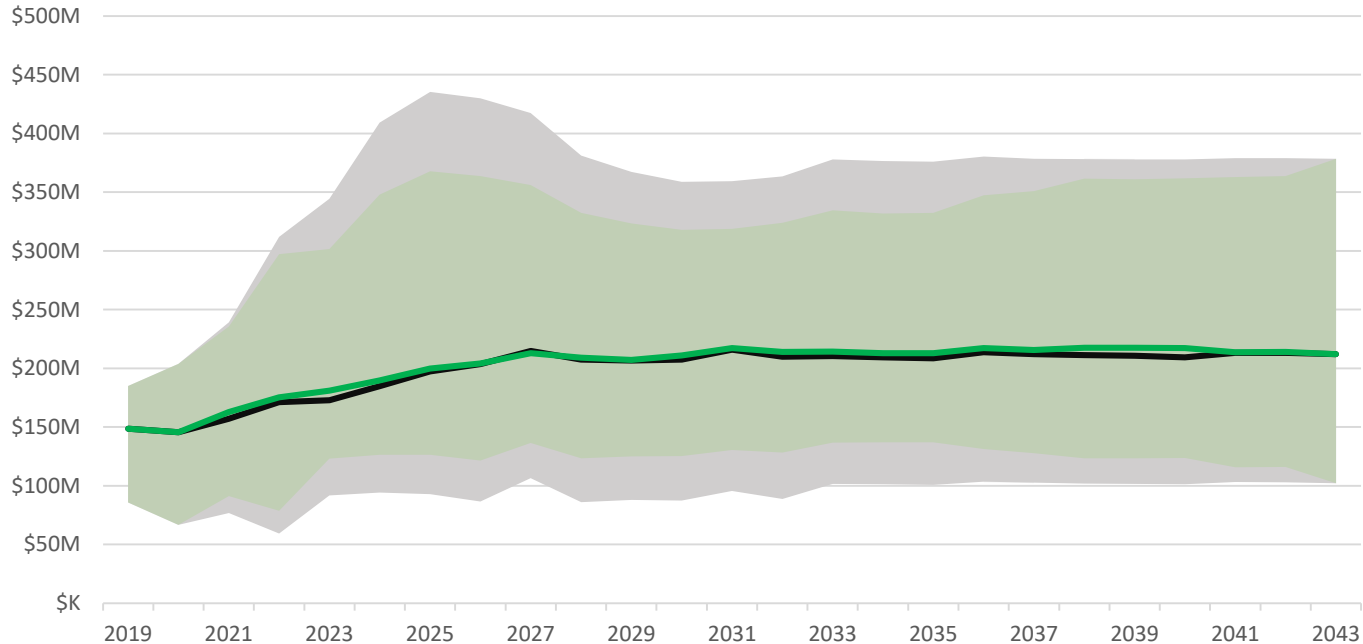
Portfolio Analysis Impact

Comparison of monthly cash flows for best and worst ranked portfolio combination



Strategically Managing Risk for Customers

Impact of Renewables on Customer Cost Certainty



- Customers' bills are impacted by potential volatility in the price of electricity
- By incorporating the portfolio of fixed-price renewable energy, we can reduce the risk faced by our customers by ~23% (as measured by +/- 25% swings in cost; or the p25-p75 range)

Evaluation Methodology

Assessment of the below key factors:

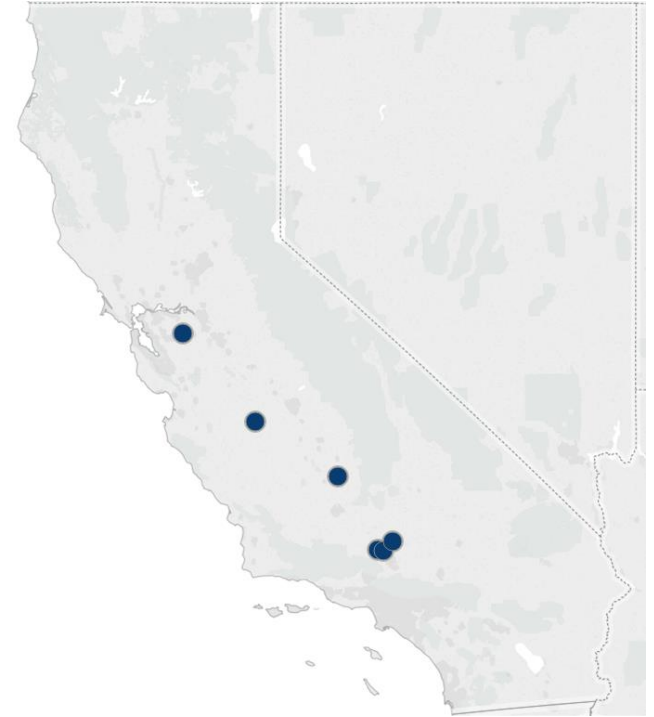
- Economic and financial risk, including project correlation within a portfolio
 - Includes assessment of fixed vs. floating price, contract curation, settlement structure, NP/SP, RA deliverability, storage option
- Project development risk, including site control, interconnection, permitting, and study status
- Project location and community investments
- Workforce commitments related to prevailing wage and union
- Counterparty experience developing and financing projects, including status as a project owner

Workforce and Community Investment

- Projects are new construction within the state of California, which will employ significant labor throughout the state
- All development partners have committed to utilizing union workforce. Projects are at varying stages of development with some projects having signed PLAs and some in discussions/negotiations
- All development partners have committed to investing funds within Alameda County in the form of community investment grants/funds

Portfolio Characteristics

- The final portfolio is expected to include 5-7 projects totaling approximately 500-600MWs in project capacity and up to 2,000,000MWhs per year
- Projects range from 50 to 150MWs in nameplate capacity
- Portfolio includes standalone solar PV, Solar PV + storage, and standalone wind
- Storage is expected to total between 40-60MWs of capacity with a 4hour duration
- Project maturities range from mid to late-stage development
- All projects are committed to utilizing union labor
- Projects include funds allocated towards community investment
- Projects include pnode and PG&E DLAP settled projects, 15-20year PPAs, as well as fixed and 2% escalating pricing structures
- Portfolio selection does account for project fall-out risk



Salka and Castlelake Overview



CASTLELAKE

- Salka, the project developer, is a San Diego-based company
 - Salka’s management team has developed and arranged financing for 13 different utility-scale renewable energy projects, more than 1 GW, to be built in North America
- Castlelake, L.P., the project owner, is a global private investment firm with US offices in Minneapolis and Dallas
 - Founded in 2005 by Rory O’Neill and Evan Carruthers
 - \$14.3billion assets under management and investments in 59 countries
 - 154 employees with 5 offices, including Minneapolis and Dallas Operates in 12 states in the US, with over 6,000 employees – experienced developer
 - Castlelake invests on behalf of endowments, foundations, public and private pension plans, private funds, family offices, insurance companies and sovereign wealth funds
- Has committed to enter into a Project Labor Agreement (“PLA”) with the Building and Construction Trades Council of Alameda County (BTC), AFL-CIO (“Council”)

Alameda Wind Project Details

- 57.5MW project generating capacity with an interconnection capacity of 56.2MW
- Project is located in Livermore, CA within Alameda County
- Expected Commercial Operation Date is December 2020
- Project has secured site control and signed interconnection agreements to deliver at the Dyer and Frick substations
- Construction start is anticipated to begin December 2019
- Project is estimated to bring well over \$250,000,000 of capital investment into Alameda County

EDPR Overview



- EDP Renewables North America LLC (“EDPR NA”) and its subsidiaries develop, construct, own and operate solar parks and wind farms throughout North America.
- EDPR NA is headquartered in Houston, Texas, with 13 regional offices across the United States, Canada and Mexico and a highly qualified team of approximately 600 employees.
- EDPR NA has developed more than 6,700 MW and operates more than 6,100 MW of renewable energy projects, consisting of more than 50 projects across North America.
- In California, EDPR NA operates 198 MW of wind in Kern County and approximately 30 MW of solar photovoltaic in San Bernardino County.
- EDPR NA is wholly owned subsidiary of EDP Renováveis, S.A. (“EDP Renewables” or “EDPR”), a global leader in the renewable energy sector.
- Present in 14 markets worldwide (Belgium, Brazil, Canada, Colombia, France, Greece, Italy, Mexico, Poland, Portugal, Romania, Spain, the United Kingdom, and the United States), EDPR is the world’s fourth largest wind energy producer.
- Energias de Portugal, S.A. (“EDP”), the principal shareholder of EDPR, is a global energy company and a leader in value creation, innovation, and sustainability. EDP has been included in the Dow Jones Sustainability Index for 12 consecutive years.

EDPR Solar + Storage Project Details

- New construction of 100MWac solar plus 30MW battery storage project located in city of Tranquility in Fresno County
- Commercial Operation Date expected Dec 2022
- Full Deliverability Status has been fully allocated at this stage, and anticipate 100% allocation next year
- Battery storage will provide sub-local Fresno area resource adequacy, energy shifting capabilities, and ancillary services
- Site control is secured and Phase 2 interconnection study completed
- Committed to a 5-party PLA signed
- EDPR has committed to investing into EBCE's Community Investment fund



Staff Report Item 20

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: FY 2020 Budget and Value Proposition (Action Item)
DATE: June 19, 2019

Recommendation

- A. Approve East Bay Community Energy's Fiscal Year 2020 Budget
- B. Approve Staff proposal to make no change to East Bay Community Energy's customer value proposition of a 1.5% discount on Bright Choice, price parity with PG&E for Brilliant 100 and a \$0.01/kWh premium for Renewable 100

Background

East Bay Community Energy Staff first presenting a draft FY 2020 budget to the East Bay Community Energy Executive Committee on May 24, 2019. The Executive Committee provided feedback on a number of items, including:

- A comparison of EBCE's projected staffing levels with other CCAs
- A comparison of EBCE's power content and value proposition with other CCAs
- A current organizational chart

On May 29, June 1 and June 25, EBCE held two webinars and a meeting in Union City to present the staff proposal to maintain EBCE's current value proposition. No comments were submitted during any of these meetings.

On June 3, the EBCE Community Advisory Committee met to discuss both the proposed budget and the proposed value proposition.

On June 7, written comments were submitted to EBCE in response of the staff proposal to maintain EBCE's current value proposition.

EBCE Budget

In response to feedback from the Executive Committee, internal staff resource discussions, public comment and two rate updates from PG&E (the first being the final 2019 PCIA EBCE numbers and the second being PG&Es initial 2020 ERRRA filing), EBCE staff is proposing the following fiscal year 2020 budget:

1) Forecast Revenues

REVENUE AND OTHER SOURCES

Electricity Sales	487,015,000
Uncollectables	(2,448,000)
Investment Income	579,000
<hr/>	
Total Revenue and Other Sources	485,146,000

This forecast of revenue reflects East Bay Community Energy’s current forecast of PG&E rates and the PCIA for EBCE’s FY 2020. These values will change over the course of the year based on actual customer consumption patterns, opt-outs, and changes to PG&Es 2020 rate and PCIA forecasts.

2) Forecast Energy and Energy Operations Costs

ENERGY OPERATIONS

Cost of Energy	386,904,000
Scheduling	653,000
Data Management/Billing'Customer Service	6,758,000
PG&E Service Fees	2,253,000
<hr/>	
Total Energy Operating Costs	396,568,000

This forecast of energy operating costs reflects East Bay Community Energy’s current procurements and forecasts of energy prices through the end of FY 2020. These values will change over the course of the year based on actual customer consumption patterns, opt-outs, and changes to actual energy product pricing.

3) Overhead Operations

OVERHEAD OPERATIONS

Personnel	6,703,000
Marketing, Outreach, Communications	2,263,000
Legal, Policy, & Regulatory Affairs	1,586,000
Local Development	4,840,000
Other Professional Services	1,214,000
General & Administrative	2,290,000
Depreciation	61,000
<hr/>	
Total Overhead Operating Costs	18,957,000

EBCE's Overhead Operating Costs reflect EBCE's proposed budgets for Personnel, Marketing/Outreach/Communications, Legal, Policy and Regulatory Affairs, Local Development, Other Professional Services and General and Administrative costs.

3a) Personnel

EBCE's budget accounts for staff headcount to grow from 23 in FY 2019 to 37 by the end of FY 2020. This includes three hires (Assistant Clerk, Local Development Program Manager, Decarbonization Analyst) that have been added in response to feedback from the Executive Committee and discussions during the Board Retreat. A full overview of EBCE's staffing plan, salary scales and organizational chart are included in the attached presentation.

3b) Marketing, Outreach and Communications

EBCE's Marketing, Outreach and Communications budget includes a wide variety of activities from direct marketing, customer outreach and engagement, events, sponsorships and customer communications that are mandated by the CPUC. A full overview of EBCE's Marketing, Outreach and Communications budget is included in the attached presentation.

3c) Legal, Policy and Regulatory Affairs

EBCE's Legal, Policy and Regulatory Affairs budget includes all EBCE's legal services costs, as well as all legislative and regulatory engagement. A full overview of EBCE's Legal, Policy and Regulatory Affairs budget is included in the attached presentation.

3d) Local Development

EBCE’s Local Development budget includes all EBCE’s planned direct expenditures on Local Development activities. In response to comments from the Community Advisory Committee, EBCE staff have created a new budget line item within Local Development that captures EBCE’s investments in Alameda County clean energy infrastructure projects that have been procured through initiatives like the Oakland Clean Energy Initiative and the CA Renewables RFP. A full overview of EBCE’s Local Development budget is included in the attached presentation.

3e) Other Professional Services

EBCE’s Other Professional Services budget primarily includes EBCE’s technical energy analytical services, including integrated resource planning and risk management support. A full overview of EBCE’s Other Professional Services budget is included in the attached presentation.

3f) General & Administrative

EBCE’s G&A budget includes the cost of EBCE’s office rental, office equipment, staff travel and expenses, and equipment. A full overview of EBCE’s G&A budget is included in the attached presentation.

4) Interest Payments

INTEREST PAYMENTS

Borrowing Interest	1,230,000
<hr/>	
Total Interest Payments	1,230,000

EBCE’s Interest Payments cover the cost of EBCE’s credit facility with Barclay’s. This value includes both drawn and undrawn costs. A full overview of EBCE’s Interest Payments is included in the attached presentation.

5) Forecast Net Position

Net Increase (Decrease) in Position	68,391,000
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EBCE’s forecast net position reflects EBCE Staff’s current view on forecast revenues, forecast energy costs and operating budget. Currently, EBCE is forecasting a positive net position of over \$68 million dollars.

EBCE Value Proposition

EBCE staff evaluated EBCE's current customer value proposition in the context of two major factors: 1) Direct Access Load Loss, 2) PG&Es Forecast 2020 Rates and PCIA

Based on current data available to EBCE, the re-opening of Direct Access could result in up to 188 GWh of load departure in 2021, which would decrease net revenue by \$2.8 million or more.

The most recent PG&E 2020 Rate and PCIA forecasts available to EBCE (one being a consultant driven rate forecast and the other being PG&E's actual 2020 ERRA Forecast) suggest the PG&Es generation rates will decrease in 2020, while the PCIA will increase by almost 30% compared to 2019. EBCE Staff forecast is that 2020 revenue impacts from the changes to PG&E's Rates and PCIA could reduce revenue by over \$60m compared to 2019.

Two sets of public comments were received in response to EBCE's review of its value proposition. Both sets of comments focused on EBCE's power content and its relationship to EBCE's finances.

In light of the continued potential that PG&E's rates and PCIA may significantly reduce 2020 revenues, EBCE staff recommend making no change to EBCE's value proposition at this time.

A more detailed assessment of EBCE's value proposition is included in the attached presentation.

Attachment

- A. FY 2020 Budget Presentation



FY 20 Proposed Budget

PRESENTED BY: Nick Chaset

DATE: May 24, 2019



East Bay Community Energy: FY 20 Budget Proposal

EBCE staff is pleased to present this draft 2019-2020 Budget.
Items covered through this presentation:

1. Overview of Revenues: Electricity Sales

2. Overview of Expenditures

- Cost of Energy

- Personnel

- Legal, Policy, & Regulatory Affairs

- Marketing Services

- General and Administration

- Other Professional Services

- Local Development

- Interest Payments

3. Overview of EBCE Expected Net Position at the end of the fiscal year and EBCE Reserve Policy

4. Review of EBCE Value Proposition and Discount

East Bay Community Energy: FY 20 Budget Proposal

Caveats on EBCE's FY20 Budget Proposal:

1. EBCE's 2019-20 Budget reflects staff's current projections for both electricity sales and energy costs. Both of these variables are subject to change over the course of the year due to a wide variety of factors ranging from the weather, to commodity prices and interest rates.
2. The 2018-19 Budget presented is the January revise, which updated many assumptions from the June budget to match with reality seen by launch.
3. For 2019-20:
 1. Legal, Policy, & Regulatory Affairs has been broken out from Other Professional Services.
 2. Anticipated future Local Development Program financing is being planned with a capital program

	FY 2018-19 Jan BUDGET	FY 2019-20 BUDGET
REVENUE AND OTHER SOURCES		
Electricity Sales	379,611,000	487,015,000
Uncollectables	-	(2,448,000)
Investment Income	-	579,000
Total Revenue and Other Sources	379,611,000	485,146,000
EXPENDITURES AND OTHER USES		
ENERGY OPERATIONS		
Cost of Energy	296,641,000	386,904,000
Scheduling	660,000	653,000
Data Management/Billing/Customer Service	4,937,000	6,758,000
PG&E Service Fees	1,476,000	2,253,000
Total Energy Operating Costs	303,714,000	396,568,000
OVERHEAD OPERATIONS		
Personnel	3,957,000	6,703,000
Marketing, Outreach, Communications	1,671,000	2,263,000
Legal, Policy, & Regulatory Affairs	-	1,586,000
Local Development	2,000,000	4,840,000
Other Professional Services	2,381,000	1,214,000
General & Administrative	1,146,000	2,290,000
Depreciation	-	61,000
Total Overhead Operating Costs	11,155,000	18,957,000
TOTAL ENERGY & OPERATING EXPENSES	314,869,000	415,525,000
Earnings Before Interest & Capital	64,742,000	69,621,000
INTEREST PAYMENTS		
Borrowing Interest	945,000	1,230,000
Total Interest Payments	945,000	1,230,000
TOTAL OPERATIONS & INTEREST DUE	315,814,000	416,755,000
NET INCREASE (DECREASE) IN POSITION	63,797,000	68,391,000

1. Overview of Revenues: Electricity Sales

REVENUE AND OTHER SOURCES	
Electricity Sales	487,015,000
Uncollectables	(2,448,000)
Investment Income	579,000
Total Revenue and Other Sources	485,146,000

Electricity Sales Assumptions and Statistics

- Opt-Out Rate: 5% (EBCE opt-out is currently approximately 3.4%)
- Uncollectables: 0.5% (based on observed monthly average)
- 89% of customers Bright Choice (1.5% discount)
- 10% of customers Brilliant 100 Opt Up (no discount)
- 1% of customers 100% Renewable Opt Up (\$0.01/kWh premium)
- Total Customers Served: 544,772 (as of 6/6/2019)
- 2019 Rates based on final PG&E ERRR compliance approved on June 10, 2019
- 2020 Rates are based on consultant forecast and PG&E 2020 ERRR Forecast

2. Overview of Expenses: Energy Operations

ENERGY OPERATIONS	
Cost of Energy	386,904,000
Scheduling	653,000
Data Management/Billing'Customer Service	6,758,000
PG&E Service Fees	2,253,000
Total Energy Operating Costs	396,568,000

Energy Costs are made up of four primary energy products and CAISO costs

- Block or Shaped Energy, Renewable Energy, Carbon Free Energy, Resource Adequacy and CAISO fees
- Current forecasts are based on actual and forecast energy costs as of June 12, 2019

Scheduling, Data Management and Service Fees

- Scheduling costs are fees paid to NCPA to manage EBCE's energy purchases and market activity
- Data Management, Billing and Customer Service/Call Center are the fees paid to SMUD at \$1.05/customer meter/month
- PG&E Service Fees are the monthly costs paid to PG&E to use their billing and metering systems at \$0.35/customer/month

Note: EBCE's specific costs of energy are derived from a mix of EBCE's actual contracted costs of the four energy products and forecast costs for these four energy products. EBCE is currently in the process of soliciting and procuring for both its 2019 and 2020 power needs.

2. Overview of Expenses: Personnel

Personnel

6,703,000

EBCE currently employs twenty two full time staff and one temporary employee.

In EBCE's FY 19 Budget, hiring for up to thirty positions was approved and EBCE expects to have hired twenty-three by the end of the fiscal year.

EBCE is seeking to hire an additional fourteen full time employees during the fiscal 2019/2020 year to reach a total of thirty seven employees, including:

- Exec: an assistant board clerk/admin coordinator
- Local Development: Program Manager, Analyst
- Marketing: Communications Analyst, Customer Care coordinator, Key Accounts manager
- Power: Risk manager, Analyst
- Data: Engineer, DER Data Scientist, Decarbonization Analyst
- Policy: Regulatory analyst, compliance analyst
- Legal: General Counsel - who will be hired based on explicit direction from the Board

Date of Hire		Position		Salary Classification
8/2/2017	Exec	Chief Executive Officer	Nick	CEO
10/5/2017	Exec	Council Clerk/Adminstrative Analyst	Steph	Analyst
10/23/2017	Exec	Chief Operating Officer	Howard	COO
10/15/2018	Exec	Finance Manager	Jason	Manager
11/13/2018	Exec	Executive Assistant	Meagan	Executive Assistant
8/1/2019	Exec	Assistant Clerk/Administrative Coordinator	Vacant	Coordinator
11/15/2017	Mar	VP of Marketing and Account Services	Annie	VP
1/2/2018	Mar	Marketing Director	Dan	Director
8/24/2018	Mar	Coordinator	Danny	Coordinator
10/1/2018	Mar	Coordinator	Febby	Coordinator
11/13/2018	Mar	Customer Care Manager	Kelly	Manager
6/10/2019	Mar	Public Engagement Manager	Alex	Manager
7/1/2019	Mar	Manager of Account Services (Key Accounts)	Vacant	Manager
7/1/2019	Mar	Intern	Vacant	Intern
9/1/2019	Mar	Customer Care Coordinator	Vacant	Coordinator
11/1/2019	Mar	Senior Communications Analyst	Vacant	Sr Analyst
1/7/2019	LD	Sr Director of Local Development	J.P.	Sr Director
4/8/2019	LD	Local Program Manager	Jesse	Manager
7/1/2019	LD	Local Program Manager	Vacant	Manager
7/1/2019	LD	Local Program Analyst	Vacant	Analyst
6/26/2018	Pow	Director of Power Procurement	Bill	Director
2/15/2019	Pow	Power Resources Associate	Jim	Associate
6/6/2019	Pow	Power Resources Manager	Mike	Manager
7/1/2019	Pow	Power Resources Manager	Vacant	Manager
9/1/2019	Pow	Power Resources Analyst	Vacant	Analyst
1/2/2018	Tec	VP of Technology & Analytics	Taj	VP
8/6/2018	Tec	Data Scientist	Kevin	Manager
9/1/2019	Tec	Systems Engineer	Vacant	Senior Analyst
8/1/2019	Tec	Integrated Decarbonization Strategist (Sr Analyst/Principle Analyst)	Vacant	Senior Analyst
10/1/2019	Tec	Strategic Manager	Vacant	Manager
11/28/2017	Pol	Sr. Directory of Reg Affairs/Deputy GC	Melissa	Sr Director
2/1/2018	Pol	Director of Community and Government Affairs	Deidre	Director
8/20/2018	Pol	Director of Regulatory Affairs	Todd	Director
9/5/2018	Pol	Principal Regulatory Analyst	Samantha	Principle Analyst
7/1/2019	Pol	Regulatory Analyst	Vacant	Analyst
7/1/2019	Pol	Paralegal/Compliance Analyst	Vacant	Analyst
TBD	Leg	General Counsel - hiring of this position contingent on Board Direction to do so	Vacant	GC

2. Overview of Expenses: CCA Headcount Comparison

	Exec/ Finance/ Admin	Legal	Marketing	Reg/Leg	Power	Programs	Customer Care	Technology	Total
PCE	3	3	4	3	3	3	2		21
SVCE	4		4	2	3	3	3		19
SJCE	6		4		4	1	3		18
MCE	13	3		6	7	10	19		58
SCP	4	2	3	1	3	4	4		21
EBCE	6	1	4	6	5	4	6	4	37
Average	6	2	4	4	4	4	6	4	

EBCE proposed headcount for FY'20 compared to five Bay Area CCAs

- EBCE staffing levels are generally at the average of the five comparable Bay Area CCAs
- The three areas where EBCE staffing levels are higher than the average are:
 - Technology and Analytics
 - Reg/Leg
 - Power
- EBCE higher levels of staffing in these three areas generally reflect EBCE's focus on developing capabilities, EBCE's size and EBCE's organizational priorities

2. Overview of Expenses: Personnel Continued

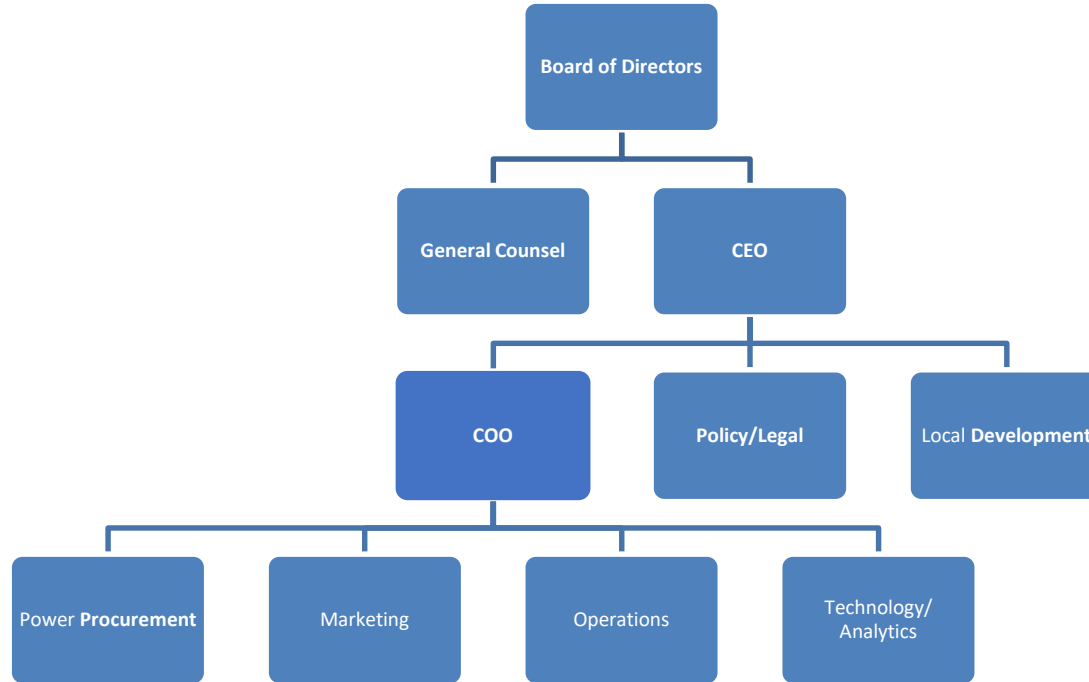
	2018/2019 low	2018/2019 high	2019/2020 Low	2019/2020 High
Fellow	\$55,000	\$60,000	\$56,100	\$63,000
Executive Assistant	\$80,000	\$110,000	\$81,600	\$115,500
Coordinator/Specialist			\$63,000	\$81,600
Analyst	\$80,000	\$105,000	\$81,600	\$110,250
Associate	\$105,000	\$125,000	\$107,100	\$131,250
Senior Analyst/Senior Associate			\$131,250	\$137,813
Manager/Principle Analyst	\$130,000	\$145,000	\$137,813	\$152,250
Senior Manager/Senior Principle Analyst	\$155,000	\$165,000	\$152,250	\$173,250
Director	\$170,000	\$190,000	\$173,400	\$199,500
Senior Director	\$195,000	\$215,000	\$199,500	\$225,750
Vice President	\$220,000	\$250,000	\$225,750	\$262,500
Senior Vice President	\$255,000	\$275,000	\$262,500	\$288,750
Executive VP/C-level	\$280,000	\$295,000	\$288,750	\$309,750
General Counsel	\$255,000	\$275,000	\$260,100	\$288,750

EBCE's 2018/2019 were developed through a review of Bay Area CCA salary survey that was included in the budget. For the 2019/2020 Fiscal Year, EBCE proposes adjusting the approved salary scales in two ways.

- First is to add a Cost of Living Adjustment of 2% and a performance based adjustment of up to 3%. These adjustments mean that EBCE staff are eligible for an increase in pay of between 2% and 5% in 2019/2020.
- The second change is the addition of two new employee classifications:
 - 1) Coordination/Specialist
 - 2) Senior Analyst/Senior Associate

Based on these two proposed adjustments, EBCE is proposing to adjust its salary scales by increasing the 2018/2019 low by 2%, the 2018/2019 high by 5% and align salaries between positions to arrive at EBCE's 2019/2020 salary scale

Overview of Expenses: EBCE Organizational Chart



2. Overview of Expenses: Marketing, Outreach, and Customer Service

Marketing, Outreach, Communications	2,263,000
-------------------------------------	-----------

Required Mailings	908,000
Advertising	579,000
Communications	273,000
Other	63,000
Grants	140,000
Data Manager	300,000

Mailings: Joint Rate Mailer/Power Content Label

Advertising/Sponsorship/Events: Alameda County Fair, Hyper Local Campaign

Communications: public relations and media, newsletters

Other: travel costs, equipment, dues and membership

Grants: community grants

Data Management: change orders to data management systems

2. Overview of Expenses: Legal, Policy, and Regulatory Affairs

Legal, Policy, & Regulatory Affairs	1,586,000
-------------------------------------	-----------

	Legal	Policy
Legal	846,000	230,000
Legislative	-	132,000
Technical consultants	-	214,000
Other Consultants	69,000	95,000

Examples of Legal, Policy, & Regulatory Affairs Activities

Legal: Outside General Counsel for regulatory engagement

Legislative: Retainer for Weideman group legislative advocacy

Technical consultants: economic analysis in regulatory and legislative cases

Other: communications, memberships in regional and statewide organizations

2. Overview of Expenses: Local Development and Programs

Local Development	4,840,000
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- EBCE’s Local Development Budget is made up of three distinct categories
 - Programs and Events
 - Local Development Capital Set-Aside for Local Clean Energy Infrastructure
 - Local Development Operating Costs
- Local Developments Programs and Events costs accrue to EBCE’s Local Development Budget and are described over the next few slides
- Local Develop Capital Set-Aside for Local Clean Energy Infrastructure accrues to EBCE’s Local Development Budget and is described over the next few slides
- Local Development Operating Costs accrue to EBCE’s Personnel and G&A Budget and are described in those sections of EBCE’s budget

EBCE’s Total FY 20 Local Development Budget is \$5,823,000

Programmatic Costs	
Programs	4,475,000
Capital Set-Aside*	1,200,000
Sponsorships & Events	65,000
Total Programs & Events	5,740,000
Non Operational Revenue	
BAAQMD	150,000
Grants & LCFS Credits	750,000
Total Revenue	900,000
Net Programmatic Budget	4,840,000
Additional Operating Costs	
Personnel	728,000
G&A Overhead	255,000
Total Additional Costs**	983,000
Net Local Development Budget	5,823,000
<i>* For future planned project financing</i>	
<i>** Included in other operational costs</i>	

2. FY '20 Proposed Local Development Programs and Events Budget Allocation

LDBP Area	2020 Proposed (\$000)	% of Budget
Vehicle Electrification	\$ (2,000)	44.7%
Building Electrification	\$ (675)	15.1%
Collaborative Procurement	\$ (600)	13.4%
Community Investment Fund	\$ (600)	13.4%
Enhanced NEM	\$ (350)	7.8%
Demand Response	\$ (150)	3.4%
Energy Efficiency	\$ (100)	2.2%
Programs and Events	(\$65)	
	Total Proposed	
	\$ (4,540)	
Other Available Revenue		
BAAQMD	\$ 150	
Grants and LCFS Credits	\$ 750	Primarily for vehicle electrification
LDBP Operating Funds	\$ (3,640)	

2. LDBP Program Budgeting Process

- Process
 - LDBP Document is the blueprint for program planning and therefore, budgeting
 - Staff will come to CAC and Board for feedback on budgets and as programs are planned and implemented
- Budgets to date
 - LDBP was originally approved in July 2018 with \$2M in early action funding recommendations
 - FY '19 (2018-2019) Budget of \$775k was accepted at Feb/2019 BOD meeting
 - FY '20 (2019-2020) Proposed budget is \$4.6M
 - Note that fiscal years (FY) are from July 1 to June 30

2. Overarching Principles of the LDBP

- Develop a high-level roadmap and framework for accelerating local DER deployment and maximizing community benefits
- Offering innovative program designs can overcome market failures & incentivize meaningful community & organizational benefits
- Development of local, clean, dispatchable, and distributed energy resources supports EBCE's core values and goals
- EBCE can support a vibrant local economy and workforce, and protect its most vulnerable customers through targeted local energy programming and investments
- A diversified portfolio of local programs coupled with retail rate savings can deliver greater benefit than rate savings alone

2. FY 2020 PROGRAMS (I)

- Building Electrification (\$600k)
 - Heat Pump Hot Water heater incentives (\$300k)
 - Reach Code Program stage II (\$150k)
 - Workforce and building inspector training, permit standardization (\$100k)
 - New electrification rate pilot (\$50k)
 - Electric living showcase (\$50k)

2. FY 2020 PROGRAMS (II)

- Demand Response (\$150k)
 - Commercial, Residential, EV and Battery
- Energy Efficiency (\$100k)
 - Continue and expand data sharing to increase efficacy of EE program
 - Build out city/county library lending program for EE and water saving devices (\$30k)
 - Find, fill, fund EE gaps for hard to reach customers (\$70k)
- Community Investment Grants (\$600k)
 - Community Innovation Grants (\$250k)
 - Government Innovation Grants (\$150k)
 - Energy Innovation Grants (\$200k)

2. FY 2020 PROGRAMS (III)

- Collaborative Procurement (\$600k)
 - Feed-in-Tariff (\$150k)
 - Community Solar (\$100k)
 - Community Net Metering (\$100)
 - Standard offer for stand alone storage (\$50k)
 - Solar + Storage for critical facilities (\$150k)
 - Direct Renewable contracting pilot (\$50k)
- Enhanced NEM (\$350k)
 - Additional adder for low income/municipal NEM (\$250k)
 - Pilot Solar to reduce disconnections (\$50k)
 - Loan buydown for low income solar loans (\$50k)

2. ELECTRIC VEHICLE BUDGET

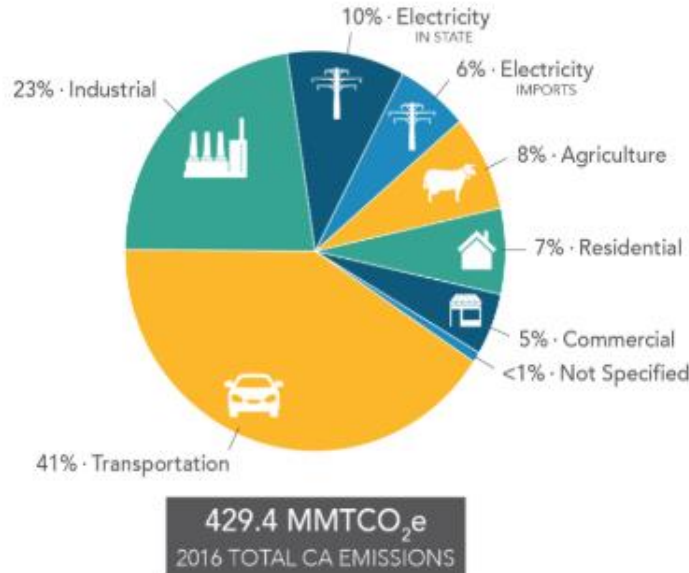
- Electric Vehicles (\$2M)
 - L2 Municipal Sites (\$550k)
 - L2 Workplace/Public charging (\$500k)
 - DCFC (\$500k)
 - Administration/staffing (\$450k)
- \$750k of budget is contingent on grants/LCFS credits

Results

- Funding will deploy 250-275 L2 chargers and 5-10 DC Fast chargers
- Focus on medium and heavy duty vehicles and school buses
- Pilot vehicle to grid testing for RA and resiliency
- Setup to pursue CALeVIP incentive funds in 2021

2. WHY \$2M FOR ELECTRIC VEHICLES?

Transport is largest GHG emitter



EV Charging infrastructure requirements to meet 2025 EV goal

Goal: 80,622 PEVs by 2025

Today: 30,000 PEVs

EV Service Equipment Required

Workplace L2: 3,853

Public L2: 3,100-3,500

Public DC Fast Chargers: 1,200-1,750

Multi-Family L2: 7,200

2. LOCAL CAPITAL SET-ASIDE

- OCEI and local Wind project will deliver significant job and economic value to Alameda County as they come on-line
- The Local Development Capital Set-Aside is designed to allow EBCE to annually budget for expected above market energy costs associated with Local Clean Energy projects like OCEI and Summit Wind
- Above market costs are calculated based on our current view of market prices for renewable energy or resource adequacy relative to the costs local project

Projects	Size/Cost
Summit Wind, Vistra Storage, other OCEI	75 MW to 90 MW
Local Market Premium over Contract Term	\$12-\$15M
Annual Capital Set-Aside*	\$1.2M/year
Contract Value	~\$250M
Capital Investment	>\$300M

2. Overview of Expenses: Other Professional Services

Other Professional Services	1,214,000
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Accounting/Audit	205,000
IT Consulting	36,000
Other Consultants	73,000
Technical consultants	900,000

Examples of Other Professional Services

Accounting and auditing for financial compliance

Technical consultants help with power procurement and planning

Other consultants will help with various essential tasks, like videography, translation services, and the like.

2. Overview of Expenses: General & Administrative

General & Administrative	2,290,000
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Conferences & Prof Development	137,000
Rent & Utilities	470,000
Operational Expenses	491,000
Dues & Memberships	556,000
Small Equipment & Software	636,000

Examples of General & Administrative Expenditures

- Small Equipment & Software includes complete development and furnishing of new office space
- Dues & Memberships includes \$375,000 for CalCCA and other essential cooperative organizations
- Operational Expenses include Director fees, service fees, supplies, and miscellaneous expenses
- Rent & Utilities covers all planned costs for one month at current space and 11 months at new space
- Conferences & Professional Development includes travel and lodging

2. Overview of Expenses: Interest Due

Barclay's Interest	1,230,000
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EBCE has only a single source of outstanding debt: Barclays Bank which loaned EBCE funds for energy purchases during Phase I launching in 2018.

The Barclays Credit Facility is sized at \$50,000,000. EBCE currently has \$13,108,000 in outstanding debt and is not anticipating any additional borrowings in the current fiscal year. EBCE pays 1% on undrawn facility balance, and 1-month LIBOR + 5.25% on its drawn facility balance. EBCE is paying down its loan to Barclays over a 24-month amortization period which started in May 2019 with full maturity in May 2021. EBCE anticipates accelerating repayment of the Barclays loan facility in the fiscal year 2019/2020.

EBCE paid its loan to Alameda County in full in February of 2019

3. Review of Net Position and Reserve Policy

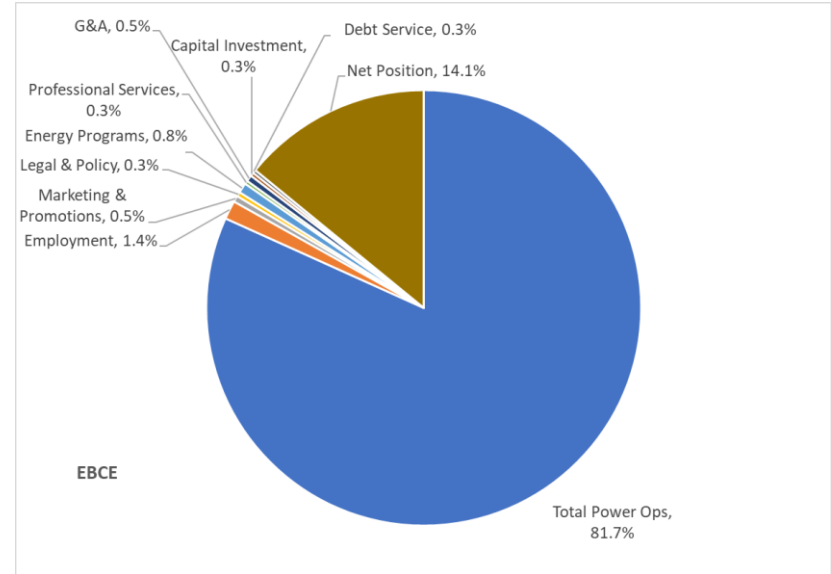
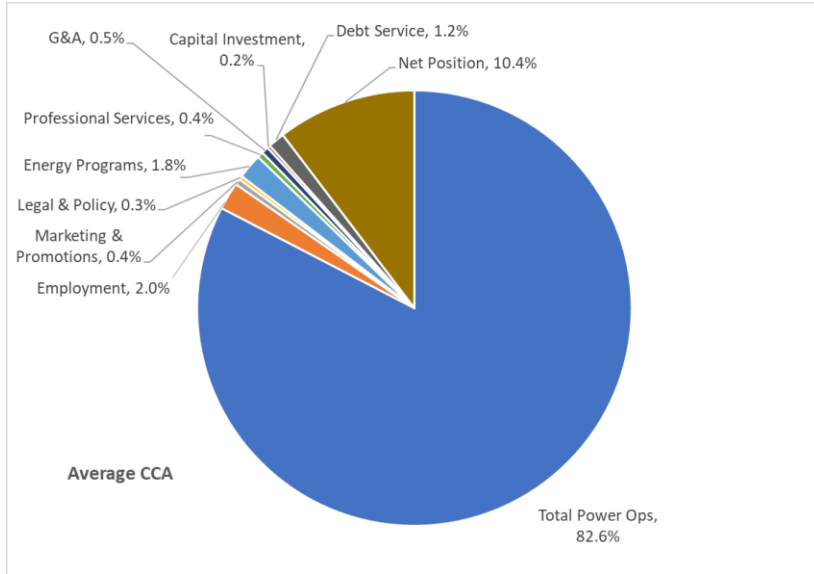
EBCE Net Position FY19-20 68,391,000

Reserve Funds	2018-19	2019-20	Total	Target	Remaining
Operating Credit	38,537,100	48,514,600	87,051,700	207,747,000	120,695,300
Rate Stabilization	5,780,600	1,496,590	7,277,190	7,277,190	-
Collateral	7,707,400	13,528,350	21,235,750	39,656,800	18,421,050
Local Development	9,634,300	4,851,460	14,485,760	48,514,600	34,028,840
Total Reserves	61,659,400	68,391,000	130,050,400	303,195,590	173,145,190

EBCE anticipates Rate Stabilization fund will be fully funded by end of 2019-20.

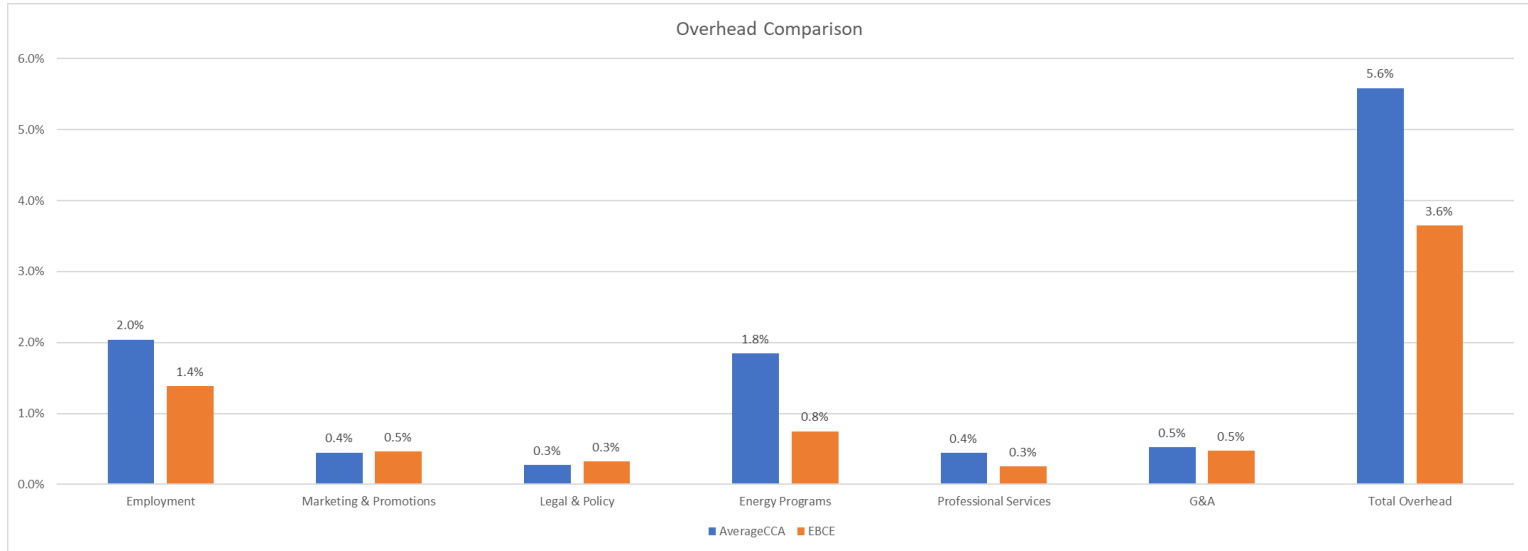
The allocations for both fiscal years are pending formal audits, but these are the expected allocations based on reserve fund policy.

3. Comparison of EBCE Budget to CCA Space



As percentage of revenues

3. Comparison of EBCE Budget to CCA Space



As percentage of revenues

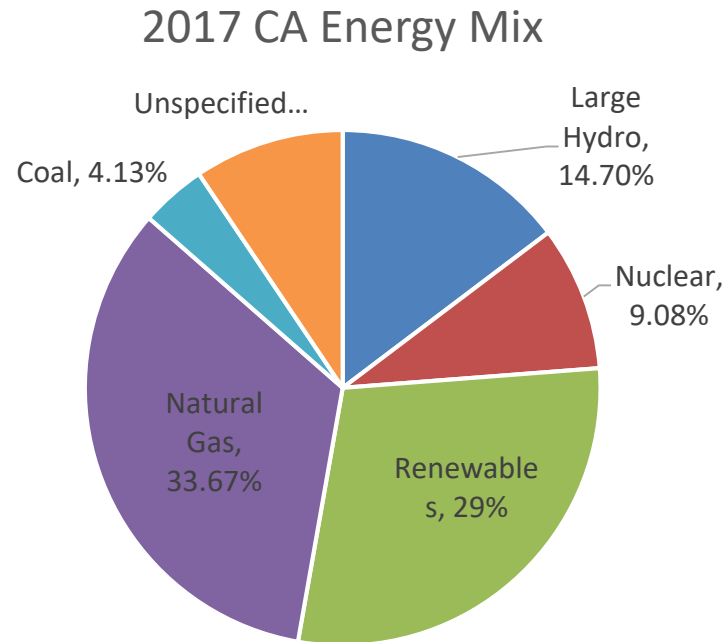
4. Comparison of CCA Products & Value

CCA	Basic Product	Power Mix		Upgrade 1	Power Mix		Upgrade 2	Power Mix	
		% Renewable/Carbon Free	Premium to PG&E		% Renewable/Carbon Free	Additional to Basic		% Renewable/Carbon Free	Rate
EBCE	Bright Choice	38% + 47%	1.50%	Brilliant 100	40% + 60%	Par to PG&E	Renewable 100	100% Renew	+0.01/kWh above PG&E
SVCE	Green Start	50% Renew/CF	1%	None	N/A	N/A	Green Prime	100% Renew	+0.01/kwh
MCE*	Light Green	61% Renew	0.30%	None	N/A	N/A	Deep Green	100% Renew	Par to PG&E
SCP	Clean Start	45% + 42%	2%	None	N/A	N/A	Evergreen	100% Renew	+0.025/kwh
SJCE	Green Source	45% + 35%	1%	None	N/A	N/A	Total Green	100% Renew	+0.01/kwh
MBCPA	MB Choice	30% Renew	Par + 3% Rebate	None	N/A	N/A	MB Prime	100% Renew	+0.01/kwh
PCE	Eco Plus	50% + 40%	5%	None	N/A	N/A	Eco 100	100% Renew	+0.01/kwh
*	Local Solar	100/100	\$0.142/kWh						

1. Carbon Free percentages are in addition above Renewable percentages
2. SVCE Green Start is at 6% premium now, but will transition to 1% through the year
3. MCE offers 100% solar option as a fixed rate product

4. California's Power Content : What's Available?

- California's energy supply mix currently includes a diverse mix of renewables, large hydro, nuclear and natural gas.
- As of 2017, clean sources made up 52% - 53% of all available electricity generation in California
- Access to incremental clean energy – renewables or carbon-free – can be achieved by either building new sources, importing sources from outside of California or buying clean energy that is wholly outside of California.
- As more CCA's seek to supply customers with significantly higher levels of clean energy than is currently available in California, supply of the clean sources becomes increasingly scarce and at a certain point no more clean energy sources are available until more construction occurs

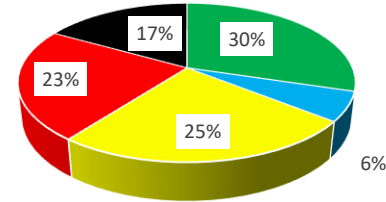


California Energy Commission Total System Electric Generation - June 21, 2018

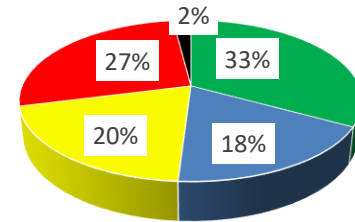
4. PG&E Energy Content Explained

- From 2015 to 2017 PG&Es power content shifted from 59% clean (with 23% nuclear) to 78% clean (with 27% nuclear)
- From 2015 to 2019 PG&E has lost almost 50% of its load - predominantly through CCA formation
- In 2019, PG&E has stated that it will not sell carbon-free energy and has not signed any new renewable contracts since 2012
- As PG&E has lost load over the last few years, the primary driver of reductions in carbon intensity have been load migration to CCAs and the growing proportion of nuclear energy in their mix
- This means that if a customer were to return to PG&E service, PG&E carbon intensity would incrementally worsen as more load is served by the same amount of carbon-free energy

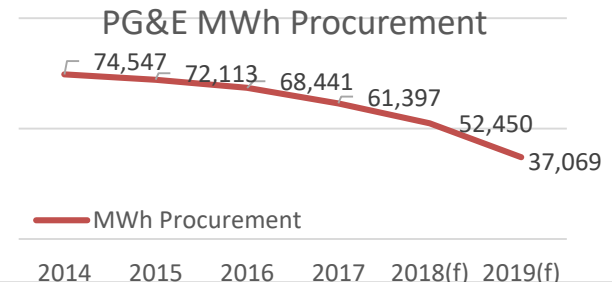
2015 PG&E Power Content



2017 PG&E Power Content

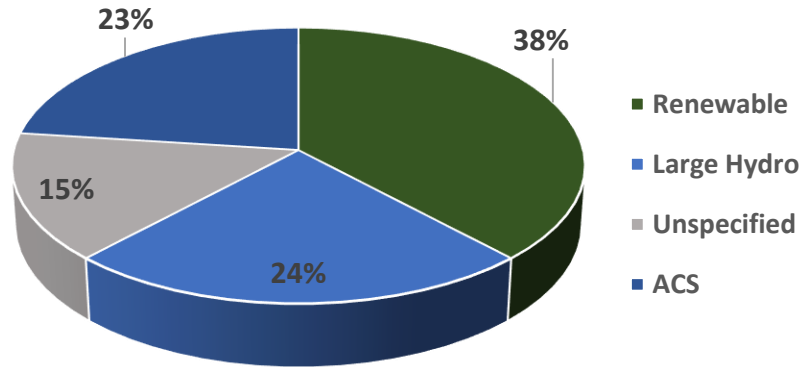


- Renewable
- Large Hydro
- Natural Gas
- Nuclear
- Unspecified



4. Bright Choice Energy Content Explained

2019 EBCE Procurement Content %



- EBCE Board has approved an emissions cap of 142lbs/MWh for Bright Choice as per [9/26/18 EBCE Board Memo on Carbon Accounting](#) which includes any emissions associated from unspecified energy or ACS
- EBCE Board approved a requirement that Bright Choice and Brilliant 100 increase their renewable content annually to always be 5% higher than CA RPS
- EBCE procurement strategy, and mix of products, will align such that total emissions for **Bright Choice** does not exceed 142 lb/MWh cap
- Further details about relative costs of energy products or associated margins are confidential and sharing them could be detrimental to EBCE's competitive position in the energy market

4. EBCE's Power Content

- California has limited supply of clean energy sources, with new renewables- which have 3-4 year lead times - representing the primary opportunity for adding to this mix
- PG&E's current power content does not reflect incremental carbon reductions, but instead illustrates the effect of customers departing to join CCAs. As part of the PCIA proceeding, PG&E will be required to start selling its excess renewables and carbon-free energy in 2020
- EBCE's current power content exceeds current CA RPS and the current CA average generation mix
- The underlying supply/demand of clean energy will create procurement challenges as more CCAs seek to procure clean energy beyond California's current available supply
- EBCE is focused on contracting for new, California renewables to support our Community and California's efforts to de-carbonize
- EBCE Staff recommends focusing on building a portfolio of new, clean energy resources while emphasizing the transition to electrified transportation and buildings to ensure the biggest impact in addressing the climate crisis

4. Review of EBCE Value Proposition

- EBCE currently offers three products:
 - Bright Choice which is 1.5% below PG&E rates
 - Brilliant 100 which is a parity with PG&E rates
 - Renewable 100 which is \$0.01/kWh more expensive than PG&E rates
- For 2019/2020, EBCE expects to deliver over \$7m in bill savings to customers
- As EBCE considers its value proposition for the next fiscal year, there are two major considerations to evaluate:
 - Expected Load Loss from Direct Access in 2021
 - Calendar year 2020 Expected PG&E Rates and PCIA

4. Review of EBCE Value Proposition: Impact of Direct Access Loss of Load

- EBCE is forecasting that the current re-opening of Direct Access will result up to 188 GWh of load departure starting Jan 1, 2021 which will reduce net revenue
- Based on analysis conducted to assess the impact of DA load departure in 2020, EBCE estimates that this could reduce margins by up to \$3m in 2021

	'19-'20 fiscal year	Calendar 2020
Reduced Revenue	\$4.7m	\$9.3m
Reduced Energy Costs	\$3.25m	\$6.5m
Impact on EBCE	-\$1.4m net revenue	-\$2.8m net revenue

4. Review of EBCE Value Proposition: 2020 PG&E Rates and PCIA

- PG&Es June 2019 ERRA forecast for 2020 includes very significant increases in the PCIA with very modest increases to PG&Es generation rate

2018 PCIA	2019 PCIA	2020 PCIA (ERRA Forecast)
Baseline	10% average increase	39% average increase

2018 PG&E Gen Rates		
Baseline	13% average increase	7% average decrease

	Rate Change	Revenue Impact
Combined impact of ERRA Forecast Gen rates and PCIA	17%-20% reduction in EBCE's Generation Rate compared to 2019	Over \$60 m reduction in revenue compared to Calendar year 2019

4. Review of EBCE Value Proposition: Staff Recommendation

- In light of continued uncertainty around 2020 PG&E rates and PCIA and risks associated with Direct Access load loss, EBCE staff recommend the following:
 - Maintain 1.5% rate discount for Bright Choice
 - Make no change to Brilliant 100 or Renewable 100
 - Consider development of additional rate options to retain customers who are eligible for Direct Access that would be brought to the Board for further review
 - Review EBCE Value Proposition in December 2019 when PG&E 2020 Rates and PCIA are more clear, to assess whether deeper discount can be provided



Staff Report Item 21

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, COO & Treasurer
SUBJECT: Selection of Auditor
DATE: June 19, 2019

Recommendation

Seek Board approval to delegate authority to the Chief Executive Officer to negotiate and execute a contract with Pimenti & Brinker LLP for a three (3) year term of service plus two (2) optional years as EBCE's financial auditor.

Background and Discussion

EBCE conducted an RFP for financial auditor services in the second quarter of this calendar year. The RFP focused on finding the best public agency auditor suitable in the electric utility space with a focus on CCA's. EBCE received and reviewed five (5) proposals with a standardized rubric. The review panel consisted of EBCE Staff, Craig Boyer from Alameda County, and Colleen Tribby from the City of Dublin.

The scoring rubric focused on four (4) areas of assessment: Understanding of Work, Capabilities to Perform, Firm Experience, and Cost Estimate. Additional considerations were given to Alameda County based firms per EBCE Administrative Procurement Policy No. 2018-9.

Each panelist individually and independently assessed each proposal in accordance with the rubric criteria. All panelists found Pimenti & Brinker scored highest in Understanding of Work, Capabilities to Perform, and Firm Experience and came in competitive on Cost. This gave them the highest overall score within the scoring rubric.

The three (3) highest scored audit firms were selected for interview. Each interview consisted of approximately 1-hour phone calls with the panel and the auditors to better understand each firm's strengths, weaknesses, and specific knowledge of the CCA space.

While all three interviewed candidates were strong, Pimenti & Brinker stood out as the best option for the following reasons:

1. They had significantly the most direct, relevant experience with auditing CCA's. Including EBCE, P&B has audited 6 CCAs with this work going as far back as 2013.
2. Already familiar with EBCE's existing financial processes, systems, and controls

3. Expressed clear commitment to the Board's interest
4. Provided a very competitive cost
5. Local to the Bay Area and available for in-person meetings, as necessary.

Staff wants to thank Craig Boyer and Colleen Tribby from our member jurisdictions for their support in this RFP process. Craig Boyer, a member of Alameda County's Auditor Controllers office, participated in EBCE's first financial audit. Based on his experience working with P&B and evaluation of the RFP proposals his endorsement of P&B further highlights the recommendation to select P&B for a long-term contract.

Fiscal Impact

The panel recommends to the Board to approve the three-year contract plus the option for an additional two years contingent upon Board satisfaction. This offers the lowest cost option and allows for a reasonable time frame and flexibility before going out to bid again. All P&B pricing options are presented below.

For the Year Ending June 30	2019	2020	2021	2022	2023
1 Year + 2 Option	27,000	27,500	28,000	0	0
2 Years + 2 Option	26,500	27,000	27,500	28,000	0
3 Years + 2 Option	26,000	26,500	27,000	27,500	28,000

All estimates include Management Letters, 3 in-person meetings, and other communications as necessary

Attachment(s):

- A. Resolution to appoint Auditor

RESOLUTION EBCE R-2019

**A RESOLUTION OF THE BOARD OF DIRECTORS
OF THE EAST BAY COMMUNITY ENERGY AUTHORITY
APPROVING AN AGREEMENT FOR AUDIT SERVICES
WITH PISENTI & BRINKER, LLP**

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

Section 1. East Bay Community Energy Authority (“EBCE”) conducted an RFP for financial auditor services; and

Section 2. EBCE’s RFP panel selected Piseni & Brinker, LLP, as the highest scoring applicant for audit services; and

Section 3. The CEO is directed to negotiate and execute a contract with Piseni & Briker LLP for a three-year term plus two optional years as EBCE’s financial auditor, pursuant to the terms described in the staff report associated with this item.

ADOPTED AND APPROVED this 19th day of June, 2019.

Scott Haggerty, Chair

ATTEST:

Stephanie Cabrera, Clerk of the Board



Staff Report Item 22

TO: East Bay Community Energy Executive Committee
FROM: J.P. Ross, Sr Director of Local Development
SUBJECT: CAC Appointments
DATE: June 19, 2019

Recommendation

- A. Re-appoint Anne Olivia Eldred to fill the vacant Environmental Justice/Community and Oakland resident seat;
- B. Appoint Ernie Pacheco to fill the vacant Labor seat; and
- C. Seek applicants from the underrepresented East and South Alameda County (Livermore, Dublin, Fremont and Union City) to fill Brinda Thomas’ seat and invite Ms. Thomas to continue to serve on the CAC until such time as another appointment is made.

Background and Discussion

On July 1, 2019, three Community Advisory Committee positions will become open for new four-year terms. At the time of appointment - in 2017 and 2018 respectively - these appointees to these three seats were selected based on their personal qualifications, stakeholder representation and city of residence.

Table 1 - CAC Stakeholder Representation and City of Residence at Time of Appointment

	Stakeholder Category	City of Residence	Appointment
Anne Olivia Eldred	Labor	Oakland	2017
Megan O’Neill	Environmental Advocate/Community	Oakland	2017
Brinda Thomas	Energy Advocate/Ratepayer	Fremont	2018

To fill these three vacancies, the Ad-Hoc Board appointment committee determined that the two primary criteria to determine whether re-appoint a current CAC member or seek new

applicants should be the current Stakeholder Category representing by the candidate and the candidate’s city of residence.

In April 2019, Ms. O’Neill resigned from the Community Advisory Committee leaving her space open. Since her resignation, the CAC seat has been filled by Ernie Pacheco, the CAC’s first alternate member. In May 2019, Ms. Eldred changed her stakeholder category from Labor to Environmental Justice/Community, while Ms. Thomas indicated that she has moved to Oakland from Fremont.

Table 2 - Current CAC Stakeholder Representation and City of Residence

	Stakeholder Category	City of Residence
Anne Olivia Eldred	Environmental Justice/Community	Oakland
Ernie Pacheco	Labor	Hayward
Brinda Thomas	Energy Advocate/Ratepayer	Oakland

Based on the Ad-Hoc Committees review of the current representation and city of residence of the three CAC members whose seats are up for re-appoint, they recommend the following actions by the Board of Directors:

1. Re-appoint Anne Olivia Eldred to fill the Environmental Justice/Community and Oakland resident seat left vacant by Megan O’Neill.
2. Appoint Ernie Pacheco to fill the Labor seat that Anne Olivia Eldred was appointed to in 2017
3. Seek applicants from the underrepresented East and South Alameda County (Livermore, Dublin, Fremont and Union City) to fill Brinda Thomas’ seat and invite Ms. Thomas to continue to serve on the CAC until such time as another appointment is made.

Attachment(s):

Documents Forthcoming

- A. Anne Olivia Eldred original application
- B. Ernie Pacheco original application
- C. Brinda Thomas original application