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PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

## Agenda Page 1 of 2

### Executive Committee Meeting Friday, November 1, 2019 12:15 P.M.

**Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901**  
**Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 9.6.19 Meeting Minutes
6. Resolution 2019-05 Establishing the Annual Salary for the Chief Executive Officer (Discussion/Action)
7. Receive Applicant Analysis and Consider Recommendation to the Board to Approve the Cities of Vallejo and Pleasant Hill as MCE Members for a 2021 Enrollment (Discussion/Action)
8. FY 2019/20 Operating Fund Budget Amendment (Discussion/Action)
9. Creation of an Operating Reserve Fund (Discussion/Action)
10. Amendments to MCE Policy 013: Reserve Policy (Discussion/Action)
11. Revolving Credit Facility Agreement with JPMorgan Chase Bank, N.A. (Discussion/Action)
12. Review Draft 11.21.19 Board Agenda (Discussion)



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building and at One Concord Center, 2300 Clayton Road, Concord, CA 94520 at the Clayton Road entrance. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than **four work days** in advance of the event.

**13.** Committee Matters & Staff Matters (Discussion)

**14.** Adjourn

**DRAFT**

**MCE EXECUTIVE COMMITTEE MEETING MINUTES**  
**Friday, September 6, 2019**  
**12:00 P.M.**

**Mt. Diablo Room**  
**2300 Clayton Road, Suite 1150**  
**Concord, CA 94520**

**Charles F. McGlashan Board Room**  
**1125 Tamalpais Avenue**  
**San Rafael, CA 94901**

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**Present:** Denise Athas, City of Novato (*San Rafael*)  
Sloan Bailey, Town of Corte Madera (*San Rafael*)  
Barbary Coler, Town of Fairfax (*San Rafael*)  
Ford Greene, Town of San Anselmo (*San Rafael*)  
Kevin Haroff, City of Larkspur (*Concord*)  
Bob McCaskill, City of Belvedere (*San Rafael*)  
Carlyn Obringer, City of Concord Alternate (*Concord*)  
Renata Sos, Town of Moraga (*Concord*)

**Absent:** Kate Sears, County of Marin  
Lisa Blackwell, Town of Danville  
Tom Butt, City of Richmond

**Staff  
& Others:** Jessica Brooks, Assistant Board Clerk  
Sherry Clark, Administrative Services Associate  
Alice Havenar-Daughton, Director of Customer Programs  
Darlene Jackson, Board Clerk  
Vicken Kasarjian, Chief Operating Officer  
Shaheen Khan, Director of Human Resources  
Jay Marshall, IT Systems Manager  
Garth Salisbury, Director of Finance  
Heather Shepard, Director of Public Affairs  
Shalini Swaroop, General Counsel  
Dawn Weisz, Chief Executive Officer

**1. Roll Call**

Acting Chair Sloan Bailey called the regular Executive Committee meeting to order at 12:01 p.m. with quorum established by roll call.

**2. Board Announcements (Discussion)**

There were none.

**3. Public Open Time (Discussion)**

**DRAFT**

Acting Chair Bailey opened the public comment period and there were no comments.

**4. Report from Chief Executive Officer (Discussion)**

CEO, Dawn Weisz, reported the following:

- Extended a thank you to Director Sloan Bailey for chairing the meeting.
- Ribbon cutting for the first FIT project in Napa County, took place in American Canyon on August 14<sup>th</sup>.
- CalCCA submitted a Resource Adequacy Settlement in the CPUC's RA docket last Friday.
- Discussions are underway regarding PCIA including resource sale and possible GHG-free resource allocations.
- MCE will soon engage in a power supply solicitation to fill some of the hedge positions per our Risk Management Oversight Policy.
- Reminder of the Board Retreat on Wednesday, September 18<sup>th</sup> from 9AM-5PM at the City of Richmond Memorial Auditorium. Board members please RSVP if you've not already done so. CPUC Commissioners Guzman-Aceves and Randolph are expected to be in attendance.
- CalCCA will hold its 2019 Annual Meeting in Redondo Beach on November 6-7. Registration is now open. Please let us know if you are interested in attending.
- Reminder that MCE's Holiday Party will take place on Friday, December 6 at the Napa Valley Marriott. A block of discounted rooms will be made available again this year for party-goers and the link will be sent out within the next two weeks. Please book your room early as there will be a limited number of rooms available at the discounted rate. More information to come soon.

**5. Consent Calendar (Discussion/Action)**

C.1 Approval of 6.7.19 Meeting Minutes

Acting Chair Bailey opened the public comment period and there were no comments.

Action: It was M/S/C (Bailey/Coler) **to approve Consent Calendar**. Motion carried by unanimous vote. (Abstain on C.1: Director Sos) (Absent: Directors Blackwell, Butt and Sears).

**6. Fiscal Year 2018 -19 Audited Financials and April – July FY 2019 – 20 Financial Update (Discussion)**

Garth Salisbury, Director of Finance, presented this item and addressed questions from Committee members.

Acting Chair Bailey opened the public comment period and there were no comments.

Action: No action required.

**DRAFT**

**7. MCE's 2021 – 2026 Energy Savings Assistance Program Application (Discussion)**

Alice Havenar-Daughton, Director of Customer Programs, presented this item and addressed questions from Committee members.

Acting Chair Bailey opened the public comment period and there were no comments.

Action: No action required.

**8. Formation of Ad Hoc CEO Evaluation Committee (Discussion/Action)**

Shaheen Khan, Director of Human Resources, presented this item and addressed questions from Committee members.

Acting Chair Bailey opened the public comment period and there were no comments.

Action: It was M/S/C to approve the Formation of Ad Hoc CEO Evaluation Committee with Directors Bailey, Coler, Lyman, Patterson, Perkins and Sears. Motion carried by unanimous vote. (Coler/Athas) (Absent: Directors: Blackwell, Butt, Greene and Sears).

**9. Committee & Staff Matters (Discussion)**

Acting Chair Bailey opened the public comment period and there were no comments.

**10. Adjournment**

Acting Chair Bailey adjourned the meeting at 1:05 p.m. to the next scheduled Executive Committee Meeting on October 4, 2019.

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**Sloan Bailey, Acting Committee Chair**

**Attest:**

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**Dawn Weisz, Secretary**



November 01, 2019

TO: MCE Executive Committee

FROM: Shaheen Khan, Director of Human Resources, Diversity and Inclusion

RE: Proposed Resolution 2019-05 Establishing the Annual Salary for the Chief Executive Officer (Agenda Item #06)

ATTACHMENTS: A. Chief Executive Officer Compensation History  
B. Proposed Resolution 2019-05 Establishing the Annual Salary for the Chief Executive Officer

Dear Executive Committee Members:

**SUMMARY:**

Dawn Weisz has served as the CEO of MCE since its inception in 2009. At a regular meeting of the Executive Committee on September 6, 2019, an Ad Hoc CEO Evaluation Committee was approved to meet and discuss the CEO evaluation process. Members of the Ad Hoc Committee include Board Chair Kathrin Sears, Directors Barbara Coler, Greg Lyman, Sloan Bailey and Tom Butt.

The Ad Hoc Committee met on September 13, 2019 to design the CEO evaluation process for the period of April 2018 through September 2019. The evaluation is designed to create an opportunity for the Board of Directors to provide performance feedback to the CEO on both “what” has been accomplished (goal achievement, critical outcomes, metrics, etc.) as well as “how” those accomplishments have been achieved in terms of the CEO’s ability to live MCE’s values and demonstrate critical management competencies. The evaluation addressed three components: the CEO’s self-evaluation, MCE Department Heads feedback on the CEO’s performance, and Board members feedback on interactions with the CEO. The evaluation was compiled and summarized by MCE’s Director of Human Resources. The Ad Hoc Committee met on October 28, 2019 to discuss the findings of the evaluation and give direction to the Board Chair regarding compensation discussions. The Board Chair delivered the evaluation results to Ms. Weisz.

The Executive Committee will meet on November 1, 2019 in closed session to discuss the results of Ms. Weisz’s evaluation and, in the event the Committee agrees with the recommendation of the Ad Hoc Committee regarding CEO compensation, the Committee will consider adopting the attached Resolution establishing an increased annual salary for the CEO. The actual salary amount will be inserted into the resolution at the time of the Committee’s consideration of this matter.

**Fiscal Impacts:**

Costs associated with establishing the CEO's annual salary are included in the FY 19/20 Budget.

**Recommendation:**

Adopt the attached Resolution 2019-05 Establishing the Annual Salary for the Chief Executive Officer.

<b>MCE's CEO Compensation Summary</b>
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<b>Year</b>	<b>Merit Increase (\$)</b>	<b>COLA (%)</b>	<b>Salary</b>	<b>Benefits Cost</b>	<b>Total Compensation</b>
2011	-	-	\$ 198,000	\$ 23,835	\$ 221,835
2012	\$ 49,500	-	\$ 247,500	\$ 24,335	\$ 271,835
2013	-	-	\$ 252,945	\$ 24,835	\$ 277,780
2014	-	2.2%	\$ 260,040	\$ 24,835	\$ 284,875
2015	-	2.8%	\$ 266,541	\$ 25,935	\$ 292,476
2016	-	2.5%	\$ 274,206	\$ 24,555	\$ 298,761
2017	-	2.9%	\$ 283,872	\$ 23,172	\$ 307,045
2018	\$ 56,128	3.3%	\$ 340,000	\$ 32,791	\$ 372,791
2019	-	3.7%	\$ 352,648	\$ 34,308	\$ 386,956



**RESOLUTION 2019-05**

**A RESOLUTION OF THE EXECUTIVE COMMITTEE OF  
MARIN CLEAN ENERGY ESTABLISHING THE ANNUAL SALARY FOR THE CHIEF  
EXECUTIVE OFFICER**

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, Dawn Weisz was hired as the first Chief Executive Officer (CEO) of MCE in 2009; and

**WHEREAS**, the Executive Committee and MCE staff desire to evaluate the CEO's performance on an annual basis consistent with all other MCE staff performance reviews; and

**WHEREAS**, a performance evaluation was conducted for the period of April 2019 through September 2019; and

**WHEREAS**, the performance evaluation indicated a merit-based salary increase for Ms. Weisz was appropriate; and

**WHEREAS**, the MCE Board of Directors delegated to the Executive Committee in Resolution 2018-09 the authority to prescribe the compensation of MCE's CEO and provide for the compensation, tenure, appointment and conditions of employment of the CEO, provided that such prescription and provision be consistent with the Board-approved budget; and

**WHEREAS**, the members of the Executive Committee are Directors Athas, Bailey, Blackwell, Butt, Coler, Greene, Haroff, McCaskill, McGallian, Sears, and Sos.

**NOW, THEREFORE, BE IT RESOLVED**, by the Executive Committee of MCE that the annual salary for the Chief Executive Officer shall be established in the amount of \$ \_\_\_\_\_, effective \_\_\_\_\_, 2019.

**PASSED AND ADOPTED** at a regular meeting of the MCE Executive Committee on this 1st day of November, 2019, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
County of Marin				
City of Belvedere				
City of Concord				
Town of Corte Madera				
Town of Danville				
Town of Fairfax				
City of Larkspur				
Town of Moraga				
City of Novato				
City of Richmond				
Town of San Anselmo				

\_\_\_\_\_  
CHAIR, MCE

**Attest:**

\_\_\_\_\_  
SECRETARY, MCE



November 1, 2019

TO: MCE Executive Committee

FROM: Jenna Famular, Community Development Manager  
John Dalessi, Operations and Development

RE: Receive Applicant Analysis and Consider Recommendation to the Board to Approve the Cities of Vallejo and Pleasant Hill as MCE Members for a 2021 Enrollment (Agenda Item #07)

ATTACHMENTS:

- A. MCE Applicant Analysis for 2021
- B. Historical Amendment 13 to the MCE JPA Agreement
- C. Addendum No. 6 to MCE Implementation Plan and Statement of Intent
- D. Policy 007 – New Customer Communities
- E. MCE Membership Application Checklist

Dear Committee Members:

**SUMMARY:**

On January 15, 2019, MCE opened an “inclusion period” for interested jurisdictions in both Solano County and Contra Costa County to complete the steps required to join MCE as a member. The inclusion period was established to create efficiencies in workflow, achieve economies of scale, and streamline procurement procedures. The inclusion period was closed on June 30, 2019. During this inclusion period the City of Vallejo, located in Solano County, and the City of Pleasant Hill, located in Contra Costa County, completed all requirements to submit a membership request to MCE.

The City of Vallejo received presentations from MCE before their city council and voted unanimously to request membership with MCE on May 28, 2019. Vallejo represents a population of approximately 122,000 individuals and would be the third jurisdiction in Solano County to join MCE after the enrollment of the City of Benicia in 2014, and the pending April 2020 enrollment of unincorporated Solano County.

The City of Pleasant Hill received a presentation from MCE before their city council and voted unanimously with one abstention to request membership with MCE on June 3, 2019. Pleasant Hill represents a population of approximately 35,000 individuals and would be the 15<sup>th</sup> jurisdiction in Contra Costa County to join MCE after the enrollment of the City of Richmond in

2013, the Cities of El Cerrito and San Pablo in 2015, the Cities of Lafayette and Walnut Creek in 2016, and the Cities of Concord, Martinez, Oakley, Pinole, Pittsburg, and San Ramon, Towns of Danville and Moraga, and unincorporated Contra Costa County in 2018.

The request of these jurisdictions to join MCE requires MCE Board approval subject to positive results from the quantitative applicant analysis. The quantitative analysis is completed for the purpose of determining environmental benefits such as incremental increases in renewable energy deliveries and expected reductions in greenhouse gas emissions, as well as potential financial impacts related to the addition of customers located within the Cities of Vallejo and Pleasant Hill. The analysis has been completed and is attached hereto.

The impacts of this prospective membership expansion are positive, demonstrating increases in renewable energy sales, expected reductions in greenhouse gas emissions, and positive fiscal impacts for MCE and its customers<sup>1</sup>. It is estimated that the additional customer base would yield annual net revenues of \$6.4 million on average, resulting in a positive fiscal impact on MCE and the existing customer base. These benefits could supplement MCE reserves, expand funding for clean energy or local energy programs, or help to maintain competitiveness of MCE rates. The analysis also indicates that service to the new customers would increase the amount of renewable energy being used in California's energy market by approximately 110,666 MWh per year while reducing GHG emissions by up to 122 metric tons of carbon dioxide equivalent per year.

On February 8, 2017, the California Public Utilities Commission (CPUC) passed Resolution E-4907, which delays the timeline by which a new member jurisdiction may begin service with a community choice aggregator. As a result, the City of Vallejo and City of Pleasant Hill will not be permitted to begin service until 2021. Resolution E-4907 requires the submission of an Addendum to MCE's Implementation Plan and Statement of Intent by the end of calendar year 2019. This Addendum would be similar in structure to Addendum No. 6, which was submitted in 2018, prior to MCE's upcoming expansion, which is included here for reference as Attachment D. Staff is prepared to create and submit Addendum No. 7 following Board direction.

General budgetary impacts of the recommended actions will be positive, as increases in revenues will more than compensate for increased expenses after enrollment occurs. Specific budgetary impacts will be reflected in the FY 2020/21 budget.

## **Recommendation**

Recommend that the MCE Board of Directors approve the cities of Vallejo and Pleasant Hill as members of MCE, and take all necessary actions to finalize membership for service in 2021.

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<sup>1</sup> Note that any rate/financial impacts are based on wholesale electricity pricing at the time of analysis. Such pricing is subject to change and actual rate/financial impacts will be based on wholesale electricity pricing offered to MCE at the time of power supply contract execution.

# Marin Clean Energy Applicant Analysis for 2021

November 2019

## SUMMARY

MCE's policy regarding new membership requires the completion of a quantitative analysis as part of the preliminary evaluative process. The primary focus of the quantitative analysis is to determine the anticipated fiscal impacts that would affect MCE's existing customer base following the addition of the prospective new communities. The quantitative analysis must demonstrate that the addition of the prospective new communities is projected to result in a neutral or positive fiscal impact for MCE and the existing customer base; this is a threshold requirement that must be met before proceeding with further membership activities. In addition, the quantitative analysis addresses the projected environmental impacts that would result from offering MCE service to the prospective new communities. More specifically, the analysis prospectively determines whether or not the new communities will accelerate greenhouse gas (GHG) reductions (beyond those reductions already achieved by MCE's existing membership) while increasing the amount of renewable energy being used within California's energy market.

MCE has received membership requests from Pleasant Hill and Vallejo, both of which have taken the requisite steps to be considered for membership in MCE. Membership would entail expansion of MCE service to customers within these cities. The results of the quantitative analysis are summarized in this report.

In general, the quantitative analysis indicates a positive effect for existing MCE customers following the addition of prospective customers located within the applicant jurisdictions. **It is estimated that the additional customer base would yield annual net revenues of \$6.4 million on average, resulting in a positive fiscal impact on MCE and the existing customer base. These benefits could supplement MCE reserves, expand funding for clean energy or local energy programs, or help to maintain competitiveness of MCE rates. The analysis also indicates that service to the new customers would increase the amount of renewable energy being used in California's energy market by approximately 110,666 MWh per year while reducing GHG emissions by up to 122 metric tons of carbon dioxide equivalent per year.**

## BACKGROUND

Since its inception in 2010, MCE has successfully undergone several expansions with the most recent occurring in April 2018, and another planned for April 2020. Initially serving approximately 8,000 customers in May 2010, MCE has grown over the years to its current customer base of more than 480,000 electric customers. Past expansions have been beneficial in reducing MCE's average costs and contributing to MCE's ability to achieve its environmental goals while maintaining competitive rates. MCE's expansion phases are summarized in Table 1.

Table 1: MCE Expansion History

MCE Phase No.	Status & Description of Phase	Implementation Date
<b>Phase 1: 8,000 Accounts</b>	<b>Complete:</b> MCE Member (municipal) accounts & a subset of residential, commercial and/or industrial accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies.	May 7, 2010
<b>Phase 2A: 5,700 Accounts</b>	<b>Complete:</b> Additional commercial and residential accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies (incremental addition to Phase 1).	August 2011
<b>Phase 2B: 74,000 Accounts</b>	<b>Complete:</b> Remaining accounts within Marin County.	July 2012
<b>Phase 3: 33,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of Richmond.	July 2013
<b>Phase 4A: 18,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the unincorporated areas of Napa County, subject to economic and operational constraints.	February 2015
<b>Phase 4B: 34,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of San Pablo, the City of Benicia and the City of El Cerrito, subject to economic and operational constraints.	May 2015
<b>Phase 5: 84,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the Cities of American Canyon, Calistoga, Lafayette, Napa, Saint Helena, Walnut Creek and the Town of Yountville.	September 2016
<b>Phase 6: 218,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within Contra Costa County (unincorporated areas); the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga.	April 2018
<b>Phase 7: 11,000 Accounts</b>	<b>Scheduled:</b> Residential, commercial, agricultural, and street lighting accounts within the unincorporated areas of Solano County	April 2020

In evaluating requests for membership, MCE uses qualitative and quantitative criteria listed below. The focus of the present analysis is to address criteria A, B, and C.

Membership Criteria:

- A. Including new communities is projected to result in a neutral or positive fiscal impact for MCE and the existing customer base.
- B. Including new communities will enhance strength of local programs, including an increase in distributed generation, and will accelerate greenhouse gas reductions on a larger scale.
- C. Including new communities will increase the amount of renewable energy being used in California's energy market.
- D. There will be an increase in opportunities to launch and operate MCE energy efficiency programs to reduce energy consumption and reliance on fossil fuels.
- E. New opportunities are available to deploy local solar and other distributed renewable generation through the MCE Net Energy Metering Tariff and Feed in Tariff.
- F. Greater demand for jobs and economic activity is likely to result from service in new communities.
- G. Inclusion of new communities is likely to create stronger voice for MCE at the State and regulatory level.

## ANALYSIS

MCE conducted an analysis of the potential new electric customers to estimate the revenues and costs associated with extending MCE service to the applicant jurisdictions. The analysis incorporated historical monthly electric usage data provided by PG&E for all current electric customers located within the service boundaries of Pleasant Hill and Vallejo.

Table 2 summarizes the aggregate account and electricity usage data for the major customer classifications. The electric data indicates the potential for 64,300 new MCE customers with a potential increase in annual electricity sales approximating 509,569 MWh per year. The aggregate peak demand of these customers is estimated at 92 MW.<sup>1</sup>

**Table 2: 2018 Applicant Electric Data**

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (kWh)
<b>Residential</b>	58,772	291,416	413
<b>Small Commercial</b>	4,345	65,909	1,264
<b>Medium Commercial</b>	392	72,901	15,498
<b>Street Lighting</b>	530	4,590	722
<b>Other Non-Residential</b>	233	74,753	26,736
<b>Total</b>	64,272	509,569	661
<b>*Peak Demand (MW)</b>			92

\*Estimate based on PG&E customer usage profiles

As compared to the current MCE customer base, summarized in Table 3 below, the applicant communities include a similar mix of customer service classifications, with a slightly higher proportion of residential customers. Aggregate per capita electricity consumption is lower in the new communities by approximately 27% overall. Other non-residential customer data have been aggregated to comply with the 15/15 customer confidentiality rule.

<sup>1</sup> These figures are for bundled electric customers of PG&E and exclude customers taking service from non-utility energy service providers through the state's direct access program as well as certain accounts on generation service contracts. These figures are unadjusted for expected customer participation rates.



**Table 3: Estimated Annual MCE Electricity Data (Current Customers)**

Classification	Accounts	Annual Energy (MWh)	Monthly Per Account (KWh)
Residential	430,493	2,464,349	477
Small Commercial	40,751	706,524	1,445
Medium Commercial	3,560	679,093	15,895
Large Commercial	1,865	759,954	33,952
Industrial	49	517,383	883,056
Agricultural and Pumping	3,274	76,663	1,951
Street Lighting	3,973	31,468	660
<b>Total</b>	<b>483,966</b>	<b>5,235,433</b>	<b>901</b>
<b>Peak Demand (MW)</b>			<b>1,005</b>

In regard to seasonal consumption patterns, electricity usage in the applicant communities exhibit a more pronounced winter peak than does the current MCE customer base. These differences can be seen in comparing Figure 1 and Figure 2 below.

**Figure 1: Applicant Communities Projected 12-Month Hourly Load Profile (KW)**

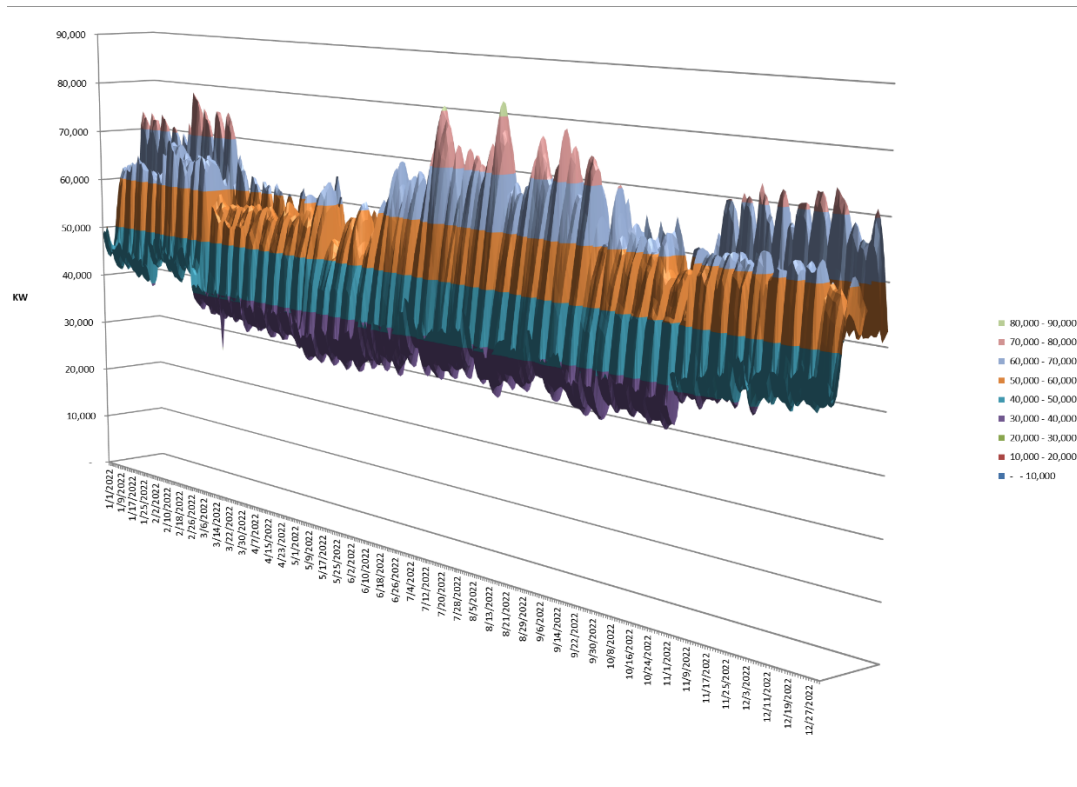


Figure 2: MCE Current Customer Base Projected 12-Month Hourly Load Profile (KW)

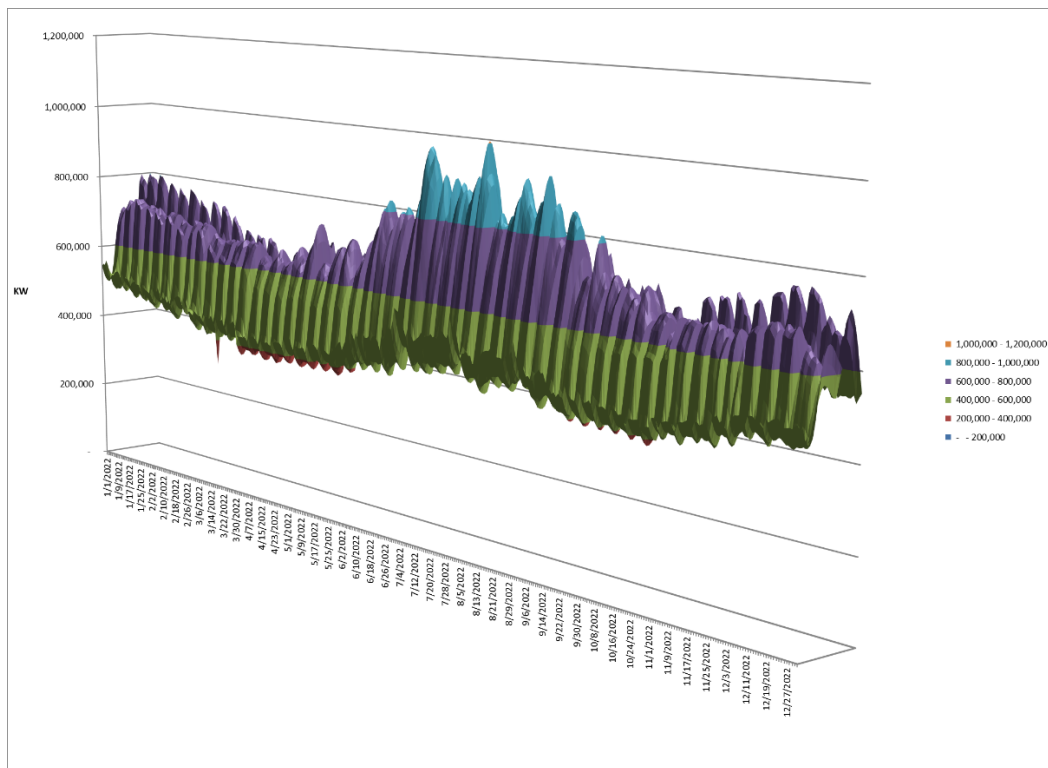
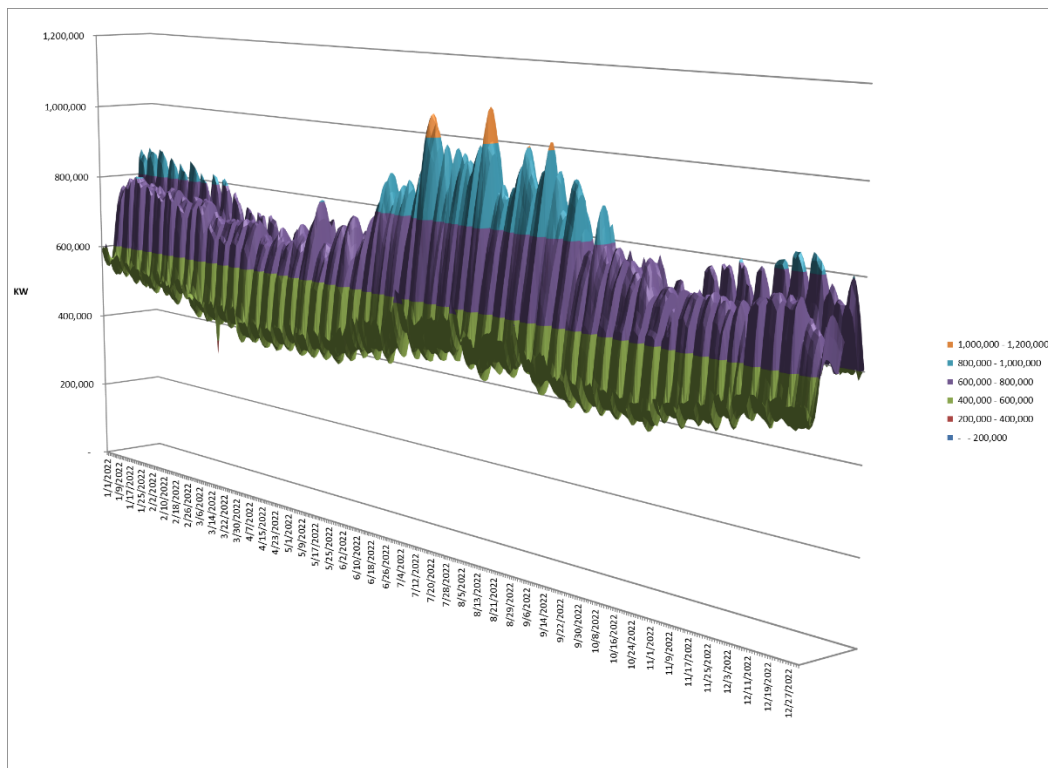


Figure 3: MCE Projected Hourly Load Profile Including Applicant Communities



## **FISCAL IMPACTS**

For purposes of the fiscal impact analysis, it was assumed that service would be initiated to the new communities in April 2021 and that 90% of customers who would be offered MCE service would elect to participate. This would equate to an increase in annual MCE electricity sales of 460,905 MWh or approximately 9%. In order to quantify rate impacts, the incremental revenues and costs were examined for the first two complete fiscal years beginning April 1, 2021 and continuing through March 31, 2023.

The incremental revenue surplus, based on the difference between projected revenues and costs directly related to the addition of these customers, represents the fiscal benefit related to expansion. Incremental revenues were projected based on forecast sales by customer type and current MCE rates. The incremental cost analysis accounts for ongoing costs related to additional power supplies, customer billing, customer service support (call center), PG&E service fees, incremental staffing and legal costs, communications and ongoing customer notices associated with serving the additional customers.

Table 4 presents the estimated potential fiscal impacts for the first two fiscal years inclusive of the new communities' enrollment.

**Table 4: MCE Fiscal Impact from Applicant Communities**

	<b>FY 2021/2022</b>	<b>FY 2022/2023</b>
<b>Volume (MWh)</b>	445,129	461,500
<b>Revenue</b>	\$38,191,409	\$39,447,985
<b>Costs</b>		
<b>Power Supply Cost</b>	\$28,468,097	\$31,733,898
<b>Billing and Other Costs</b>	\$1,178,477	\$1,145,250
<b>Total Cost</b>	\$29,646,574	\$32,879,148
<b>Fiscal Benefit</b>	\$8,544,835	\$6,568,837
<b>% Benefit</b>	≈2%	≈1%

In consideration of current market conditions, the fiscal impact analysis indicates that the addition of the applicant communities' customers to MCE's total customer base would provide benefits to MCE and its existing ratepayers; it is estimated that expanding MCE service to the applicant communities would provide a financial benefit of approximately 1-2% of annual revenues. This benefit accrues due to the margins generated by a higher sales volume; economies of scale as fixed administrative costs can be spread over a larger sales base; and a reduction in MCE's average power supply costs, as the cost of marginal power purchases is below MCE's average cost of power.

#### **CAPITAL AND LIQUIDITY IMPACTS**

Although minimal, additional costs related to the expansion would be incurred during the fiscal year preceding the first described in this study (attributed to initiation of service to the new customers). These costs would be incurred for marketing and outreach, customer noticing, regulatory, legal, internal operations, resource planning and electric procurement activities that would be necessary to incorporate the new member communities and their customers into MCE and provide outreach to the new customers. MCE has sufficient cash liquidity to fund the growth in customers and energy sales related to the expansion.

#### **FISCAL IMPACT SENSITIVITIES**

The fiscal impact estimate is based on current power supply pricing and rates, which could change prior to the time service for the new member communities commences. Additionally, actual customer participation may vary from the currently projected 90% participation rate. A sensitivity analysis was performed to evaluate the risk associated with these variables. The sensitivity results, shown in Table 5, indicate that fiscal impacts will be positive under a reasonable range of possible scenarios.

**Table 5: Fiscal Impact Sensitivities (FY 2021/2022)**

<b>Scenario</b>	<b>Fiscal Impact</b>
	<b><u>FY 2021/22</u></b>
<b>Base Projection</b>	\$8,544,835
<b>Power Costs + 20%</b>	\$4,921,010
<b>75% Participation Rate</b>	\$7,134,183

**RENEWABLE ENERGY IMPACTS**

Renewable energy requirements were calculated for the applicant communities to ensure compliance with the statewide Renewables Portfolio Standard (RPS) as well as the more aggressive MCE renewable energy content standards adopted by MCE (currently set at a minimum 60% for Light Green customers; MCE procures 100% renewable energy for all customers participating in the voluntary Deep Green and Local Sol service options). In consideration of MCE's internally established renewable energy targets, the total renewable energy requirement associated with prospective expansion to the applicant municipalities would be approximately 288,115 MWh annually. Per MCE's internally established renewable energy procurement plans, 100% of this additional renewable energy requirement would be fulfilled utilizing PCC1 certified bundled renewable energy.

Relative to California's statutory minimums (which must be met by PG&E and other retail sellers), enrolling the applicant communities' electric customers in MCE service would increase the amount of renewable energy being used in California's energy market by approximately 110,666 MWh annually. .

**Table 6: Renewable Energy Impacts (CY 2022)**

	<b>Annual MWh</b>
<b>Retail Sales</b>	460,905
<b>MCE Renewable Energy Standard</b>	288,114
<b>State Renewable Portfolio Standard</b>	177,448
<b>Increase in Renewable Energy</b>	110,666

## GREENHOUSE GAS EMISSIONS IMPACTS

In general, MCE's net incremental purchases of GHG-free energy to serve the new customer load are expected to reduce electric sector GHG emissions. This anticipated outcome seems reasonable because such incremental purchases are assumed to displace GHG-emitting energy generated within or imported into California. The incremental GHG-free energy purchased by MCE, less any excess GHG-free energy sold off and not otherwise retained by PG&E for the benefit of its customers, would represent the net change in GHG-free energy resulting from the extension of MCE service to the new communities.

Based on resource planning targets for 2022, MCE would purchase 37.5% of the new community energy requirements from large hydro-electric sources, in addition to the 62.5% supplied by qualifying renewable sources.<sup>2</sup> This equates to an estimated 461 GWh of GHG-free energy purchases per year on behalf of the new customers. The increase in GHG-free energy, and the resultant reduction in GHG emissions attributable to these customers joining MCE, is also influenced by changes to PG&E's supply mix as it loses load to CCA providers. When such transitions have occurred, PG&E's past practice has been to sell excess qualifying renewable energy (to market participants, including CCAs) while retaining other GHG-free energy supply (i.e., large hydro and nuclear). Such practice has resulted in reductions to PG&E's reported and estimated carbon emissions over time. Stated somewhat differently, as CCA sales in Northern California have increased, the emissions intensity associated with PG&E's supply portfolio has gone down. If PG&E's practice continues, the entirety of MCE's incremental hydro-electric purchases (173 GWh) as well as the incremental qualifying renewable purchases that are in excess of the RPS (111 GWh) can be assumed to displace GHG emitting supply that would otherwise be purchased or produced by PG&E. If PG&E retains its hydroelectric and nuclear energy sources when customers depart, it needs to buy less carbon-emitting supply due to its reduced overall energy requirements; in the case of MCE, new customers are immediately served with a near-GHG-free supply, resulting in an overall reduction in electric sector emissions as previous purchases from carbon-emitting sources are effectively discontinued. The associated GHG emission reduction can be estimated by multiplying the 284 GWh of GHG-free energy by the 0.428 metric tons per MWh emissions rate associated with unspecified source system energy. This equates to approximately 122 metric tons of GHG emissions reduction per year, which can be considered the high end of the estimated impact.

A lower impact would result if PG&E were to sell off excess GHG-free energy or if a share of these resources were to be allocated to MCE when new CCA customers commence service. Discussions are underway at the California Public Utilities Commission as part of the Power Charge Indifference Adjustment (PCIA) reform proceeding to address how GHG-free energy, which is subject to the PCIA cost recovery mechanism, might be allocated to CCAs. If this allocation takes place, MCE's incremental procurement of GHG-free energy for the new communities would be reduced by the amount of the allocation received from the PG&E portfolio. The proportion of large hydro-electricity in the PG&E portfolio that is subject to potential allocation is estimated to make up approximately 11% of MCE's load, and the net increase in MCE's GHG free purchases for the new communities would be

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<sup>2</sup> Assumes a similar mix of new customers subscribing to MCE's Light Green Service offering (60% renewable) as well as Deep Green and Local Sol Service offerings (both of which are 100% renewable) relative to MCE's current customer base. For purposes of this discussion, large hydro-electric sources include purchases from Asset Controlling Suppliers (ACS), which primarily rely on power produced by hydro-electric systems – ACS systems are assigned ultra-low emission factors by the California Air Resources Board, reflecting the predominant use of hydroelectricity and other clean-energy sources.

approximately 233 GWh (122 GWh of large hydro and 111 GWh of qualifying renewable energy). This equates to an annual GHG emissions reduction of approximately 100 metric tons, which can be considered the low end of the estimated impact.

**AMENDMENT NO. 13 TO MARIN ENERGY AUTHORITY  
JOINT POWERS AUTHORITY AGREEMENT**

1. Exhibit B to the Agreement, which includes a “List of the Parties” to the Agreement, is hereby amended to reflect the Marin Clean Energy (formerly the Marin Energy Authority) current membership, which includes the following local public entities:

- County of Marin
- Contra Costa County
- County of Napa
- County of Solano
- City of American Canyon
- City of Belvedere
- City of Benicia
- City of Calistoga
- City of Concord
- Town of Corte Madera
- Town of Danville
- City of El Cerrito
- Town of Fairfax
- City of Lafayette
- City of Larkspur
- City of Martinez
- City of Mill Valley
- Town of Moraga
- City of Napa
- City of Novato
- City of Oakley
- City of Pinole
- City of Pittsburg
- City of San Ramon
- City of Richmond
- Town of Ross
- Town of San Anselmo
- City of San Pablo
- City of San Rafael
- City of Sausalito
- City of St. Helena
- Town of Tiburon
- City of Walnut Creek
- Town of Yountville

2. Exhibit C to the Agreement, which specifies “Annual Energy Use” for each party to the Agreement, is hereby amended to reflect annual energy use within each member’s jurisdiction inclusive of the County of Solano.

3. Exhibit D to the Agreement, which specifies “Voting Shares” for each party to the Agreement, is hereby amended to reflect the current voting shares of each member in accordance with the provisions of Section 4.9.2 of the Agreement.



4. This Amendment No. 13 does not limit the authority of the Board to update Exhibits B, C and D in the future without further amending the Agreement as provided by Sections 1.3 and 4.9.2.3 of the Agreement.

This Amendment No. 13 to the Marin Energy Authority Joint Powers Authority Agreement was duly adopted by the Board of Directors in accordance with Article 8.4 of this Agreement on October 18, 2018.

**Exhibit C****Marin Energy Authority****- Annual Energy Use -**

This Exhibit C is effective as of October 18, 2018.

<b>Party</b>	<b>kWh (2017)</b>
<b>City of American Canyon</b>	<b>68,955,413</b>
<b>City of Belvedere</b>	<b>7,650,037</b>
<b>City of Benicia</b>	<b>113,473,495</b>
<b>City of Calistoga</b>	<b>26,787,693</b>
<b>City of Concord*</b>	<b>535,484,388</b>
<b>Town of Corte Madera</b>	<b>44,135,831</b>
<b>County of Contra Costa*</b>	<b>846,712,037</b>
<b>Town of Danville*</b>	<b>179,825,522</b>
<b>City of El Cerrito</b>	<b>57,917,571</b>
<b>Town of Fairfax</b>	<b>18,182,921</b>
<b>City of Lafayette</b>	<b>98,004,380</b>
<b>City of Larkspur</b>	<b>42,991,627</b>
<b>City of Martinez*</b>	<b>148,593,742</b>
<b>City of Mill Valley</b>	<b>44,395,650</b>
<b>County of Marin</b>	<b>227,286,301</b>
<b>Town of Moraga*</b>	<b>46,999,113</b>
<b>City of Napa</b>	<b>329,813,779</b>
<b>County of Napa</b>	<b>310,572,948</b>
<b>City of Novato</b>	<b>186,270,302</b>
<b>City of Oakley*</b>	<b>111,425,259</b>
<b>City of Pinole*</b>	<b>65,770,486</b>
<b>City of Pittsburg*</b>	<b>413,969,922</b>
<b>City of Richmond</b>	<b>390,351,942</b>
<b>Town of Ross</b>	<b>9,772,866</b>
<b>Town of San Anselmo</b>	<b>32,862,447</b>
<b>City of San Ramon*</b>	<b>325,049,470</b>
<b>City of Saint Helena</b>	<b>48,963,808</b>
<b>City of San Pablo</b>	<b>66,311,864</b>
<b>City of San Rafael</b>	<b>227,948,054</b>
<b>City of Sausalito</b>	<b>31,538,040</b>
<b>County of Solano*</b>	<b>186,837,283</b>
<b>Town of Tiburon</b>	<b>29,290,586</b>
<b>City of Walnut Creek</b>	<b>357,691,687</b>
<b>Town of Yountville</b>	<b>33,328,188</b>
<b>MCE Total Energy Use</b>	<b>5,665,164,653</b>

\*2017 usage data as provided by PG&E. All other usage data reflects MCE customer billing records for 2017.

**EXHIBIT D**

<b>Marin Energy Authority</b>				
<b>- Voting Shares -</b>				
This Exhibit D is effective as of October 18, 2018.				
<b>Party</b>	<b>kWh (2017)</b>	<b>Section 4.9.2.1</b>	<b>Section 4.9.2.2</b>	<b>Voting Share</b>
City of American Canyon	68,955,413	1.47%	0.61%	<b>2.08%</b>
City of Belvedere	7,650,037	1.47%	0.07%	<b>1.54%</b>
City of Benicia	113,473,495	1.47%	1.00%	<b>2.47%</b>
City of Calistoga	26,787,693	1.47%	0.24%	<b>1.71%</b>
City of Concord*	535,484,388	1.47%	4.73%	<b>6.20%</b>
Town of Corte Madera	44,135,831	1.47%	0.39%	<b>1.86%</b>
County of Contra Costa*	846,712,037	1.47%	7.47%	<b>8.94%</b>
Town of Danville*	179,825,522	1.47%	1.59%	<b>3.06%</b>
City of El Cerrito	57,917,571	1.47%	0.51%	<b>1.98%</b>
Town of Fairfax	18,182,921	1.47%	0.16%	<b>1.63%</b>
City of Lafayette	98,004,380	1.47%	0.86%	<b>2.34%</b>
City of Larkspur	42,991,627	1.47%	0.38%	<b>1.85%</b>
City of Martinez*	148,593,742	1.47%	1.31%	<b>2.78%</b>
City of Mill Valley	44,395,650	1.47%	0.39%	<b>1.86%</b>
County of Marin	227,286,301	1.47%	2.01%	<b>3.48%</b>
Town of Moraga*	46,999,113	1.47%	0.41%	<b>1.89%</b>
City of Napa	329,813,779	1.47%	2.91%	<b>4.38%</b>
County of Napa	310,572,948	1.47%	2.74%	<b>4.21%</b>
City of Novato	186,270,302	1.47%	1.64%	<b>3.11%</b>
City of Oakley*	111,425,259	1.47%	0.98%	<b>2.45%</b>
City of Pinole*	65,770,486	1.47%	0.58%	<b>2.05%</b>
City of Pittsburg*	413,969,922	1.47%	3.65%	<b>5.12%</b>
City of Richmond	390,351,942	1.47%	3.45%	<b>4.92%</b>
Town of Ross	9,772,866	1.47%	0.09%	<b>1.56%</b>
Town of San Anselmo	32,862,447	1.47%	0.29%	<b>1.76%</b>

City of San Ramon*	325,049,470	1.47%	2.87%	<b>4.34%</b>
City of Saint Helena	48,963,808	1.47%	0.43%	<b>1.90%</b>
City of San Pablo	66,311,864	1.47%	0.59%	<b>2.06%</b>
City of San Rafael	227,948,054	1.47%	2.01%	<b>3.48%</b>
City of Sausalito	31,538,040	1.47%	0.28%	<b>1.75%</b>
County of Solano*	186,837,283	1.47%	1.65%	<b>3.12%</b>
Town of Tiburon	29,290,586	1.47%	0.26%	<b>1.73%</b>
City of Walnut Creek	357,691,687	1.47%	3.16%	<b>4.63%</b>
Town of Yountville	33,328,188	1.47%	0.29%	<b>1.76%</b>
<b>MCE Total Energy Use</b>	<b>5,665,164,653</b>	<b>50.00%</b>	<b>50.00%</b>	<b>100.00%</b>
*2017 usage data as provided by PG&E.				
All other usage data as reflected in MCE customer billing records for 2017.				

# MARIN CLEAN ENERGY

## ADDENDUM NO. 6 TO THE REVISED COMMUNITY CHOICE AGGREGATION IMPLEMENTATION PLAN AND STATEMENT OF INTENT

### TO ADDRESS MCE EXPANSION TO THE UNINCORPORATED AREAS OF SOLANO COUNTY



**November 19, 2018**

For copies of this document contact Marin Clean Energy in San Rafael, California or visit [www.mcecleanenergy.org](http://www.mcecleanenergy.org)

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## CHAPTER 1 – INTRODUCTION

The purpose of this document is to make certain revisions to the Marin Clean Energy Implementation Plan and Statement of Intent in order to address the expansion of Marin Clean Energy (“MCE”) to the unincorporated areas of Solano County. MCE is a public agency that was formed in December 2008 for purposes of implementing a community choice aggregation (“CCA”) program and other energy-related programs targeting significant greenhouse gas emissions (“GHG”) reductions. At that time, the Member Agencies of MCE included eight of the twelve municipalities located within the geographic boundaries of Marin County: the cities/towns of Belvedere, Fairfax, Mill Valley, San Anselmo, San Rafael, Sausalito and Tiburon and the County of Marin (together the “Members” or “Member Agencies”). In anticipation of CCA program implementation and in compliance with state law, MCE submitted the Marin Energy Authority Community Choice Aggregation Implementation Plan and Statement of Intent (“Implementation Plan”) to the California Public Utilities Commission (“CPUC” or “Commission”) on December 9, 2009. Consistent with its expressed intent, MCE successfully launched the Marin Clean Energy CCA program (“MCE” or “Program”) on May 7, 2010 and has been serving customers since that time.

During the second half of 2011, four additional municipalities within Marin County, the cities of Novato and Larkspur and the towns of Ross and Corte Madera, joined MCE, and a revised Implementation Plan reflecting updates related to this expansion was filed with the CPUC on December 3, 2011.

Subsequently, the City of Richmond, located in Contra Costa County, joined MCE, and a revised Implementation Plan reflecting updates related to this expansion was filed with the CPUC on July 6, 2012.

A revision to MCE’s Implementation Plan was then filed with the Commission on November 6, 2012 to ensure compliance with Commission Decision 12-08-045, which was issued on August 31, 2012. In Decision 12-08-045, the Commission directed existing CCA programs to file revised Implementation Plans to conform to the privacy rules in Attachment B of the aforementioned Decision.

During 2015, the County of Napa and the Cities of Benicia, El Cerrito, and San Pablo joined MCE; service was extended to customers in unincorporated Napa County during February 2015 and to customers in Benicia, El Cerrito and San Pablo during May 2015. To address the anticipated effects of these expansions, MCE filed with the Commission a revision to its Implementation Plan on July 18, 2014 to address expansion to the County of Napa (the Commission subsequently certified this revision on September 15, 2014). Following the Commission’s certification of this revision, MCE submitted Addendum No. 1 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City of San Pablo (“Addendum No. 1”) on September 25, 2014 (and the Commission subsequently certified Addendum No. 1 on October 29, 2014); and Addendum No. 2 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City

of Benicia (“Addendum No. 2”) on November 21, 2014 (the Commission subsequently certified Addendum No. 2 on December 1, 2014); and Addendum No. 3 to the Revised Community Choice Aggregation Implementation Plan and Statement of Intent to Address MCE Expansion to the City of El Cerrito (“Addendum No. 3”) on January 7, 2015 (the Commission subsequently certified Addendum No. 3 on January 16, 2015).

On April 21, 2016, MCE’s Board of Directors (the “Board” or “Governing Board”) unanimously adopted Resolution No. 2016-01, which approved the cities of American Canyon, Calistoga, Lafayette, Napa, St. Helena and Walnut Creek as well as the Town of Yountville as members of MCE. On this date, MCE’s Board also approved the related Addendum No. 4 to its Revised Community Choice Aggregation Implementation Plan and Statement of Intent (“Addendum No. 4”), which addressed expansion to such Communities. Addendum No. 4 was submitted to the Commission on April 22, 2016; Addendum No. 4 was certified by the Commission thereafter on May 6, 2016.

On July 20, 2017, MCE’s Board adopted Resolution No. 2017-06, which approved Contra Costa County (unincorporated areas); the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga as members of MCE. On this date, MCE’s Board also approved the related Addendum No. 5 to its Revised Community Choice Aggregation Implementation Plan and Statement of Intent (“Addendum No. 5”), which addressed expansion to such Communities. Addendum No. 5 was submitted to the Commission on September 25, 2017; Addendum No. 5 was certified by the Commission thereafter on December 21, 2017.

More recently, MCE’s Board approved the membership request of Solano County (unincorporated areas) on October 18, 2018 via Resolution No. 2018-12, and staff prepared this Addendum No. 6 to MCE’s Revised Community Choice Aggregation Implementation Plan and Statement of Intent (“Addendum No. 6”), which addresses service delivery within the unincorporated areas of Solano County. MCE’s Board also approved Addendum No. 6 on October 18, 2018.

The MCE program now provides electric generation service to approximately 471,000 customers, including a cross section of residential and commercial accounts. During its more than eight-year operating history, non-member municipalities have monitored MCE’s progress, evaluating the potential opportunity for membership, which would enable customer choice with respect to electric generation service. In response to such inquiries, MCE’s Board adopted Policy 007, which established a formal process and specific criteria for new member additions. In particular, this policy identifies several threshold requirements, including the specification that any prospective member evaluation demonstrate rate-related savings (based on prevailing market prices for requisite energy products at the time of each analysis) as well as environmental benefits (as measured by anticipated reductions in greenhouse gas emissions and increased renewable energy sales to CCA customers) before proceeding with expansion activities, including the filing of related revisions/addenda to this Implementation Plan. As MCE receives new membership requests, staff will follow the prescribed evaluative process of Policy 007 and will present related



results at future public meetings. To the extent that membership evaluations demonstrate favorable results and any new community completes the process of joining MCE, this Implementation Plan will be revised through a related addendum, highlighting key impacts and consequences associated with the addition of such new community/communities.

In response to public interest and MCE's successful operational track record, Solano County requested MCE membership, consistent with MCE Policy 007, and adopted the requisite ordinance for joining MCE. As previously noted, MCE's Board approved such membership request at a duly noticed public meeting on October 18, 2018 through the adoption of Resolution No. 2018-12.

This Addendum No. 6 describes MCE's expansion plans to include the unincorporated areas of Solano County. MCE intends to enroll such customers in its CCA Program during the month of April 2020, consistent with the Commission's requirements per Resolution E-4907, which define relevant timing for Implementation Plan filing in advance of service commencement. According to the Commission, the Energy Division is required to receive and review a revised MCE implementation plan reflecting changes/consequences of additional members. With this in mind, MCE has reviewed its revised Implementation Plan, which was filed with the Commission on July 18, 2014, as well as previously filed and certified Addendums, and has identified certain information that requires updating to reflect the changes and consequences of adding Solano County (unincorporated areas) as well as other forecast modifications, which reflect the most recent historical electric energy use within MCE's existing service territory. This Addendum No. 6 reflects pertinent changes that are expected to result from the new member addition as well as updated projections that are considerate of recent operations. This document format, including references to MCE's most recent Implementation Plan revision (filed with the Commission on July 18, 2014 and certified by the Commission on September 15, 2014), which is incorporated by reference and attached hereto as Appendix D, addresses all requirements identified in Public Utilities Code Section 366.2(c)(4), including universal access, reliability, equitable treatment of all customer classes and any requirements established by state law or by the CPUC concerning aggregated service, while streamlining public review of pertinent changes related to MCE's anticipated expansion.

## **CHAPTER 2 – CHANGES TO ADDRESS MCE EXPANSION TO SOLANO COUNTY**

As previously noted, this Addendum No. 6 addresses the anticipated impacts of MCE's planned expansion to Solano County (unincorporated areas), as well as other forecast modifications reflecting the most recent historical electric energy use within MCE's existing service territory. As a result of this member addition, certain assumptions regarding MCE's future operations have changed, including customer energy requirements, peak demand, renewable energy purchases, revenues, expenses and various other items. The following section highlights pertinent changes related to this planned expansion. To the extent that certain details related to membership expansion are not specifically discussed within this Addendum No. 6, MCE represents that such information shall remain unchanged relative to the July 18, 2014 Implementation Plan revision.

With regard to the defined terms Members and Member Agencies, the following Communities are now signatories to the MCE Joint Powers Agreement and represent MCE’s current membership:

<b>Member Agencies</b>
City of American Canyon
City of Belvedere
City of Benicia
City of Calistoga
City of Concord
County of Contra Costa
Town of Corte Madera
Town of Danville
City of El Cerrito
Town of Fairfax
City of Lafayette
City of Larkspur
County of Marin
City of Martinez
City of Mill Valley
Town of Moraga
City of Napa
County of Napa
City of Novato
City of Oakley
City of Pinole
City of Pittsburg
City of Richmond
Town of Ross
Town of San Anselmo
City of Saint Helena
City of San Pablo
City of San Rafael
City of San Ramon
City of Sausalito
County of Solano
Town of Tiburon
City of Walnut Creek
Town of Yountville

Throughout this document, use of the terms Members and Member Agencies refer to the aforementioned Communities. To the extent that the discussion herein addresses the process of

aggregation and MCE organization, each of these communities is now an MCE Member and the electric customers of such jurisdictions have been or will be offered CCA service consistent with the noted phase-in schedule.

### *Aggregation Process*

MCE's aggregation process was discussed in Chapter 2 of MCE's July 18, 2014 Revised Implementation Plan. This first paragraph of Chapter 2 is replaced in its entirety with the following verbiage:

As previously noted, MCE successfully launched its CCA Program, MCE, on May 7, 2010 after meeting applicable statutory requirements and in consideration of planning elements described in its initial Implementation Plan. At this point in time, MCE plans to expand agency membership to include Solano County (unincorporated areas). This community has requested MCE membership, and MCE's Board of Directors subsequently approved this membership request at a duly noticed public meeting on October 18, 2018.

### *Program Phase-In*

Program phase-in was discussed in Chapter 5 of MCE's July 18, 2014 Revised Implementation Plan. Chapter 5 is replaced in its entirety with the following verbiage:

MCE will continue to phase-in the customers of its CCA Program as communicated in this Implementation Plan. To date, six complete phases have been successfully implemented, and a seventh phase will commence in April 2020. The seventh phase will include service commencement to customers located within Solano County (unincorporated areas), as reflected in the following table.

<b>MCE Phase No.</b>	<b>Status &amp; Description of Phase</b>	<b>Implementation Date</b>
<b>Phase 1: 8,500 Accounts</b>	<b>Complete:</b> MCE Member (municipal) accounts & a subset of residential, commercial and/or industrial accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies.	May 7, 2010
<b>Phase 2A: 6,100 Accounts</b>	<b>Complete:</b> Additional commercial and residential accounts, comprising approximately 20 percent of total customer load within MCE's original Member Agencies (incremental addition to Phase 1).	August 2011
<b>Phase 2B: 79,000 Accounts</b>	<b>Complete:</b> Remaining accounts within Marin County.	July 2012
<b>Phase 3: 35,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of Richmond.	July 2013

MCE Phase No.	Status & Description of Phase	Implementation Date
<b>Phase 4A: 14,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the unincorporated areas of Napa County, subject to economic and operational constraints.	February 2015
<b>Phase 4B: 30,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the City of San Pablo, the City of Benicia and the City of El Cerrito, subject to economic and operational constraints.	May 2015
<b>Phase 5: 83,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within the Cities of American Canyon, Calistoga, Lafayette, Napa, Saint Helena, Walnut Creek and the Town of Yountville.	September 2016
<b>Phase 6: 216,000 Accounts</b>	<b>Complete:</b> Residential, commercial, agricultural, and street lighting accounts within Contra Costa County (unincorporated areas); the cities of Concord, Martinez, Oakley, Pinole, Pittsburg and San Ramon; and the towns of Danville and Moraga.	April 2018
<b>Phase 7: 11,000 Accounts</b>	<b>Pending Implementation Plan Certification:</b> Residential, commercial, agricultural, and street lighting accounts within Solano County (unincorporated areas).	April 2020 (planned)

This approach has provided MCE with the ability to start slow, addressing problems and unforeseen challenges associated with a small, manageable CCA program before offering service to successively larger groups of customers. Following completion of Phase 7 customer enrollments, MCE expects to serve a customer base of approximately 480,000 accounts. This approach has also allowed MCE and its energy suppliers to address all system requirements (billing, collections and payments) under a phase-in approach that was designed to minimize potential exposure to uncertainty and financial risk by “walking” (when serving relatively small account totals) prior to “running” (when serving much larger account totals). The Board may evaluate other phase-in options based on future market conditions, statutory requirements and regulatory considerations as well as other factors potentially affecting the integration of additional customer accounts.

### ***Sales Forecast***

With regard to MCE’s sales forecast, which is addressed in Chapter 6, Load Forecast and Resource Plan, MCE assumes that total annual retail sales will increase to approximately 5,500 GWh following Phase 7 expansion. The following tables have been updated to reflect the impacts of planned expansion to MCE’s new membership.

## Chapter 6, Resource Plan Overview

<b>Marin Clean Energy Proposed Resource Plan (GWh) 2010 to 2021</b>												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>MCE Demand (GWh)</b>												
Retail Demand	-91	-185	-570	-1,110	-1,252	-1,710	-2,103	-3,036	-4,620	-5,656	-5,834	-5,918
Distributed Generation	0	2	4	5	9	14	135	121	127	446	527	610
Energy Efficiency	0	0	0	0	1	3	3	5	7	10	15	21
EV Demand	0	0	0	0	0	0	-22	-29	-37	-75	-125	-210
Losses and UFE	-5	-11	-34	-66	-74	-102	-119	-176	-271	-317	-325	-330
<b>Total Demand</b>	<b>-97</b>	<b>-195</b>	<b>-601</b>	<b>-1,172</b>	<b>-1,316</b>	<b>-1,795</b>	<b>-2,106</b>	<b>-3,115</b>	<b>-4,795</b>	<b>-5,592</b>	<b>-5,742</b>	<b>-5,826</b>
<b>MCE Supply (GWh)</b>												
<u>Renewable Resources</u>												
Generation	0	0	0	0	0	0	0	0	0	0	0	0
Power Purchase Contracts	23	50	289	564	645	926	1,089	1,709	2,633	3,233	3,322	3,372
<b>Total Renewable Resources</b>	<b>23</b>	<b>50</b>	<b>289</b>	<b>564</b>	<b>645</b>	<b>926</b>	<b>1,089</b>	<b>1,709</b>	<b>2,633</b>	<b>3,233</b>	<b>3,322</b>	<b>3,372</b>
<u>Conventional/Hydro Resources</u>												
Generation	0	0	0	0	0	0	0	0	0	0	0	0
Power Purchase Contracts	74	145	312	608	670	869	1,017	1,406	2,162	2,359	2,420	2,454
<b>Total Conventional/Hydro Resources</b>	<b>74</b>	<b>145</b>	<b>312</b>	<b>608</b>	<b>670</b>	<b>869</b>	<b>1,017</b>	<b>1,406</b>	<b>2,162</b>	<b>2,359</b>	<b>2,420</b>	<b>2,454</b>
<b>Total Supply</b>	<b>97</b>	<b>195</b>	<b>601</b>	<b>1,172</b>	<b>1,316</b>	<b>1,795</b>	<b>2,106</b>	<b>3,115</b>	<b>4,795</b>	<b>5,592</b>	<b>5,742</b>	<b>5,826</b>
<b>Energy Open Position (GWh)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

## Chapter 6, Customer Forecast

<b>Marin Clean Energy Enrolled Retail Service Accounts Phase-In Period (End of Month)</b>									
	May-10	Aug-11	Jul-12	Jul-13	Feb-15	May-15	Sep-16	Apr-18	Apr-20
<b>MCE Customers</b>									
Residential	7,354	12,503	77,345	106,510	120,204	145,874	225,128	421,325	430,493
Commercial & Industrial	579	1,114	9,913	13,098	15,316	17,884	27,274	44,708	46,226
Street Lighting & Traffic	138	141	443	748	1,014	1,156	1,866	3,670	3,973
Ag & Pumping	-	<15	113	109	1,467	1,467	1,700	2,051	3,274
<b>Total</b>	<b>8,071</b>	<b>13,759</b>	<b>87,814</b>	<b>120,465</b>	<b>138,001</b>	<b>166,381</b>	<b>255,968</b>	<b>471,754</b>	<b>483,966</b>

<b>Marin Clean Energy Retail Service Accounts (End of Year) 2010 to 2021</b>												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>MCE Customers</b>												
Residential	7,354	12,503	77,345	106,510	106,510	145,874	225,128	226,254	421,325	423,432	430,493	432,645
Commercial & Industrial	579	1,114	9,913	13,098	13,098	17,884	27,274	27,410	44,708	44,932	46,226	46,457
Street Lighting & Traffic	138	141	443	748	748	1,156	1,866	1,875	3,670	3,688	3,973	3,993
Ag & Pumping	-	<15	113	109	109	1,467	1,700	1,709	2,051	2,061	3,274	3,290
<b>Total</b>	<b>8,071</b>	<b>13,759</b>	<b>87,814</b>	<b>120,465</b>	<b>120,465</b>	<b>166,381</b>	<b>255,968</b>	<b>257,248</b>	<b>471,754</b>	<b>474,113</b>	<b>483,966</b>	<b>486,386</b>

## Chapter 6, Sales Forecast

<b>Marin Clean Energy Energy Requirements (GWh) 2010 to 2021</b>												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>MCE Energy Requirements (GWh)</b>												
Retail Demand	91	185	570	1,110	1,252	1,710	2,103	3,036	4,620	5,656	5,834	5,918
Distributed Generation	0	-2	-4	-5	-9	-14	-135	-121	-127	-446	-527	-610
Energy Efficiency	0	0	0	0	-1	-3	-3	-5	-7	-10	-15	-21
EV Demand	0	0	0	0	0	0	22	29	37	75	125	210
Losses and UFE	5	11	34	66	74	102	119	176	271	317	325	330
<b>Total Load Requirement</b>	<b>97</b>	<b>195</b>	<b>601</b>	<b>1,172</b>	<b>1,316</b>	<b>1,795</b>	<b>2,106</b>	<b>3,115</b>	<b>4,795</b>	<b>5,592</b>	<b>5,742</b>	<b>5,826</b>

## Chapter 6, Capacity Requirements

<b>Marin Clean Energy Capacity Requirements (MW) 2010 to 2021</b>												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
<b>Demand (MW)</b>												
Retail Demand	28	46	182	233	234	318	441	682	1,068	1,285	1,361	1,368
Distributed Generation	-	(1)	(2)	(3)	(5)	(8)	(77)	(81)	(85)	(318)	(376)	(435)
Energy Efficiency	-	-	-	-	-	-	(5)	(7)	(10)	(13)	(16)	(19)
EV Load	-	-	-	-	-	-	10	13	17	34	57	96
Losses and UFE	2	3	11	14	14	19	22	36	59	59	62	61
<b>Total Net Peak Demand</b>	<b>30</b>	<b>47</b>	<b>191</b>	<b>244</b>	<b>243</b>	<b>328</b>	<b>391</b>	<b>643</b>	<b>1,049</b>	<b>1,048</b>	<b>1,088</b>	<b>1,070</b>
Reserve Requirement (%)	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%	15%
Capacity Reserve Requirement	4	7	29	37	36	49	59	97	157	157	163	160
Capacity Requirement Including Reserve	34	55	220	281	279	378	450	740	1,206	1,205	1,251	1,230

## Chapter 6, Renewables Portfolio Standards Energy Requirements

<b>Marin Clean Energy RPS Requirements (MWh) 2010 to 2021</b>												
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
*Retail Sales	91,219	183,741	566,640	1,105,310	1,241,233	1,693,246	1,986,409	2,938,886	4,523,279	5,275,013	5,417,339	5,496,210
Baseline	-	18,244	36,748	113,328	221,062	269,348	394,526	496,602	793,499	1,311,751	1,635,254	1,787,722
Incremental Procurement Target	18,244	18,504	76,580	107,734	48,286	125,179	102,076	296,897	518,252	323,503	152,468	179,921
Annual Procurement Target	18,244	36,748	113,328	221,062	269,348	394,526	496,602	793,499	1,311,751	1,635,254	1,787,722	1,967,643
% of Current Year Retail Sales	20%	20%	20%	20%	22%	23%	25%	27%	29%	31%	33%	36%

\*Net of Energy Efficiency and Distributed Generation

**Marin Clean Energy**  
**RPS Requirements and Program Renewable Energy Targets**  
**(MWh)**  
**2010 to 2021**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
*Retail Sales (MWh)	91,219	183,741	566,640	1,105,310	1,241,233	1,693,246	1,986,409	2,938,886	4,523,279	5,275,013	5,417,339	5,496,210
Annual RPS Target (Minimum MWh)	18,244	36,748	113,328	221,062	269,348	394,526	496,602	793,499	1,311,751	1,635,254	1,787,722	1,967,643
Program Target (% of Retail Sales)	25%	27%	51%	51%	52%	55%	55%	58%	58%	61%	61%	61%
Program Renewable Target (MWh)	22,805	49,610	288,986	563,708	645,441	926,138	1,088,592	1,709,269	2,632,525	3,233,008	3,321,963	3,371,708
Surplus In Excess of RPS (MWh)	4,561	12,862	175,658	342,646	376,094	531,612	591,989	915,770	1,320,774	1,597,754	1,534,241	1,404,065
Annual Increase (MWh)	22,805	26,805	239,376	274,722	81,733	280,697	162,454	620,677	923,256	600,483	88,955	49,745

\*Net of Energy Efficiency and Distributed Generation

## Chapter 6, Energy Efficiency

**Marin Clean Energy**  
**Energy Efficiency Savings Goals**  
**(GWh)**  
**2010 to 2021**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
MCE Retail Demand	91	185	570	1,110	1,252	1,710	2,103	3,036	4,620	5,656	5,834	5,918
MCE Energy Efficiency Goal	0	0	0	0	-1	-3	-3	-5	-7	-10	-15	-21

## Chapter 6, Demand Response

**Marin Clean Energy**  
**Demand Response Goals**  
**(MW)**  
**2010 to 2021**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total Capacity Requirement (MW)	34	55	220	281	279	378	450	740	1,206	1,205	1,251	1,230
Greater Bay Area Capacity Requirement (MW)	5	9	35	44	44	40	48	79	125	184	133	131
Demand Response Target	-	-	-	-	-	-	-	-	-	3	6	15
Percentage of Local Capacity Requirement		0%	0%	0%	0%	0%	0%	0%	0%	2%	5%	12%

## Chapter 6, Distributed Generation

**Marin Clean Energy**  
**Distributed Generation Projections**  
**(MW)**  
**2010 to 2021**

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
DG Capacity	-	1	2	3	5	8	77	81	85	318	376	435

### *Financial Plan*

With regard to MCE's financial plan, which is addressed in Chapter 7, Financial Plan, MCE has updated its expected operating results, which now include projected impacts related to service expansion within MCE's new member Community. The following table reflects updated operating projections in consideration of these planned expansions.

## Chapter 7, CCA Program Operating Results

**Marin Clean Energy**  
**Summary of CCA Program Phase-In**  
**(January 2010 through December 2021)**

CATEGORY	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
I. REVENUES FROM OPERATIONS (\$)												
ELECTRIC SALES & OTHER REVENUE	10,529,582	20,457,577	43,687,317	81,279,541	97,203,892	141,251,837	169,550,635	208,613,288	333,956,504	375,509,679	387,224,816	391,455,571
LESS UNCOLLECTIBLE ACCOUNTS	-	(309,659)	(61,992)	(950,674)	(484,404)	(1,432,948)	(893,645)	(1,704,125)	(2,269,054)	(2,552,979)	(2,632,670)	(2,661,514)
TOTAL REVENUES	10,529,582	20,147,918	43,625,325	80,328,867	96,719,488	139,818,889	168,656,990	206,909,163	331,687,450	372,956,699	384,592,145	388,794,057
II. COST OF OPERATIONS (\$)												
(A) ADMINISTRATIVE AND GENERAL (A&G)												
STAFFING	433,250	605,855	923,190	1,376,429	1,953,241	2,778,126	4,199,088	5,362,173	8,255,933	9,090,955	9,363,684	9,644,595
CONTRACT SERVICES	1,711,537	1,394,953	2,920,222	4,081,277	4,360,839	4,821,343	5,762,064	5,944,191	12,760,088	12,789,299	13,157,403	13,381,838
IOU FEES (INCLUDING BILLING)	20,468	60,780	214,113	547,806	669,037	865,764	1,025,141	1,377,970	1,933,275	2,214,007	2,330,994	2,414,673
OTHER A&G	140,427	316,671	437,596	1,374,738	1,581,589	2,393,573	2,285,284	1,202,750	3,308,027	3,959,120	4,077,894	4,200,230
SUBTOTAL A&G	2,305,682	2,378,259	4,495,121	7,380,250	8,564,705	10,858,806	13,271,577	13,887,084	26,257,322	28,053,381	28,929,975	29,641,336
(B) COST OF ENERGY	7,418,662	15,167,808	33,340,133	71,137,536	82,201,115	116,789,531	138,679,332	187,067,809	255,691,939	334,089,834	335,491,414	350,705,109
(C) DEBT SERVICE	662,262	2,596,787	718,375	1,107,972	1,279,799	2,353,444	-	-	220,375	243,000	243,000	243,000
TOTAL COST OF OPERATION	9,724,343	17,546,067	37,835,255	78,517,786	90,765,821	127,648,337	151,950,909	200,954,893	281,949,261	362,143,215	364,421,389	380,346,445
CCA PROGRAM SURPLUS/(DEFICIT)	805,239	2,601,851	5,790,071	1,811,081	5,953,667	12,170,552	16,706,082	5,954,270	49,738,189	10,813,484	20,170,756	8,447,612
REPAYMENT OF LOAN PRINCIPAL	578,566	2,473,134	567,938	920,147	1,142,408	2,296,675	-	-	-	-	-	-

### *Expansion Addendum Appendices*

Appendix A: Marin Clean Energy Resolution 2018-12

Appendix B: Joint Powers Agreement

Appendix C: Solano County Ordinance

Appendix D: Marin Clean Energy Revised Implementation Plan and Statement of Intent  
(July 18, 2014)





## **POLICY NO. 007 – NEW CUSTOMER COMMUNITIES**

Whereas MCE’s founding mission is to address climate change by using a wide range of renewable energy sources, reducing energy related greenhouse gas emissions and promoting the development of energy efficiency programs; and

Whereas creating opportunities for customer electric service in new communities may allow MCE to further progress towards its founding mission; and

Whereas MCE currently provides a minimum 50% renewable energy supply to all MCE customers (through its default Light Green retail service option), which substantially exceeds similar renewable energy supply percentages provided by California’s investor-owned utilities (IOUs); and

Whereas the inclusion of new communities to MCE’s membership will increase state-wide renewable energy percentages due to 1) MCE’s specified minimum renewable energy supply percentage of 50%, and 2) access to its 100% renewable option; and

Whereas the inclusion of new communities to MCE’s membership will also decrease greenhouse gas emissions within the Western United States as a result of minimum renewable energy supply percentages exceeding such percentages provided by California’s IOUs; and

Whereas the inclusion of new communities reaffirms the viability of community choice aggregation, and provides an incentive for other cities and counties to pursue more renewable energy options within their own jurisdictions.

Therefore, it is MCE’s policy to explore and support customer electric service in new communities to further agency goals.

In consideration of the above MCE may allow access to service in new communities through two channels, affiliate membership or special-consideration membership, as applicable.

Affiliate membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is not more than 30 miles from MCE existing county jurisdiction, and
3. Customer base in new community is 40,000 or less or is within a County already served by MCE.

Special-consideration membership considered if:

1. All applicable membership criteria are satisfied,
2. New community is located in a county that is more than 30 miles from MCE existing jurisdiction and/or the customer-base in the new community is greater than 40,000.

### **MCE Membership Application Checklist**

- √ Request for load data for PG&E signed by Mayor, City Manager, Board president or Chief County Administrator
- √ Adoption of a resolution requesting membership in MCE
- √ Adoption of the ordinance required by the Public Utilities Code Section 366.2(c)(10) to join MCE's CCA program, adopted governing Board, subject to MCE Board approval
- √ Executed 'Agreement for Services' or 'Memorandum of Understanding' (if during inclusion period) to cover:
  - Community agrees to publicize and share information about MCE with community during the 6 month enrollment period. Options to publicize include but are not limited to website, social media, public events, community workshops, and newsletter announcements (where feasible), as well as distribution of flyers and handouts provided by MCE at community offices
  - Community agrees to provide desk space for up to 2 MCE staff during the 6 month enrollment period, and agrees to consider ongoing desk space availability if needed for effective and efficient outreach.
  - Community agrees to assign staff member as primary point of contact with MCE. Assigned staff member will support and facilitate communication with other community staff and officials, as well as provide input and high-level assistance on community outreach.
  - Community agrees to cover of quantitative analysis cost, not to exceed \$10,000; waived under inclusion period.



My community.  
My choice.

# MCE Inclusion Process

Applicant Analysis for the Cities of

Pleasant Hill and Vallejo

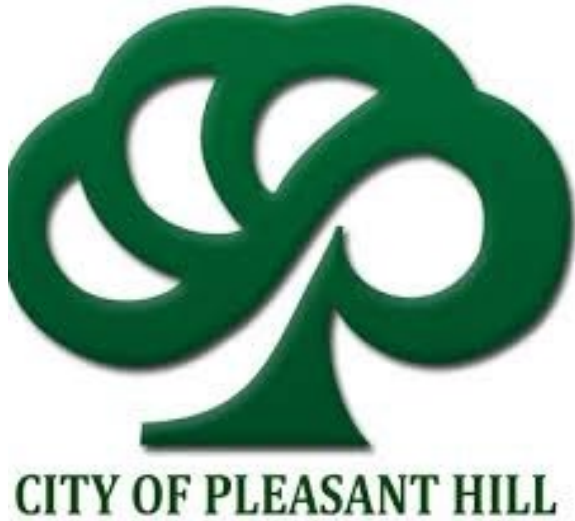
November 2019

# Purpose of Analysis

Evaluate applications for MCE membership submitted by the Cities of Pleasant Hill and Vallejo

Per Policy No. 007, criteria A-C: Would allowing for MCE service in new communities accomplish the following?

- Result in a neutral or positive fiscal impact for MCE and the existing customer base
- Accelerate greenhouse gas reductions
- Increase amount of renewable energy being used in California energy market



Population  
35,000

## City of Pleasant Hill

- Located in Contra Costa County
- Voted to request MCE membership on June 3, 2019
- Would be the 15<sup>th</sup> Contra Costa jurisdiction to join MCE





# City of Vallejo

- Located in Solano County
- Voted to request MCE membership on May 28, 2019
- Would be the 3rd Solano County jurisdiction to join MCE

Population  
122,000

# New Communities: Timeline

Nov 2019 – MCE's Board votes to include new communities

Dec 2019 – MCE submits updated Implementation Plan to CPUC

Feb 2020 – CPUC certifies updated Implementation Plan

Spring 2021 – Service starts to new customers



# MCE Key Statistics(Annual Projected)

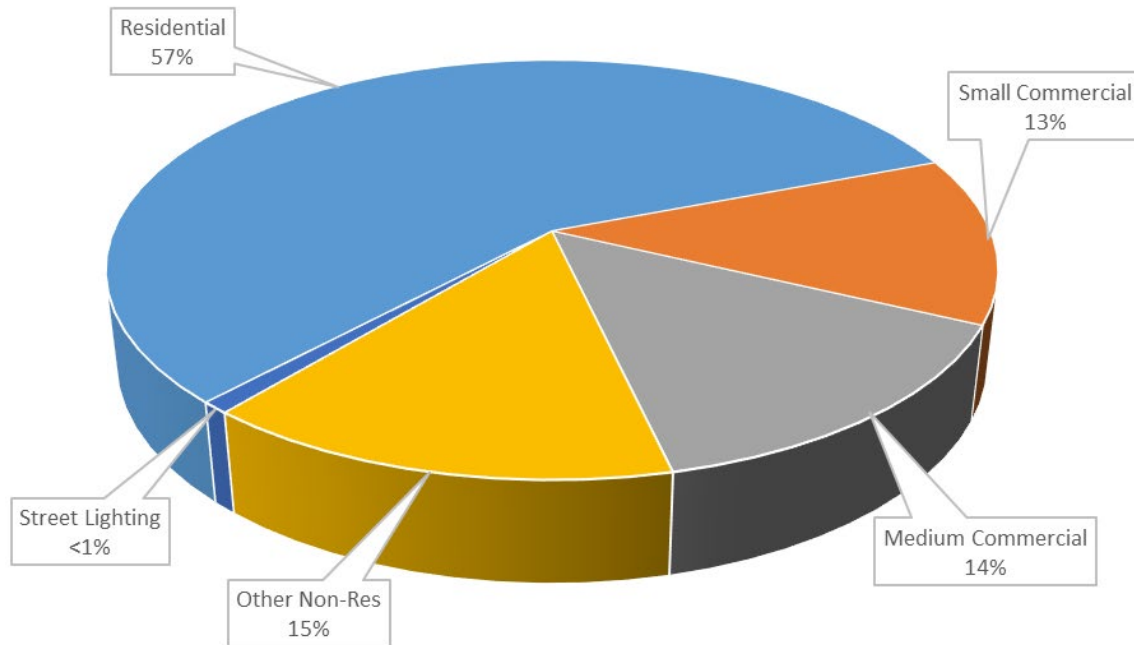
- Customer base ~ 483,500
- Annual energy sales ~ 5,235,000 MWh
- Peak demand ~ 901 MW
- Renewable energy content 60+%
- Carbon free content 90%-100%
- Annual revenues ~\$440 million

# New Communities: Customer Base

Classification	Accounts	Annual Energy (MWh)	Average Per Customer (kWh/Month)
Residential	58,772	291,416	413
Small Commercial	4,345	65,909	1,264
Medium Commercial	392	72,901	15,498
Street Lighting	530	4,590	722
Other Non-Residential	233	74,753	26,736
TOTAL	64,272	509,569	661
Peak Demand (MW)			92

# New Communities: Electricity Use

Distribution of Customer Usage



# Impact Analysis: Key Assumptions

- Service to commence in April 2021
- 90% customer participation rate
- Incremental revenues projected assuming currently effective MCE rates
- Incremental cost analysis accounts for: additional power supply, customer billing, call center support, PG&E service fees
- Revenue surplus, if any, represents fiscal benefit or surplus

# Incremental Revenue & Cost Summary

	FY 2021/2022	FY 2022/2023
Volume (MWh)	445,129	461,500
Revenue	\$38,191,409	\$39,447,985
Costs		
Power Supply Cost	\$28,468,097	\$31,733,898
Billing and Other Costs	\$1,178,477	\$1,145,250
<b>TOTAL COST</b>	<b>\$29,646,574</b>	<b>\$32,879,148</b>
<b>Fiscal Benefit</b>	<b>\$8,544,835</b>	<b>\$6,568,837</b>
<b>% Benefit (relative to combined revenue)</b>	<b>~2%</b>	<b>~1%</b>

Minimal implementation costs will be incurred during pre-expansion fiscal year for marketing and outreach, customer noticing, regulatory, legal, internal operation, resource planning and electric procurement activities.

# Sensitivity Analysis

## Scenario

## Fiscal Impact FY 2021/2022

Base Projection

\$8,544,835

Power Costs + 20%

\$4,921,010

75% Participation Rate

\$7,134,183

# Renewable Energy

- In first full year (2022), MCE would supply up to 288,114 MWh of renewable energy to new communities
- Would increase sales of renewable energy in new communities by 110,666 MWh per year

# Greenhouse Gasses

- MCE to buy between 233,000 and 284,000 additional carbon free (renewable and large hydro) MWh to serve the new communities
- Estimated to reduce emissions by 100 to 122 metric tons of CO<sub>2</sub>e per year



# Summary

Quantitative analysis findings are favorable:

- Fiscal benefit to MCE of \$4.9-8.5 million per year
- Up to 110,666 MWhs/year of increased renewable energy sales
- Up to 122 metric tons of annual GHG reductions



November 1, 2019

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance

RE: Proposed FY 2019/20 Operating Fund Budget Amendment (Agenda Item #08)

ATTACHMENT: Proposed FY 2019/20 Operating Fund Budget Amendment

Dear Executive Committee Members:

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**SUMMARY:**

In March 2019, the Board approved MCE's Fiscal Year (FY) 2019/20 Operating Fund Budget. The Budget authorizes Staff to spend funds within the limits set forth in each budget line item and to collect revenue. In May 2019, the Board approved increases in rates designed to better align revenues with cost recovery among rate classes and to be in a position to meet MCE's Reserve Targets by the end of the current fiscal year. Staff is not requesting any changes to the Operating Fund expense line items as operating expenses (excluding Cost of Energy) have come in at or below the budgeted amounts so far this fiscal year. An amendment to the FY 2019/20 Operating Fund Budget is proposed to reflect the anticipated increase in revenues as a result of the rate increases, to update the Cost of Energy line item to better reflect energy cost projections for the remainder of the fiscal year and to create and initially fund a Resiliency Fund.

**Operating Fund Budget Amendment Detail**

The attached Proposed FY 2019/20 Operating Fund Budget Amendment sets forth changes to the following budget line items:

**Energy Revenue – (+\$61,208,438 17.2% increase):** Energy Revenue – Electricity (net of allowance) is based on estimates of customer electricity usage and retail electricity rates and bi-lateral wholesale sales of energy and Resource Adequacy (RA) capacity to other counterparties. The increase in revenue results from the rate increases effective 7/1/2019, slightly higher than expected customer electricity usage and more robust wholesale sales of energy and RA.

**Cost of Energy – (+\$15,195,000 5.0% increase):** Cost of Energy includes expenses associated with purchase of energy, costs for RA capacity, charges by the California Independent Systems Operator (CAISO) for scheduled load, and services performed by the CAISO as the Balancing Authority. The proposed increase in the Cost of Energy budget line item is intended to accommodate purchases of energy and resource adequacy that were resold via wholesale transactions (previously netted from Cost of Energy) and higher load charges due to higher than expected customer demand.

**Change in Net Position – (+\$45,233,000):** The projected increase in Net Position from the budgeted amount of \$14,339,000 is projected to increase by \$45,233,000 as a result of the higher energy revenue even after factoring in the higher cost for the energy. The bulk of this increase is due to the rate change approved by your Board in May. This change results in a total projected increase to the Net Position of \$59,572,000.

**Resiliency Fund:** Staff is proposing the creation of a Resiliency Fund and initial funding in the amount of \$3,000,000. The creation of this proposed Resiliency Fund is in large part a response to PG&E's Public Safety Power Shutoff (PSPS) events. These events are significantly impacting the safety, reliability, health and welfare of customers including vulnerable MCE customers and critical care facilities. At MCE, we want to help empower our customers by piloting advanced technology such as battery storage and small-scale microgrids to retain essential supply during PSPS events and naturally occurring outages while minimizing use of carbon-emitting generators.

Through Resiliency projects, MCE would pilot and implement structured rates, incentives, facilitation, education, installation and aggregation of storage devices in our service area. Priority locations may include multi-family and senior housing, Offices of Emergency Services, fire stations, community centers, hospitals, and schools.

Such storage devices, especially when co-located with roof top solar, would provide some of the needed support to retain, as much as possible, our customers' quality of life while in PSPS events. Outside of PSPS events, MCE would use these resources to perform virtual aggregation and optimize MCE's load serving capability better aligning MCE energy demand shape with supply shape. For example, charging storage devices when solar energy is plentiful, and discharging them in the evening when wholesale prices are higher and fewer renewable resources are available, creates both economic and environmental benefits.

**FISCAL IMPACT:** The primary net impact of the proposed FY 2019/20 Operating Fund Budget Amendment is a \$45,233,000 increase in the budgeted contribution to the Net Position for a total contribution of \$59,572,000. This increase is projected to allow MCE to meet and slightly exceed its Reserve Target at 105% by the end of the current 2019/20 Fiscal Year. Budgeted expenditures include contingencies and Staff expects that the actual contribution to the Net Position will likely exceed the amended budgeted contribution to the Net Position.

**RECOMMENDATION:** Recommend that the MCE Board approve the proposed FY 2019/20 Operating Fund Budget Amendment to include the creation and initial funding of a Resiliency Reserve in the amount of \$3,000,000.

**Marin Clean Energy  
Operating Fund  
Fiscal Year 2019/20  
From April 1, 2019 through March 31, 2020**

	Approved Budget	Proposed Amendment	Amended Budget Variance (Under) Over	Amended Budget Variance (Under) Over %
<b>ENERGY REVENUE</b>				
Revenue	\$355,550,000	\$416,758,000	\$61,208,000	17.22%
<b>ENERGY EXPENSE</b>				
Cost of energy	317,119,000	333,094,000	15,975,000	5.04%
<b>NET ENERGY REVENUE</b>	<b>38,431,000</b>	<b>83,664,000</b>	<b>45,233,000</b>	<b>117.70%</b>
<b>OPERATING EXPENSE</b>				
Personnel	8,791,000	8,791,000	0	0.00%
Data Manager, Calpine	6,270,000	6,270,000	0	0.00%
Technical and scheduling services	917,000	917,000	0	0.00%
Service fees - PG&E	2,073,000	2,073,000	0	0.00%
Legal and Policy Services	1,060,000	1,060,000	0	0.00%
Communication Services	1,573,000	1,573,000	0	0.00%
Other Services	1,184,000	1,184,000	0	0.00%
General and Administration	1,664,000	1,664,000	0	0.00%
Occupancy	1,014,000	1,014,000	0	0.00%
Finance and Contingency	1,370,000	1,370,000	0	0.00%
<b>TOTAL OPERATING EXPENSES</b>	<b>25,916,000</b>	<b>25,916,000</b>	<b>0</b>	<b>0.00%</b>
<b>OPERATING INCOME</b>	<b>12,515,000</b>	<b>57,748,000</b>	<b>45,233,000</b>	<b>361.43%</b>
<b>NONOPERATING REVENUES</b>				
Grant Income	1,748,000	1,748,000	0	0.00%
Other Income	0	0	0	0.00%
Interest income	1,400,000	1,400,000	0	0.00%
<b>TOTAL NONOPERATING REVENUES</b>	<b>3,148,000</b>	<b>3,148,000</b>	<b>0</b>	<b>0.00%</b>
<b>NONOPERATING EXPENSES</b>				
Banking Fees and Financing Costs	253,000	253,000	0	0.00%
Grant related consultants - TerraVerde	1,071,000	1,071,000	0	0.00%
<b>TOTAL NONOPERATING EXPENSES</b>	<b>1,324,000</b>	<b>1,324,000</b>	<b>0</b>	<b>0.00%</b>
<b>CHANGE IN NET POSITION</b>	<b>14,339,000</b>	<b>59,572,000</b>	<b>45,233,000</b>	<b>315.45%</b>
Budgeted net position beginning of period	91,577,000	91,577,000	0	0.00%
<b>BUDGETED NET POSITION END OF PERIOD</b>	<b>105,916,000</b>	<b>151,149,000</b>	<b>45,233,000</b>	<b>0.00%</b>
Transfer to Resiliency Fund	0	3,000,000	3,000,000	100.00%
Transfer to Local Renewable Energy Development	846,000	846,000	0	0%
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND</b>	<b>846,000</b>	<b>3,846,000</b>	<b>3,000,000</b>	
<b>TRANSFERS &amp; OTHER</b>				<b>0.00%</b>
<b>BUDGETED NET INCREASE IN OPERATING FUND BALANCE</b>	<b>105,070,000</b>	<b>147,303,000</b>	<b>42,233,000</b>	<b>40.20%</b>



November 1, 2018

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance

RE: Proposed Creation of an Operating Reserve Fund (Agenda Item #09)

ATTACHMENTS: DRAFT Resolution #2019-06 Resolution Creating an Operating Reserve Fund

Dear Executive Committee Members:

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**SUMMARY:**

Staff proposes the creation of an Operating Reserve Fund (ORF) to allow MCE to defer revenue in years when financial results are strong to be used in future years when financial results are not as strong or are stressed. Deferring revenue to be used in future years would allow MCE to avoid sudden rate increases to address unanticipated spikes in energy costs, or conversely, to offset reductions in rate levels (and net revenues) to address large increases in the PCIA. Using deferred revenue in a future year would allow MCE to minimize the near term impact on rates and net revenues while remaining in compliance with debt and counterparty financial covenants.

**Introduction:** In the last five years MCE has grown considerably in terms of load, customers served, services provided and in the sophistication of its operations and finances. MCE was the first CCA to achieve an investment grade credit rating and is now the first to have two such ratings. If MCE is to reach its goal of providing 85% renewable and 100% GHG free energy on a cost competitive basis in ten years, the agency will have to utilize all of the available tools including potentially directly owning generation or storage assets. Investment in generation or storage assets, once identified, would likely be achieved through a combination of MCE retained earnings and tax-exempt debt.

Staff proposes creating an Operating Reserve Fund to be funded from MCE revenues. The type of fund that is being recommended would be created under the Government Accounting Standard Board (GASB) Standard 62. GASB 62 is very specific in that current revenues would be “deferred” into the fund when it is determined that excess revenues are available to make deposits into the fund. From an accounting standpoint, a deferral of current revenue into the ORF would result in a reduction in a like amount of revenue in that fiscal year which would reduce net revenues and the consequent addition to MCE’s Net Position. By deferring revenues into the ORF before it is recognized as revenue, MCE would effectively “bank” revenue for use in a future fiscal year.

**Bank and Bond Covenants:** If MCE intends to access the tax-exempt capital markets, the agency would need to agree to a number of covenants including a Rate Covenant and a Debt Service Coverage Ratio. These covenants would be required to protect (and attract) bond investors in the offering and would require that MCE produces net revenues sufficient to pay debt service with a specific minimum margin (e.g. coverage of annual debt payments by 1.5 times). The ORF could be drawn upon to allow MCE to meet its Rate and Debt Service Coverage Ratio covenants if needed.

**Governance:** Creation of the Operating Reserve Fund would require a Resolution by the MCE Board of Directors. In addition, any deferral of current revenues into the fund and/or withdrawals from the fund in the future would require action by the MCE Board.

**Fiscal Impacts:** Creation of the Operating Reserve Fund would have no fiscal impact. Deferring revenues into the ORF would have a commensurate negative effect on net revenues in that fiscal year. Withdrawals from the ORF would have commensurate positive effect on net revenues in that fiscal year.

**Recommendation:** Recommend to the Board adoption of MCE Resolution #2019-06 creating an Operating Reserve Fund.

## RESOLUTION 2019-06

### A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY ESTABLISHING A NEW OPERATING RESERVE FUND

**WHEREAS**, Marin Clean Energy (MCE) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, on February 18, 2016, the Board of Directors adopted a Reserve Policy (Policy 013), the terms of which, as amended from time to time, provide a policy framework for accumulating and maintaining a reserve in MCE's general operating fund (the "General Reserve") at a target funding level as part of MCE's annual budget and rate setting processes; and

**WHEREAS**, Policy 013 contemplates that the General Reserve may be utilized to satisfy working capital requirements, procure energy at competitive rates, adhere to loan covenants, cover unanticipated expenditures, and support rate stability, among other things; and

**WHEREAS**, the Board of Directors deems it prudent to establish, designate, and maintain, separately from the General Reserve, an operating reserve fund (the "Operating Reserve Fund") to provide a contingency available to satisfy financial covenants, rate stabilization, and such other matters as may be approved from time to time by the Board of Directors, and to be funded as deferred surplus revenues from time to time following annual funding and maintenance of the General Reserve at the level and in the manner specified in Policy 013; and

**NOW, THEREFORE, BE IT RESOLVED**, by the MCE Board of Directors:

A. The Board of Directors hereby establishes an operating reserve fund designated the "Operating Reserve Fund," which shall be accounted for as a separate fund from all other MCE funds, although amounts credited to it may be commingled with other funds of MCE. The Operating Reserve Fund shall be subject to the Investment Policy (Policy 014) adopted by the Board of Directors, as in effect and amended by the Board of Directors from time to time.

B. The Board of Directors hereby authorizes the Director of Finance, the Treasurer, and their respective designees to deposit, from time to time, such amount as each such officer may determine as prudent and appropriate into the Operating Reserve Fund from any source of legally available surplus funds; provided, the Board of Directors later approves such deposit at the next scheduled meeting of the Board of Directors.

C. The Operating Reserve Fund shall be recognized by GASB 62 and provide a contingency available upon approval by the Board of Directors to satisfy financial covenants, rate stabilization, and such other matters as may be approved from time to time by the Board of Directors.

D. The Director of Finance, the Treasurer, and any designee appointed by the Director of Finance or the Treasurer, are hereby authorized and directed, jointly and severally, to do any and all things to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified and confirmed.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 21st day of November 2019, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				



City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

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CHAIR, MCE

**Attest:**

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SECRETARY, MCE



November 1, 2018

TO: MCE Executive Committee

FROM: Garth Salisbury, Director of Finance

RE: Proposed Amendments to MCE Policy 013: Reserve Policy (Agenda Item #10)

ATTACHMENTS: Proposed Amended MCE Policy 013: Reserve Policy (Redlined Version)

Dear Executive Committee Members:

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**SUMMARY:**

In February 2016 the Board approved MCE Policy 013: Reserve Policy and in May 2018 the Board approved amendments to simplify the calculations and to extend the target date to meet the Reserve goals to March 31, 2020. Adequate Reserves enable MCE to satisfy working capital requirements, procure energy at competitive rates, adhere to loan or debt covenants, cover unanticipated expenditures, support rate stability and have been cited by both Moody's and Fitch as one of MCE's primary credit strengths.

As a result of the rate increases enacted this fiscal year and slightly better operating performance, Staff anticipates reaching the financial goals of the current Reserve Policy by the targeted date of March 31, 2020. Staff reviews the Reserve Policy annually and proposes changes as needed. Changes proposed at this time appear in the attached proposed Reserve Policy and include the following;

1. Increasing the Reserve target from 40% to 60% of annual budget
2. Increasing the Liquidity target from 140 days to 240 days cash on hand
3. Directing the Reserve levels to be for the current fiscal year as opposed to the ensuing fiscal year, and
4. Extending the target date for achieving MCE's proposed Reserve and Liquidity targets from March 31, 2020 to March 31, 2022

**Reserve Goals:** Given the suggested updates to the Reserve Policy above, the Reserve target would be calculated as 60% of energy and operating costs for the then current fiscal year. For instance, the FY 2020/21 target Net Position would be equal to 60% of projected operating and energy expenses in that year.

These proposed changes in the targeted Reserve amounts are designed to put MCE in a better financial/liquidity position commensurate with an “A” rated utility. While financial reserves are but one aspect of an overall credit rating, the rating agencies have stated that ample reserves are the best buffer against future financial uncertainty and for the long term viability of MCE in a more competitive energy market environment.

**Liquidity Goals:** Additions to MCE Reserves are established through the budget and rate setting processes. Reserves contribute to MCE’s liquidity. Liquidity – defined as unrestricted cash, marketable investments and unused bank lines of credit – is important for ensuring MCE’s financial strength and “days liquidity on hand” is an established metric used by industry participants and rating agencies to assess MCE’s credit worthiness. The current target of 140 days liquidity on hand is generally associated with organizations that have investment grade credit ratings. Staff proposes increasing the Liquidity target to 240 days by fiscal year 2021/22. These proposed liquidity levels are commensurate with a financially strong utility capable of withstanding prolonged rate competition, one that has the ability to potentially invest some of its cash to acquire capital assets and to be in line with utilities that have stronger “A” ratings.

The Reserve and Liquidity calculation methodologies and projections appear in Table A below for information and illustrative purposes and are intended to be read in conjunction with the proposed Reserve Policy.

**Table A: Reserve and Liquidity Projections**

MCE Reserve & Liquidity Requirement Targets		FY 2018/19 (Audited)	FY 2019/20	FY 2020/21	FY 2021/22	
Reserve Projections	A	Reserve Target (%)	40%	40%	60%	60%
	B=A*K	Reserve Target (\$)	128,093,200	143,604,162	235,115,922	238,305,960
	C	Projected Actual Reserves (\$)*	91,577,000	151,149,000	216,900,000	271,029,000
	D=C/B	Reserves Actual (%)	71%	105%	92%	114%
Liquidity Projections	E	Projected Unrestricted Cash and Invstmnts (\$)	60,788,000	115,006,271	174,191,171	217,109,471
	F	Projected Unused Bank Line (\$)**	25,000,000	40,000,000	40,000,000	50,000,000
	G=E+F	Trotal Projected Liquidity (\$)	85,788,000	155,006,271	214,191,171	267,109,471
	H=G*365/K	Projected Days Liquidity on Hand	98	158	200	245
	I	Target Days Liquidity on Hand	140	140	240	240
	J=K*I/365	Liquidity Target (\$)	122,829,000	137,703,000	257,661,000	261,157,000
Annual Expenses	K	Projected Annual Operating Expenses + Cost of Energy for the Current Fiscal Year (\$)	320,233,000	359,010,404	391,859,870	397,176,600

\* Projections are based on MCE’s current retail electricity rates

\*\* MCE’s bank line will increase to \$40,000,000 on November 1, 2019

**Fiscal Impacts:** The proposed Reserve Policy has an indirect fiscal impact by providing a policy framework for adding to and maintaining Reserves as part of MCE’s annual budget and rate setting processes.

**Recommendation:** Recommend that the Board approve the proposed amendments to MCE Policy 013: Reserve Policy.



## **POLICY 013: Reserve Policy**

### **Policy Statement**

MCE will adopt budgets and establish rates that provide for a growing Reserve until target funding levels are met.

The Reserve will grow to and be maintained at a funding level equal to or exceeding 640% of projected energy and operating expenses for the upcoming-current fiscal year. The Reserve will be accounted for as the Net Position in MCE's financial statements.

The MCE Board will adopt budgets and establish rates for MCE with the goal of building and maintaining Reserves at or above the target level by March 20220, subject to MCE's ability to meet operational expenditures and maintain competitive rates.

### **Policy Purpose**

MCE will prudently manage its operations in a manner that supports its long-term financial independence and stability while providing sufficient financial capacity to meet short term obligations. This Reserve Policy is important in meeting MCE's strategic objectives, securing favorable commercial terms from both third-party service providers and lenders and in the maintenance and potential improvement in development of a future stand-alone MCE's stand-alone credit ratings.

Adequate Reserves will enable MCE to satisfy working capital requirements, procure energy at competitive rates, adhere to loan or bond covenants, cover unanticipated expenditures, and support rate stability.

### **Relationship to the Budget, Liquidity and Periodic Review**

By setting rates and authorizing expenditures through approved Budgets, MCE determines targeted additions to Reserves. Staff will carefully monitor MCE's liquidity to ensure it meets the objectives of the organization with the goal of securing 140240 days liquidity on hand<sup>1</sup>. Staff will review the Reserve Policy annually to ensure it meets the needs of the agency. The future development of MCE may require the expansion of reserve requirements to support new activities such as major expansion of MCE activities or the acquisition of generating assets.

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<sup>1</sup> Days liquidity on hand = (unrestricted cash and investments + unused bank lines of credit) x 365 / (operating expenses + cost of energy, each for the upcoming-current fiscal year)



November 1, 2019

TO: MCE Executive Committee

FROM: Vicken Kasarjian, Chief Operating Officer  
Maira Strauss, Senior Finance Analyst

RE: Revolving Credit Facility Agreement with JPMorgan Chase Bank, N.A. (Agenda Item #11)

ATTACHMENTS: A. Draft of Revolving Credit Agreement with JPMorgan Chase Bank, N.A.  
B. Draft Fee Agreement of Revolving Credit Agreement with JPMorgan Chase Bank, N.A.  
C. Proposed Resolution 2019-07 Approving and Authorizing The Execution and Delivery of a Revolving Credit Agreement with JPMorgan Chase Bank, N.A.

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**Dear Executive Committee:**

**Summary:**

Due to the upcoming expiration of the current Credit Facility with River City Bank, MCE Staff surveyed the bank market to determine if there were more competitive Credit Facility options to best meet MCE's financial objectives. Staff received proposals from JP Morgan Chase Bank, River City Bank and Barclays Bank PLC. Staff selected JP Morgan Chase Bank due to overall better terms and lower cost.

MCE Staff negotiated a new three-year Credit Facility Agreement with JPMorgan Chase Bank, N.A. The new Agreement would replace MCE's Credit Agreement with River City Bank, which will expire on November 30, 2019. The new Agreement would increase the amount of the Credit Facility, and would allow MCE to borrow funds if needed and order the issuance of letters of credit to support power purchase contracts.

Highlights of the proposed Credit Facility Agreement (Attachment A):

- Increases MCE's available credit line from \$25,000,000 to \$40,000,000, which enhances MCE's overall liquidity for any short-term working capital needs;
- Supports MCE's power procurement program. It can be used to meet collateral requirements of individual power contracts with higher rated Letters of Credit provided by JPMorgan Chase Bank (Aa2/ A+/ AA);
- Enhances MCE's investment grade credit ratings. Liquidity is one of the factors considered when credit agencies determine their rating. Investment grade ratings can often allow MCE to negotiate more favorable financial terms with power suppliers and vendors;
- The three-year term provides some protection against credit market disruptions;

- JPMorgan Chase Bank has the ability to increase the amount of the line of Credit Facility if needed.

**Fiscal Impact:**

Costs associated with the proposed Revolving Credit Agreement are included in the FY 2019/20 Budget.

**Recommendation:**

Recommend to the Board adoption of Proposed Resolution No. 2019-07 Approving and Authorizing The Execution and Delivery of a Revolving Credit Facility Agreement with JPMorgan Chase Bank, N.A.

*NP DRAFT 10/25*

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**REVOLVING CREDIT AGREEMENT**

**Dated as of November [29], 2019,**

**by and between**

**MARIN CLEAN ENERGY,  
as Borrower**

**and**

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,  
as Lender**

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**EXHIBITS**

- Exhibit A — Form of Opinion of Chapman and Cutler LLP
- Exhibit B — Form of Compliance Certificate
- Exhibit C — Form of [Borrowing Request][Letter of Credit Request]
- Exhibit D – Form of Letter of Credit

## REVOLVING CREDIT AGREEMENT

This **REVOLVING CREDIT AGREEMENT**, dated as of November [29], 2019 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between MARIN CLEAN ENERGY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “*Borrower*”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Lender*”).

### WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

### ARTICLE 1

#### DEFINITIONS

Section 1.1 **Definitions**. As used in this Agreement:

“*Adjusted LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“*Affiliate*” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“*Agreement*” has the meaning set forth in the introductory paragraph hereof.

“*Annual Debt Service*” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including facility fees, undrawn fees and commitment fees) due and payable on the Loans, other Parity Debt and other Subordinate Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) (i) in the case of Working Capital Loans, Reimbursement Loans, and other Parity Debt (comprising other working capital loans), the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Parity Debt loans (comprising other working capital loans), during such Fiscal Year or other designated four fiscal quarter period by 3, and (ii) in the case of Revolving Credit Exposure (excluding therefrom Working Capital Loans and Reimbursement Loans), other Parity Debt (not comprising other working capital loans), and other Subordinate Debt the quotient obtained by dividing the average daily outstanding principal balance of the Revolving Credit Exposure (excluding therefrom Working Capital Loans and the Reimbursement Loans), other Parity Debt (not comprising other working capital loans), and other Subordinate Debt during such

Fiscal Year or other designated four fiscal quarter period by 10. Provided that, to the extent interest on any debt is subject to a Swap Contract, MCE shall treat such interest payments due on such debt as being equal to the net amount paid and received by MCE under such Swap Contract.

“*Anti-Corruption Laws*” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

“*Applicable Law*” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“*Applicable Margin*” has the meaning set forth in the Fee Agreement.

“*Audited Financial Statements*” has the meaning set forth in Section 4.6.

“*Authorized Representative*” means an Authorized Representative of the Borrower, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by the Borrower and delivered to the Lender.

“*Availability Period*” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“*Bank Agreement*” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to make or provide funds to make payment of, or to purchase or provide credit enhancement for, bonds or notes of the Borrower secured by or payable from Revenues (including Net Revenues) on parity with, or subordinate to the payment of, the Obligations.

“*Banking Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“*Base Rate*” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.5% per annum, and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof, then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Base Rate Borrowing*”, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Base Rate.

“*Basic Documents*” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“*Board*” means the Board of Directors of the Borrower.

“*Borrower*” has the meaning set forth in the introductory paragraph hereof.

“*Borrowing*” means the making, conversion or continuation of a Loan.

“*Borrowing Request*” means a request by the Borrower for a Borrowing in accordance with Section 2.3 and in the form of Exhibit C hereto.

“*Business Day*” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or San Francisco are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“*Cash Collateral Loan*” means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower’s payment obligations under one or more PPAs or to make a termination payment under PPAs.

“*Change in Law*” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “*Change in Law*,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by the Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the commitment of the Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.8. The initial amount of the Commitment is \$40,000,000.

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Consulting Engineer*” means the engineer, engineering firm or consulting firm retained from time to time by Borrower to provide independent analysis and planning advice regarding the business strategy and operations of Borrower.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “*Controlling*” and “*Controlled*” have meanings correlative thereto.

“*Debt*” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Contract and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“*Debt Service Coverage Ratio*” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter.

“*Debt Service Coverage Ratio Notice*” has the meaning set forth in Section 5.1(q) hereof.

“*Default*” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“*Default Rate*” has the meaning set forth in the Fee Agreement.

“*Designated Jurisdiction*” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“*dollars*” or “*\$*” refers to lawful money of the United States of America.

“*Electronic Signature*” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“*Employee Plan*” means an employee benefit plan covered by Title W of ERISA and maintained for employees of the Borrower.

“*Environmental Laws*” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

“*Eurodollar*” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.

“*Event of Default*” has the meaning set forth in Section 6.1 hereof.

“*Excluded Taxes*” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as the NYFRB shall set forth on its public website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate, provided that if the Federal Funds Effective Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“*Fee Agreement*” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented and amended from time to time.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year.

“*Fitch*” means Fitch Ratings, Inc.

“*FRB Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“*Governmental Approval*” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“*Governmental Authority*” means the government of the United States or any other nation or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“*Guarantees*” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

“*Impacted Interest Period*” has the meaning assigned to it in the definition of “*LIBO Rate*.”

“*Indemnified Taxes*” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“*Interest Election Request*” means a request by the Borrower to convert or continue a Revolving Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“*Interest Payment Date*” means, (a) with respect to any Base Rate Loan, the first Business Day of the month, and (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part.

“*Interest Period*” means, with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding

Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“*Interpolated Rate*” means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Lender (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.

“*Investment Policy*” means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“*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 the Joint Powers Agreement of Borrower effective as of December 19, 2008, and as amended from time to time.

“*Law*” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“*LC Disbursement*” means a payment made by the Lender pursuant to a Letter of Credit.

“*LC Exposure*” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“*Letter of Credit*” means any letter of credit issued pursuant to this Agreement.

“*Letter of Credit Fees*” has the meaning set forth in the Fee Agreement.

“*Lender*” has the meaning set forth in the introductory paragraph hereof.

“*LIBO Rate*” means, with respect to any Eurodollar Borrowing for any Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “*Impacted Interest Period*”) then the LIBO Rate shall be the Interpolated Rate.



“*LIBO Screen Rate*” means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate for U.S. Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion, provided that if the LIBO Screen Rate shall be less than zero, such rate shall be deemed to zero for the purposes of this Agreement).

“*Lien*” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Cash Collateral Loans, the Working Capital Loans and the Reimbursement Loans.

“*Material Adverse Change*” means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, calls into question the Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower, taken as a whole; (b) a material impairment of the rights and remedies of any Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Borrower’s Obligations under this Agreement and any other Basic Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement or any other Basic Document to which Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on the third anniversary of the Closing Date (*i.e.*, [November 29, 2022]), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

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

“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating and Maintenance Costs from Revenues, in each case for such period as of such date.

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Banking Day, for the immediately preceding Banking Day); provided that if none of such rates are published for any day that is a Business Day, the term “*NYFRB Rate*” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*Obligations*” means all obligations of the Borrower to the Lender or any Participant arising under or in relation to this Agreement and the Fee Agreement, including repayment of Loans, the Undrawn Fee, the Letter of Credit Fees and LC Disbursements.

“*Operating and Maintenance Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs paid or incurred by Borrower for maintaining and operating the System, including costs of electric energy and power generated or purchased, costs of transmission and fuel supply, and including all reasonable expenses of management and repair and other expenses necessary to maintain and preserve the System in good repair and working order, and including all administrative costs of Borrower that are charged directly or apportioned to the maintenance and operation of the System, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant and the Consulting Engineer, and including Borrower’s share of the foregoing types of costs of any electric properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefore and amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature. Maintenance and Operation Costs shall include all amounts required to be paid by Borrower under take or pay contracts.

“*Operating Reserve*” means a reserve fund established by the Borrower to provide a reserve that can be utilized by the Borrower to pay Operating and Maintenance Costs (including power costs) [when Revenues are insufficient].

“*Operating Reserve Requirement*” means, for any Fiscal Year of the Borrower, an amount equal to the Commitment Amount hereunder.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest

under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“*Other Taxes*” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“*Overnight Lender Funding Rate*” means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on its public website from time to time, and published on the next succeeding Banking Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

“*Parity Debt*” means any System Debt issued or incurred by the Borrower the payment of which is on parity with the Borrower’s payment Obligations under this Agreement.

“*Participant*” has the meaning set forth in Section 7.3(b) hereof. “*Participation*” has the meaning set forth in Section 7.3(b) hereof.

“*Person*” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“*PPA*” means a power purchase agreement executed between the Borrower and a PPA Counterparty.

“*PPA Counterparty*” means a party to a PPA other than the Borrower.

“*Prime Rate*” means the rate of interest per annum publicly announced from time to time by the Lender as its prime rate in effect at its office located at 270 Park Avenue, New York, New York; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“*Property*” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

“*Rating Agency*” and “*Rating Agencies*” means, individually or collectively, as applicable, any nationally recognized rating agency (such as Fitch, Moody’s and S&P) that is rating any long-term unenhanced System Debt.

“*RCB Obligations*” means all obligations due and owing to River City Bank pursuant to the Non-Revolving Credit Agreement dated as of August 21, 2015, between Borrower and Lender, as amended by the First Amendment to Non-Revolving Credit Agreement dated as of March 17, 2016, the Second Amendment to Credit Agreement dated as of May 19, 2016, and the Third Amendment to Credit Agreement dated as of July 20, 2017.

“*Reimbursement Loan*” has the meaning assigned to such term in Section 2.4(d).

“*Reimbursement Loan Amortization Payment Amount*” means, with respect to a Reimbursement Loan, the principal amount of such Reimbursement Loan on the applicable Reimbursement Loan Start Date divided by the number of Reimbursement Loan Payment Dates in the applicable Reimbursement Loan Amortization Period.

“*Reimbursement Loan Amortization Period*” means, with respect to a Reimbursement Loan, the period commencing on the applicable Reimbursement Loan Start Date and ending on the applicable Reimbursement Loan Maturity Date.

“*Reimbursement Loan Maturity Date*” means, with respect to a Reimbursement Loan, the earlier of (i) the second anniversary of the applicable Reimbursement Loan Start Date and (ii) the Maturity Date.

“*Reimbursement Loan Payment Date*” means, with respect to a Reimbursement Loan, the first Business Day of each calendar quarter during the applicable Reimbursement Loan Amortization Period and the Reimbursement Loan Maturity Date.

“*Reimbursement Loan Start Date*” means, with respect to a Reimbursement Loan, the date such Reimbursement Loan is made.

“*Reimbursement Obligations*” means any and all obligations of the Borrower to reimburse the Lender for LC Disbursements under Letters of Credit and all obligations to repay the Lender for any Loan, including in each instance all interest accrued thereon.

“*Related Parties*” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“*Reserve Funds Notice*” has the meaning set forth in Section 5.1(r) hereof.

“*Revenues*” means all revenues, rates and charges received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the System, together with income, earnings and profits therefrom, as determined in accordance with GAAP.

“*Revolving Borrowing*” means a Loan hereunder other than for a Letter of Credit.

“*Revolving Credit Exposure*” means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“*S&P*” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business.

“*Sanction(s)*” means any and all economic sanctions administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority.

“*Senior Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full of the Borrower’s payment Obligations under this Agreement.

“*State*” means the State of California.

“*Statutory Reserve Rate*” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the FRB Board to which the Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “*Eurocurrency Liabilities*” in Regulation D of the FRB Board). Such reserve percentage shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“*Subordinate Debt*” means any System Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is expressly subordinate to the payment in full of the Borrower’s payment Obligations under this Agreement and under any other Parity Debt.

“*Swap Contract*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “*Master Agreement*”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include the Lender or any Affiliate of the Lender).

“*System*” means (i) all facilities, works, properties, structures and contractual rights to distribution, metering and billing services, electric power, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the generation, transmission and distribution of electric power, (ii) all general plant facilities, works, properties and structures of Borrower, and (iii) all other facilities, properties and structures of Borrower, wherever located, reasonably required to carry out any lawful purpose of Borrower. The term shall include all such contractual rights, facilities, works, properties and structures now owned or hereafter acquired by Borrower.

“*System Debt*” means Debt of the Borrower secured by a Lien over Revenues, including Net Revenues.

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*2019 Audited Financial Statements*” means the statements of net position of the System at March 31, 2019 and March 31, 2018, the statements of revenues, expenses and changes in net position of the System for the years ended March 31, 2019 and March 31, 2018, and the statements of cash flows of the System for the years ended March 31, 2019 and March 31, 2018, together with unqualified audit opinion of Baker Tilly.

“*Type*”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Base Rate.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

The LIBO Rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. The regulatory authority that oversees financial services firms and financial markets in the U.K. has announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions for purposes of determining the LIBO Rate. As a result, it is possible that commencing in 2022, the LIBO Rate may no longer be available or no longer deemed an appropriate reference rate upon which to determine the interest rate on your loan. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the LIBO Rate. In the event the LIBO Rate is no longer available or no longer deemed an appropriate reference rate, we will inform you of such occurrence and will endeavor to establish an alternate rate of interest to the LIBO Rate. There is no assurance that the composition or characteristics of any such alternative reference rate will be similar to or produce the same value or economic equivalence as the LIBO Rate or that it will have the same volume or liquidity as did the LIBO Rate prior to its discontinuance or unavailability.

Section 1.2 **Terms Generally.** The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3 **Accounting Terms; GAAP.** Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

## ARTICLE 2

### THE CREDITS

Section 2.1 **Commitments.** Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

#### Section 2.2 **Loans and Borrowings.**

(a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as a Base Rate Loan or a Eurodollar Loan.

(b) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000 and not less

than \$1,000,000. At the time that each Base Rate Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; provided that a Base Rate Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d).

(c) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.3 **Requests for Revolving Borrowings.** To request a Borrowing, the Borrower shall notify the Lender of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, two Business Days before the date of the proposed Borrowing or (b) in the case of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Lender of a written Borrowing Request in a form attached hereto as Exhibit C and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit C hereto.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be a Base Rate Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Lender shall make available to, or for the account of, the Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on the applicable Borrowing date.

Section 2.4 **Letters of Credit.**

(a) **General.** Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof for the support of its PPA payment obligations, in [the form of a Letter of Credit Request set forth in Exhibit C hereto] at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) **Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.** To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in



any event no less than five Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

(c) Expiration Date. Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five Business Days prior to the Maturity Date.

(d) Reimbursement. If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 1:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 1:00 p.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$100,000, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with a Base Rate Revolving Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Base Rate Borrowing (such Base Rate Borrowing, a "**Reimbursement Loan**").

(e) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery

of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) Disbursement Procedures. The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly notify the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether the Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) If the Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for Base Rate Loans and such interest shall be due and payable on the date when such reimbursement is payable.

## Section 2.5 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing (other than a Base Rate Borrowing of a Reimbursement Loan) and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request

shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be a Base Rate Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term “*Interest Period*”.

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month’s duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Base Rate Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to a Base Rate Borrowing at the end of the Interest Period applicable thereto; provided, however, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

## Section 2.6 **Termination and Reduction of Commitment**

(a) Unless previously terminated, the Commitment shall terminate on the Maturity Date.

(b) Subject to the provisions of the Fee Letter, the Borrower may at any time terminate, or from time to time reduce, the Commitment; provided that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$1,000,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent

prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposure would exceed the Commitment.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

#### Section 2.7 **Repayment of Loans; Evidence of Debt.**

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan (other than a Reimbursement Loan) on the Maturity Date. The Borrower hereby unconditionally promises to pay to the Lender with respect to each Reimbursement Loan the Reimbursement Loan Amortization Payment Amount for such Reimbursement Loan on each applicable Reimbursement Loan Payment Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

#### Section 2.8 **Prepayment of Loans.**

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and in accordance with any amounts due and owing pursuant to Section 2.13 of this Agreement.

(b) The Borrower shall notify the Lender by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of prepayment, or (ii) in the case of prepayment of a Base Rate Borrowing, not later than 11:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be

prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

Section 2.9 **Fees**. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and the Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10 **Interest**.

(a) The Loans comprising each Base Rate Borrowing (other than Reimbursement Loans) shall bear interest at the Base Rate plus the Applicable Margin.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) The Reimbursement Loans shall bear interest at the Base Rate plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate *per annum* equal to (i) in the case of overdue principal of any Loan, 3% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 3% plus the rate applicable to Base Rate Loans as provided in paragraph (a) of this Section.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed in a 365- or 366- year, except that interest computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate shall be computed on the

basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

#### Section 2.11 **Alternate Rate of Interest.**

(a) If prior to the commencement of any Interest Period for a Eurodollar Borrowing, the Lender determines (which determination shall be conclusive absent manifest error) that (i) adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period, or (ii) the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loan included in such Borrowing for such Interest Period; then the Lender shall give notice thereof to the Borrower by telephone or telecopy as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing.

(b) If at any time the Lender determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (a)(i) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(i) have not arisen but the supervisor for the administrator of the LIBO Screen Rate or a Governmental Authority having jurisdiction over the Lender has made a public statement identifying a specific date after which the LIBO Screen Rate shall no longer be used for determining interest rates for loans, then the Lender and the Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable. Until an alternate rate of interest shall be determined in accordance with this clause (b) (but, in the case of the circumstances described in clause (ii) of the first sentence of this Section 2.11(b), only to the extent the LIBO Screen Rate for

such Interest Period is not available or published at such time on a current basis), (x) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, or (y) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as a Base Rate Borrowing; provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 2.12 **Increased Costs.**

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate);

(ii) impose on the Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered. If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or the Letters of Credit issued by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(b) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(c) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

**Section 2.13 Break Funding Payments.** In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within 30 days after receipt thereof.

**Section 2.14 Payments Free of Taxes.**

(a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.



(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 30 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "applicable law" includes FATCA.

#### Section 2.15 **Payments Generally.**

(a) The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 12:00 noon, New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion

of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

Section 2.16 **Mitigation Obligation**. If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

Section 2.17 **Extension of Maturity Date**. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); provided, however, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18 **Pledge; Security of Obligations**. The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation over another Obligation. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues.

## ARTICLE 3

### CONDITIONS PRECEDENT

Section 3.1 **Conditions Precedent to Effectiveness**. The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions*. The Lender has received an opinion of Chapman and Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents*. (i) The Lender has received executed copies of the Basic Documents executed by the Borrower on or prior to the Closing Date certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative or the Board, as applicable, as being complete and in full force and effect on and as of the Closing Date. (ii) The Lender has received a certified copy of the Joint Powers Agreement, including a FTB certificate or related state certification of the Borrower's status.

(c) *Defaults; Representations and Warranties*. On and as of the Closing Date, the representations of the Borrower set forth in Article Four hereof are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date and no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement.

(d) *No Litigation*. No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, (i) in connection with the Basic Documents or any transactions contemplated thereby or (ii) against or affecting the Borrower, the result of which could have a Material Adverse Effect on the business, operations or condition (financial or otherwise) of the Borrower or its ability to perform its obligations under the Basic Documents.

(e) *No Material Adverse Change*. Since the date of the [2019] Audited Financial Statements, (i) no Material Adverse Change has occurred in the status of the business, operations or condition (financial or otherwise) of the Borrower or its ability to perform its obligations under the Basic Documents and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate*. The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the

Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees; Existing RCB Obligations.* The Lender has received all fees and expenses due and payable to the Lender and/or its legal counsel pursuant to the Fee Agreement. All Existing RCB Obligations shall have been paid in full in immediately available funds on or before the Closing Date, and such RCB Obligations and the documents thereto shall be terminated to the satisfaction of the Lender.

(h) *Financial Statements.* The Lender has received the 2019 Audited Financial Statements, internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end, if not previously provided.

(i) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by this Agreement as the Lender may have requested.

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

Section 3.2 **Conditions Precedent to Each Credit Event.** The obligation of the Lender to make a Loan on the occasion of any Borrowing, and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Suspension Event shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans and issue the Letters of Credit, the Borrower represents and warrants to the Lender as follows:

Section 4.1 **Organization, Powers, Etc.** The Borrower (a) is a public agency formed under the provisions of the Joint Powers Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property

owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a Material Adverse Effect on its business, operations or assets. The Borrower has the agency power to (i) execute, deliver and perform its obligations under the Basic Documents; (ii) provide for the security of this Agreement and the Fee Agreement pursuant to the Joint Powers Act; and (iii) has complied with all Laws in all matters related to such actions of the Borrower as are contemplated by the Basic Documents.

Section 4.2 **Authorization, Absence of Conflicts, Etc.** The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower, (b) do not conflict with, or result in a violation of, any Laws, including the Joint Powers Agreement, or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which violation would result in a Material Adverse Effect on the System and (c) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property is bound which, in any case, would result in a Material Adverse Effect on the System.

Section 4.3 **Binding Obligations.** The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4 **Governmental Consent or Approval.** No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.5 **Absence of Material Litigation.** There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or which could reasonably be expected to result in any Material Adverse Change in the financial condition, operations or prospects of the System, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as "***Material Litigation***").

Section 4.6 **Financial Condition.** The most recent audited financial statements of the System delivered (or deemed delivered) to the Lender (the "***Audited Financial Statements***") were prepared in accordance with GAAP applied on a consistent basis throughout the periods involved and were subject to certification by independent certified public accountants of nationally

recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited financial statements of the System delivered (or deemed delivered) to the Lender were prepared on a consistent basis and, unless otherwise specified in Schedule 5.1(a), in accordance with GAAP. The data on which such financial statements and budget reports are based were true and correct in all material respects. The Audited Financial Statements and the budget reports present fairly the net position of the System as of the date they purport to represent and the revenues, expenses and changes in fund balances and in net position for the periods then ended. Since the date of the most recent Audited Financial Statements delivered to the Lender, no Material Adverse Change has occurred in the business, operations or condition (financial or otherwise) of the System.

Section 4.7 **Incorporation of Representations and Warranties**. The representations and warranties of the Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Lender.

Section 4.8 **Accuracy and Completeness of Information**. The Basic Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9 **No Default**.

(a) No Default or Event of Default under this Agreement has occurred and is continuing.

(b) No “event of default” has occurred and is continuing under any other material mortgage, indenture, contract, agreement or undertaking respecting the System (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the System.

Section 4.10 **No Proposed Legal Changes**. There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to have a Material Adverse Effect on the ability of the Borrower to perform its obligations under the Basic Documents.

Section 4.11 **Compliance with Laws, Etc.** The Borrower is in compliance with the Investment Policy and all Laws applicable to the Borrower, non-compliance with which could reasonably be expected to have a Material Adverse Effect on the security for the obligations under this Agreement and the Fee Agreement or the validity and enforceability of the Basic Documents. In addition, no benefit plan maintained by the Borrower for its employees is subject to the provisions of ERISA, and the Borrower is in compliance with all Laws in respect of each such benefit plan.

Section 4.12 **Environmental Matters.** In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that Environmental Laws are likely to have a Material Adverse Effect on the ability of the Borrower to perform its obligations under the Basic Documents.

Section 4.13 **Regulation U.** The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14 **Liens.** This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower's obligations under this Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt, Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. There is no pledge of or Lien on Net Revenues that ranks senior to the obligations hereunder or under the Fee Letter.

Section 4.15 **Sovereign Immunity.** The Borrower is not entitled to immunity from legal proceedings to enforce the Basic Documents (including, without limitation, immunity from service of process or immunity from jurisdiction of any court otherwise having jurisdiction) and is subject to claims and suits for damages in connection with its obligations under the Basic Documents.

Section 4.16 **Usury.** The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17 **Insurance.** As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18 **ERISA**. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19 **Sanctions Concerns and Anti-Corruption Laws**.

(a) Neither the Borrower, nor, to the knowledge of the Borrower, any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction.

(b) The Borrower and its respective officers and employees and to the knowledge of the Borrower, its directors and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977 and other similar Anti-Corruption Laws in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

Section 4.20 **System Debt**. The Borrower has not incurred or issued any System Debt other than the System Debt, if any, incurred or issued in accordance with Section 5.2(j).

## ARTICLE 5

### COVENANTS

Section 5.1 **Affirmative Covenants**. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports*. The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within sixty (60) days after the close of each quarter, an unaudited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, prepared in accordance with GAAP and in a form acceptable to Lender;

(ii) as soon as available, and in any event within six (6) months after the close of each annual accounting period of Borrower, a copy of the audited balance sheet of Borrower as of the last day of the period then ended and the statements of income, retained earnings and cash flows of Borrower for the period then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous fiscal year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such fiscal year and the results



of its operations and cash flows for the fiscal year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, would materially adversely effect the financial condition, Properties, business or operations of Borrower or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, the Borrower shall provide the Lender its annual budget; and

(vi) promptly after the request therefore, all such other information as Lender may reasonably request.

Each of the financial statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default, and such compliance certificate shall also include the Debt Service Coverage Ratio test required by Section 5.1(q) hereof and the amount set forth in the Operating Reserve.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the properties of the Borrower and the other assets of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of System.*

(i) The Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this

Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any action referred to in this subparagraph (i).

(ii) The Borrower covenants that it will maintain and preserve the System in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for municipal power systems of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the properties of the System, so that at all times business carried on in connection with the System shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the System in an efficient and economical manner and shall not commit or allow any waste with respect to the System.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws) and material to the Basic Documents. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use its Property for any business activity that violates any federal or state law or that supports a business that violates any federal or state law.

(f) *Investment Policy and Guidelines.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase the types of investments permitted thereby as of the Closing Date.

(g) *Notices.* The Borrower shall promptly give notice to the Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, would materially impair the ability of the Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or

more restrictive events of default or additional or improved remedies (“*Improved Provisions*,” which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any “default” or “event of default” or “termination event” under any Basic Document (other than this Agreement and the Fee Agreement) or any Other Revenue Document, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents or any other System Debt which are not restricted or prohibited from being shared with the Lender under the law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed amendment to any Basic Document and copies of all such amendments promptly following the execution thereof, (iv) notice of any proposed substitution of any Letter of Credit, and (v) notice of the passage of any state or local Law not of general applicability to all Persons of which the Borrower has knowledge, which could reasonably be expected to have a Material Adverse Effect on the Borrower’s ability to perform its obligations under the Basic Documents or to result in a Material Adverse Effect on the enforceability or validity of any Basic Document.

(k) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its properties with responsible and reputable insurance companies; provided, however, that the Borrower may maintain self-insurance general liability on its properties not covered by the public entity property insurance program policy, for worker’s compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers’ compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or funds of the System, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the System.

(l) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied through the facilities of the System, which shall be fair and nondiscriminatory and adequate to provide the Borrower on a projected basis with Revenues in each Fiscal Year sufficient to (i) pay, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by law or contract in such Fiscal Year and (ii) maintain on a historical and projected basis a Debt Service Coverage Ratio of not less than 1.10 for each Fiscal Year.

(n) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all obligations due to the Lender hereunder and under the Fee Agreement. If the amounts so budgeted are not adequate for the payment of the obligations due hereunder and under the Fee Agreement, the Borrower shall take such action as may be necessary to cause such annual budget to be amended, corrected or augmented so as to include therein the amounts required to be paid to the Lender during the course of the Fiscal Year to which such annual budget applies.

(o) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may hereafter be lawfully imposed upon the Borrower on account of the System or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the System or any part thereof.

(p) *Rating and Rating Change.* The Borrower shall at all times maintain one rating with a Rating Agency. The Borrower shall use its best efforts to notify the Lender as soon as practicable of any issuance, downgrade, suspension or withdrawal in rating of any System Debt.

(q) *Debt Service Coverage.* The Borrower shall maintain a Debt Service Coverage Ratio of not less than 1.10 for each fiscal quarter of the Borrower, commencing with the fiscal quarter ended [September 30, 2019]. The Debt Service Coverage Ratio shall be tested on a rolling last twelve month basis and forward for the following twelve months as of the last day of each fiscal quarter commencing with the fiscal quarter ended [September 30], 2019. The Borrower shall determine the Debt Service Coverage Ratio for a fiscal quarter and provide written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than the forty-five calendar days following the end of such fiscal quarter (each such notice, a “**Debt Service Coverage Ratio Notice**”).

(r) *Operating Reserve.* The Borrower shall maintain the Operating Reserve with unrestricted cash and investments at the Operating Reserve Fund Requirement level at all times that amounts are due and owing to the Lender hereunder. The Borrower shall withdraw amounts from the Operating Reserve to pay Operating and Maintenance Costs, Obligations and debt service on, and fees associated with, other Parity Debt.

Section 5.2 **Negative Covenants.** Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues (other than Parity Debt or Subordinate Debt permitted by this Agreement); or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its assets to any Person.

(c) *Abandon.* Take any action to abandon the System or any significant portion thereof.

(d) *Preservation of Corporate Existence, Etc.* Take any action to terminate its existence as a public agency under the Joint Powers Act or its rights and privileges as such entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues other than the Liens created or permitted by this Agreement and Liens created or permitted by any other agreement or instrument evidencing Parity Debt or Subordinate Debt.

(f) *Sovereign Immunity.* Assert the defense of any future right of sovereign immunity in a legal proceeding to enforce or collect upon the obligations of the Borrower under any Basic Document or the transactions contemplated thereby.

(g) *System.* Construct, operate or maintain any system or utility competitive with the System. The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the System to pay the fees, rates and charges applicable to the services and facilities furnished by the System. The Borrower shall not provide any service of the System free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the System with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion to the Lender.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Borrower's obligations under PPAs. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Borrower's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement, (iii) for general corporate purposes, or (iv) capital expenditures related to the development or acquisition of new assets related to the System subject to prior written approval by the Lender, which such approval shall not be unreasonably withheld. For the avoidance of doubt, Loan Proceeds may not be used for other long-term expenditures or for funding the Operating Reserve. Use the proceeds of any Loan or any Letter of Credit in violation of any Sanctions or Anti-Corruption Laws.

(j) *System Debt.*

(i) Not issue, incur or assume to exist any Senior Debt or any other Debt other than (A) Parity Debt described in clause (ii) below; and (B) Subordinate Debt described in clause (iii) below;

(ii) Not issue, incur or assume to exist any Parity Debt except for: (A) the Obligations, and (B) Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(2) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement, the Ordinances or any other resolutions or ordinances adopted by the Borrower;

(3) the Operating Reserve is fully funded immediately prior to the issuance or incurrence of such Parity Debt; and

(4) compliance by the Borrower with either (A) or (B) below:

(A) delivery of a written certificate of the Borrower: (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), and subject to the proviso at the end of this sub-paragraph A), (ii) setting forth Annual Debt Service for the preceding twelve month period inclusive of any additional Parity Debt (in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.30 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the preceding twelve month period as set forth in the foregoing clause (i), such Net Revenues

may be increased to reflect any increase in rates and charges that has been adopted and has become effective during or subsequent to such twelve month period and prior to the date of such certificate, as if such increase in rates and charges were in effect during the entirety of such period; or

(B) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions, and subject to the proviso at the end of the foregoing sub-paragraph A), (ii) setting forth Annual Debt Service for the preceding twelve month period inclusive of any additional Parity Debt (in reasonable detail and with reasonable assumptions), (iii) setting forth projected Annual Debt Service (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions) and projected Net Revenues for the twelve month period following completion of such capital project, based on a report of an independent consultant engaged by the Borrower and reasonably acceptable to the Lender and including only such assumptions and qualifications as are reasonably acceptable to the Lender, and (iv) demonstrating that (a) Net Revenues for the preceding twelve month period were at least equal to 1.20 times the Annual Debt Service for such period and (b) Net Revenues for the twelve month period following completion of such capital project are projected to be at least equal to 1.30 times Annual Debt Service for such period

(iii) Not issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(2) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other laws of the State, the Joint Powers Agreement or any other resolutions or ordinances adopted by the Borrower;

(3) the Operating Reserve is fully funded immediately prior to the issuance or incurrence of such Subordinate Debt or will be fully funded after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(4) compliance by the Borrower with either (A) or (B) below:

(A) delivery of a written certificate of the Borrower: (A*i*) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions), and subject to the proviso at the end of this sub-paragraph A), (ii) setting forth Annual Debt Service for the preceding twelve month period inclusive of any additional Subordinate

Debt (in reasonable detail and with reasonable assumptions) and (iii) demonstrating that Net Revenues for the preceding twelve month period were at least equal to 1.30 times the Annual Debt Service for such period; *provided, however*, that for purposes of determining the Net Revenues for the preceding twelve month period as set forth in the foregoing clause (i), such Net Revenues may be increased to reflect any increase in rates and charges that has been adopted and has become effective during or subsequent to such twelve month period and prior to the date of such certificate, as if such increase in rates and charges were in effect during the entirety of such period; or

(B) in connection with any Debt issued to finance capital projects related to System improvements, additions or expansions, a written certificate of the Borrower (i) setting forth Net Revenues for the preceding twelve month period (in reasonable detail and with reasonable assumptions, and subject to the proviso at the end of the foregoing sub-paragraph A), (ii) setting forth Annual Debt Service for the preceding twelve month period inclusive of any additional Subordinate Debt (in reasonable detail and with reasonable assumptions), (iii) setting forth projected Annual Debt Service (inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions) and projected Net Revenues for the twelve month period following completion of such capital project, based on a report of an independent consultant engaged by the Borrower and reasonably acceptable to the Lender and including only such assumptions and qualifications as are reasonably acceptable to the Lender, and (iv) demonstrating that (a) Net Revenues for the preceding twelve month period were at least equal to 1.10 times the Annual Debt Service for such period and (b) Net Revenues for the twelve month period following completion of such capital project are projected to be at least equal to 1.20 times Annual Debt Service for such period.

(k) *Excess Revenues*. Not use excess revenues for any purpose other than: (i) payment of Operating and Maintenance Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, other Parity Debt; (iv) funding and replenishment of the Operating Reserve; (v) so long as no Event of Default has occurred and is continuing, payment of interest on, and fees associated with, other Subordinate Debt; (vii) capital expenditures in connection with assets that will become part of the System; (viii) rebates to System customers; and (ix) any other lawful purpose that inures to the direct benefit of the System.

## ARTICLE 6

### DEFAULTS

Section 6.1 **Events of Default and Remedies**. If any of the following events occurs, each such event will be an “*Event of Default*”:



(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) any Reimbursement Obligation or (ii) any Obligation (other than a Reimbursement Obligation) hereunder or under the Fee Agreement and, in such case, such failure continues for three (3) Business Days.

(b) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder is incorrect or untrue in any material respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(c), 5.1(d), 5.1(g), 5.1(k), 5.1(l), 5.1(m), 5.1(q), or 5.2 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any corporate action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or

enforceability of any obligation to pay System Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to System Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any System Debt beyond the period of grace, if any, provided in the instrument or agreement under which such System Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any System Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such System Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such System Debt;

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$10,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days;

(l) if any rating on any System Debt (i) is downgraded below “investment grade” (i.e., “BBB-”/“Baa3”) or (ii) is suspended or withdrawn;

(m) the passage of any Law has occurred which could reasonably be expected to (i) have a Material Adverse Effect on the ability of community choice aggregators to operate within the State, (ii) have a Material Adverse Effect on the Borrower’s ability to perform its obligations under this Agreement or the other Basic Documents or (iii) result in a Material Adverse Effect on the enforceability or validity of this Agreement or any of the other Basic Documents.

Section 6.2 **Remedies.** Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

## ARTICLE 7

### MISCELLANEOUS

Section 7.1 **Amendments, Waivers, Etc.** No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2 **Notices.** All notices and other communications provided for hereunder must be in writing (including required copies) and sent by receipted hand delivery (including Federal Express or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, California 94901  
Attention: [Vicken Kasarjian, Chief Operating Officer  
Telephone: (415) 464-6659]  
Facsimile:

with a copy to:

Chapman and Cutler LLP  
1270 Avenue of the Americas, 30th Floor  
New York, New York 10020  
Attention: Douglas A. Bird  
Telephone: (212) 655-2519

(b) if to the Lender:

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: Allyson Goetschius or Janice Fong  
Telephone: (212) 270-0335 or (212) 270-3762  
Facsimile: (917) 849-0272  
Email: [Allyson.l.goetschius@jpmorgan.com](mailto:Allyson.l.goetschius@jpmorgan.com) or  
[Janice.r.fong@jpmorgan.com](mailto:Janice.r.fong@jpmorgan.com)

and

Attention: Brandon Allen  
Telephone: (302) 634-9588

Facsimile: (302) 634-4733  
Email: [12012443628@tls.ldsprod.com](mailto:12012443628@tls.ldsprod.com)

with a copy to:

JPMorgan Chase Bank, National Association  
JPM-Delaware Loan Operations  
500 Stanton Christiana Road, NCCS, Floor 01  
Newark, Delaware 19713  
Attention: Brandon Allen  
Telephone: (302) 634-9588  
Telecopy: (302) 634-4733

And, for compliance-related items, with a copy to:  
[public.finance.notices@jpmchase.com](mailto:public.finance.notices@jpmchase.com)

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that requests for LC Disbursements submitted to the Lender will not be effective until received by the Lender.

Section 7.3 **Survival of Covenants; Successors and Assigns.**

(a) All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Letter with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably), provided that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a “**Participant**”) a participation or participations in all or any part of the Lender’s rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a “**Participation**”) without the consent of the Borrower. In the event of any such grant by the Lender

of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; provided that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and provided, further, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.4 **Reserved.**

Section 7.5 **Liability of Lender; Indemnification.**

(a) To the extent permitted by the law of the State, the Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; provided that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Lender nor any of its respective officers or directors will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by the gross negligence or willful misconduct of the Lender.

(b) To the extent permitted by the law of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; provided that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.6 **Expenses**. Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents (provided that such expenses to be paid in connection with the preparation and execution and delivery will not exceed the amount specified in the Fee Agreement), (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.7 **No Waiver; Conflict**. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.8 **Modification, Amendment Waiver, Etc**. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9 **Dealings**. The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower and/or any PPA Counterparty regardless of the capacity of the Lender hereunder or under any Letter of Credit.

Section 7.10 **Severability**. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11 **Counterparts**. This Agreement may be executed in two or more counterparts, each of which constitutes an original, but when taken together constitute but one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Lender to accept electronic signatures in any form or format without its prior written consent.

Section 7.12 **Table of Contents; Headings**. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13 **Entire Agreement**. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14 **Governing Law Waiver of Jury Trial**.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS (OTHER THAN NEW YORK GENERAL OBLIGATIONS LAWS 5-1401 AND 5-1402); PROVIDED, THAT THE OBLIGATIONS OF THE BORROWER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO CHOICE OF LAW RULES.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE BASIC DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. IF AND TO THE EXTENT THAT THE FOREGOING WAIVER OF THE RIGHT TO A JURY TRIAL IS UNENFORCEABLE FOR ANY REASON IN SUCH FORUM, EACH OF THE PARTIES HERETO CONSENTS TO THE ADJUDICATION OF ALL CLAIMS PURSUANT TO JUDICIAL REFERENCE AS PROVIDED IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638, AND THE JUDICIAL REFEREE IS EMPOWERED TO HEAR AND DETERMINE ALL ISSUES IN SUCH REFERENCE, WHETHER FACT OR LAW. EACH OF THE PARTIES HERETO REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND CONSENT AND, FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS, KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS AND CONSENTS TO JUDICIAL REFERENCE. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT OR TO JUDICIAL REFERENCE UNDER CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638 AS PROVIDED HEREIN.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15 **Governmental Regulations**. The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“*OFAC*”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of LC Disbursements under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Lender Secrecy Act laws and regulations, as amended.

Section 7.16 **USA PATRIOT Act**. The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “*Act*”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Act.

Section 7.17 **Electronic Transmissions**. The Lender is authorized to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission,



including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated telecommunications and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

Section 7.18 **Assignment to Federal Reserve Bank**. The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower's obligations hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.19 **[Reserved]**.

Section 7.20 **Arm's Length Transaction**. The transaction described in this Agreement is an arm's length, commercial transaction between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (i.e., as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to this transaction and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to this transaction are set forth in this Agreement, the Fee Agreement and the Letters of Credit; and (v) the Lender is not recommending that the Borrower take an action with respect to the transaction described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Name:  
Title:

[By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

By: \_\_\_\_\_  
Name: Allyson Goetschius  
Title: Executive Director

**EXHIBIT A**

**FORM OF OPINION OF CHAPMAN AND CUTLER LLP**

**[FORM UNDER REVIEW]**

[November [ ]], 2019

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, California 94901

Re: Marin Clean Energy and JPMorgan Chase Bank, N.A. – Revolving Credit Agreement  
and Fee Agreement

Ladies and Gentlemen:

We have acted as special counsel to Marin Clean Energy, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (“MCE”), in connection with:

(i) the Revolving Credit Agreement, dated as of November [ ]], 2019 (the “Revolving Credit Agreement”) and the Fee Agreement, dated November [ ]], 2019 (the “Fee Agreement” and together with the Revolving Credit Agreement, the “Loan Documents”) each between MCE, as borrower, and JPMorgan Chase Bank, N.A., as lender (the “Lender”);

In connection with this opinion, we have examined, among other documents, copies of the Loan Documents and the following additional documents, instruments and agreements, each in the form executed as of the dates set forth below:

(a) the Joint Powers Agreement of MCE, effective as of December 19, 2008, as amended;

(b) Resolution No. [ ] - [ ]], adopted by MCE on November [ ]], 2019;

(c) [Investment Policy (Policy 014) of MCE];

(d) [FTB certificate or related state certification] of MCE’s status, dated November [ ]], 2019; and

(e) [\_\_\_\_\_].

Subject to the assumptions and qualifications contained herein, we have also examined originals or copies, certified or otherwise identified to our satisfaction, of such records of MCE, agreements and such other instruments and certificates of public or governmental officials and of officers and representatives of MCE, and made such investigations of law, as we have deemed necessary or appropriate as a basis for the opinions expressed below. We have relied as to factual matters upon representations of officers and representatives of MCE, including the representations of MCE in the Loan Documents. We have not independently investigated or verified the facts represented and do not opine as to the accuracy of any such facts.

In rendering the following opinions, we have assumed, without investigation, the authenticity of any document or instrument submitted to us as original, the conformity to the originals of any document or instrument submitted to us as a copy, the authenticity of the originals of such latter documents, the legal capacity of natural persons and the genuineness of all signatures on such originals or copies, and that all documents executed by a party other than MCE were duly and validly authorized, executed and delivered by such party and are the legal, valid and binding obligations of such party enforceable against such party in accordance with their respective terms.

We have further assumed that the Loan Documents accurately reflect the intent and business purposes of the parties thereto and the complete understanding of the parties thereto with respect to the transactions contemplated thereby and the rights and obligations of the parties thereunder. The terms and conditions of the transactions described in the Loan Documents have not been amended, modified or supplemented by any (a) other agreement, negotiations or understanding of the parties thereto or (b) waiver of any of the material provisions of the Loan Documents.

We have assumed that the Lender has complied with all legal requirements pertaining to its status as such status relates to its power to enter into and make advances under the Loan Documents and enforce its remedies under the Loan Documents. In addition, we have assumed the Lender is either exempt from or has complied with all state and federal laws and regulations applicable to it as a result of entering into and making advances under the Loan Documents. Further, we have assumed the Lender (a) is a person exempt from the restrictions of Section 1 of Article XV of the California Constitution relating to rates of interest upon a loan or forbearance, and (b) has no present intent to transfer the Loan Documents to a person or entity that is not exempt from the usury laws of the State of California. Finally, we have assumed that all of the conditions to, and all of the requirements for, the effectiveness of the Loan Documents have been satisfied or waived.

Where statements in this opinion are qualified by the term “material” or “materially,” those statements involve judgments and opinions as to the materiality or lack of materiality of any matter to MCE’s business, assets, results of operations or financial condition that are entirely those of MCE and its officers.

Members of our firm involved in the preparation of this opinion are licensed to practice law in the State of California and, in rendering the following opinions, do not purport to be experts on, or to express an opinion herein concerning, any law other than (i) the law of the State of California and (ii) the federal law of the United States, in each case, as in effect on the date hereof and in our experience as are normally applicable to the transactions of the type contemplated by the Loan Documents (the foregoing laws, subject to the exceptions and qualifications herein, are referred to herein collectively as the “Applicable Laws”). We express no opinion as to whether the laws of any particular jurisdiction apply, and no opinion to the extent that the laws of any jurisdiction other than those identified above are applicable to the Loan Documents or the transactions contemplated thereby.

We express no opinion herein with respect to any document, instrument or agreement other than the Loan Documents.

Based upon and subject to the foregoing and the other assumptions and qualifications hereinafter contained, we are of the opinion that the Loan Documents constitute the legal, valid and binding obligations of MCE, enforceable against MCE in accordance with their terms.

This opinion is qualified by, and we render no opinion with respect to, the following:

(i) We express no opinion as to the effect of bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting the relief of debtors or the rights and remedies of creditors generally, including without limitation the effect of statutory or other law regarding fraudulent conveyances, preferential transfers and equitable subordination;

(ii) Our opinions are qualified by the limitations imposed by general principles of equity upon the availability of equitable remedies for the enforcement of provisions of any of the Loan Documents, and by the effect of judicial decisions which have held that certain provisions are unenforceable when their enforcement would violate the implied covenant of good faith and fair dealing, or would be commercially unreasonable, or where their breach is not material;

(iii) We express no opinion as to the effect of Section 1670.5 of the California Civil Code or any other California law or equitable principle which provides that a court may refuse to enforce, or may limit the application of, a contract or any clause thereof which the court finds to have been unconscionable at the time it was made or contrary to public policy;

(iv) We express no opinion as to the enforceability of provisions of any of the Loan Documents expressly or by implication waiving broadly or vaguely stated rights or unknown future rights, or waiving rights granted by law where such waivers are against public policy;

(v) We express no opinion as to the enforceability of any provision of any of the Loan Documents purporting to (a) waive rights to trial by jury, service of process or objections to the laying of venue or to forum in connection with any litigation arising out of or pertaining to any of the Loan Documents, (b) exclude conflict of law principles under California law, (c) establish particular courts as the forum for the adjudication of any controversy relating to any of the Loan

Documents or (d) establish the laws of any particular state or jurisdiction for the adjudication of any controversy relating to any of the Loan Documents;

(vi) We express no opinion as to the effect of judicial decisions that may permit the introduction of extrinsic evidence to modify the terms or the interpretation of any of the Loan Documents;

(vii) We express no opinion as to the enforceability of any provisions of any of the Loan Documents providing that (a) rights or remedies are not exclusive, (b) rights or remedies may be exercised without notice, (c) every right or remedy is cumulative and may be exercised in addition to or with any other right or remedy, (d) the election of a particular remedy or remedies does not preclude recourse to one or more other remedies or (e) the failure to exercise, or any delay in exercising, rights or remedies available under any of the Loan Documents will not operate as a waiver of any such right or remedy;

(viii) We note that a requirement that provisions of any of the Loan Documents may only be waived in writing may not be binding or enforceable if an oral agreement has been created modifying any such provision or an implied agreement by trade practice or course of conduct has given rise to a waiver;

(ix) We express no opinion as to any provision of the Loan Documents which provides for indemnification, contribution, waiver or release to the extent such provision may be limited or rendered unenforceable, in whole or in part, by applicable federal or state securities laws, criminal statutes, or the policies underlying such laws and by the effect of general rules of contract law that limit the enforceability of provisions releasing, exculpating or exempting a party from, or requiring indemnification for liability for action or inaction, to the extent the action or inaction involves negligence, gross negligence, recklessness, willful misconduct or unlawful conduct of any person to be indemnified, exculpated, released, or exempted, or waivers of unmatured claims or rights;

(x) We express no opinion as to the creation, attachment, priority, enforceability or perfection of any security interest, including, without limitation, any security interest in the Debt Service Reserve Account or any security interest created by the Assignment; and

(xi) The opinions expressed herein are subject to the qualification that actions taken or determinations made by the parties to the Loan Documents be taken in good faith and be reasonable in view of the circumstances.

Our opinions expressed herein are rendered as of the date hereof and do not address the passage of time or other events subsequent to the date hereof. We disclaim any undertaking to advise you of any change in law or fact which may affect the continued correctness of any opinion as of a later date.

No opinion expressed herein may be cited, quoted or otherwise referenced in any financial statement, prospectus, private placement memorandum or other similar document, nor may copies of this opinion be delivered to any person other than the addressees hereto, without our prior written consent.

The addressees hereto may rely on the opinions expressed herein (subject to the assumptions and qualifications set forth herein) only in connection with the transactions contemplated by the Loan Documents. No other person may rely on the opinions expressed herein for any purpose without our prior written consent. This opinion is not to be filed with any governmental agency or other person or entity without our prior written consent.]

Very truly yours,

CHAPMAN AND CUTLER LLP



**EXHIBIT B**

**FORM OF COMPLIANCE CERTIFICATE**

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, National Association (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of November [29], 2019 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the Marin Clean Energy (including its successors and assigns, the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. To the best of my knowledge the financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Marin Clean Energy System in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

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5. [The Debt Service Coverage Test Calculation].

6. Amounts held in the Operating Reserve are as follows: \$ \_\_\_\_\_.

*[Remainder of page intentionally left blank]*

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT C**

**FORM OF [BORROWING REQUEST][LETTER OF CREDIT REQUEST]**

\_\_\_, 20\_\_

JPMorgan Chase Bank, N.A.  
383 Madison Avenue, 3rd Floor  
New York, New York 10179  
Mail Code: NY1-M076  
Attention: \_\_\_\_\_

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of November [29], 2019 (together with any amendments or supplements thereto, the "**Agreement**"), by and between Marin Clean Energy (with its successors and assigns, the "**Borrower**") and JPMorgan Chase Bank, N.A. (with its successors and assigns, the "**Lender**") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section [2.3][2.4] of the Agreement, that the Lender is hereby requested to [make a Loan][issue a Letter of Credit] under the Agreement and to disburse such funds as set forth in #7 below, and in that connection sets forth below the following information relating to [such Loan (the "**Proposed Loan**")][such Letter of Credit (the "**Proposed Letter of Credit**")]:

1. The Business Day of the [Proposed Loan][Proposed Letter of Credit] is \_\_\_\_\_, 20\_\_ (the "**Issuance Date**").

2. The principal amount of the [Proposed Loan][Proposed Letter of Credit] is \$ \_\_\_\_\_, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the [Proposed Loan][Proposed Letter of Credit], the aggregate principal amount of all Loans and Letters of Credit outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date set forth in 1 above.

3. [a]The interest rate with respect to the Proposed Loan shall be a [Base Rate Loan][Eurodollar Loan][.];[IN THE CASE OF AN EURODOLLAR BORROWING] the initial Interest Period shall be for [one month][three months].[a] The tenor of the Proposed Letter of Credit shall be for [one][two][three] year[s].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the Borrower set forth in Article IV of the Agreement (other than in Section 4.7 thereof) are true and correct in all material respects on the date hereof, as if made on the date hereof;

(b) No Event of Default has occurred and is continuing;

(c) No event or change shall be in effect or shall have occurred that could reasonably be expected to have a Material Adverse Effect with respect to the Borrower's ability to receive Revenues or its ability to perform its obligations under the Agreement or the other Related Documents.

5. [The proceeds for any Loan are being requested for the following purposes:

(a) To provide cash collateral to secure the Borrower's obligations under PPAs,

(b) to repay in whole or in part any LC Disbursement],

(c) for general corporate purposes, or

(d) capital expenditures related to the development or acquisition of new assets related to the System.

6. The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds or deposited [in the amount of \$\_\_\_\_\_] into Borrower's account at the Lender in accordance with the instructions set forth in the Agreement or to or on behalf of the Borrower in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

**[Insert wire instructions and amounts]]**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
Chief Operating Officer

MARIN CLEAN ENERGY,

By: \_\_\_\_\_  
[Title]

[FOR REQUESTS RELATING TO SECTION 5(d)]

Approved by the Lender:

JPMORGAN CHASE BANK, N.A.

By: \_\_\_\_\_  
[Authorized Officer]

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**Exhibit D**

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**FORM OF LETTER OF CREDIT**

**J.P.Morgan**

**CONTINUING AGREEMENT FOR  
COMMERCIAL & STANDBY LETTERS OF CREDIT BETWEEN**

**MARIN CLEAN ENERGY AND JPMORGAN CHASE BANK, N.A.**

(for Credits issued under a credit agreement)

To induce JPMorgan Chase Bank, N.A. and/or any of its domestic or foreign subsidiaries or affiliates (individually and collectively, “**Bank**”), to issue for the account of Applicant or for the account of the Account Party named in the Application, one or more standby or commercial letters of credit or other independent undertakings, from time to time at the request of the undersigned (individually and collectively, “**Applicant**”; jointly and severally, if more than one), Applicant agrees as to each letter of credit or undertaking (together with any replacements, extensions or modifications, a “**Credit**”, collectively, “**Credits**”) as follows:

All Credits issued pursuant to this Continuing Agreement (as amended, supplemented or otherwise modified, the “**Agreement**”) are issued under and pursuant to the terms and conditions of the Revolving Credit Agreement (as amended, extended, restated or otherwise modified from time to time, and including any successor agreement to which the Bank is a party (as a letter of credit issuing bank) which

refinances or otherwise governs the Credits, the “**Credit Agreement**”) dated as of \_\_\_\_\_ among Marin Clean Energy and JPMorgan Chase Bank, N.A. as Lender. Capitalized terms used herein and not otherwise defined have the meaning assigned to them in the Credit Agreement. If the Credit Agreement is terminated or expires, references in this Agreement to the Credit Agreement shall refer to the Credit Agreement in the form it was in immediately prior to such termination or expiration, unless otherwise agreed by Bank and Applicant. In the event of any inconsistency between the terms and conditions of the Credit Agreement and the terms and conditions of this Agreement, the terms and conditions of the Credit Agreement shall control, except that provisions relating to indemnification and limitation of Bank’s liability as set forth in this Agreement shall also apply.

**1. Definitions:** The following terms shall have the meanings set forth below:

“**Application**” means an irrevocable request to issue a Credit, in a form acceptable to the Bank.

“**Costs**” means any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including reasonable and documented expert witness fees and legal fees, charges and disbursements of any counsel for any Indemnified Person.

“**Drawing Document**” means any document presented for purposes of drawing under

a Credit. “**Good Faith**” means honesty in fact in the conduct of the transaction

concerned.

“**Instructions**” means each Application, any inquiries, communications and instructions (in any form, whether oral, telephonic, written, electronic mail or transmission or facsimile) regarding a Credit. Bank’s records of the content of any Instruction shall be conclusive absent manifest error.

“**ISP**” means International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

“**LOIs**” means steamship guarantees, releases or letters of indemnity in favor of a carrier issued by Bank upon Instruction of Applicant as set forth on Annex I.

“**Obligations**” means all obligations and liabilities of Applicant to Bank in respect of any and all Credits and LOIs issued hereunder (if any), whether matured or unmatured, absolute or contingent, now existing or hereafter incurred.

“**Property**” means all property of any kind whatsoever (now existing or hereafter acquired) referred to, or relating to, an applicable Credit including, without limitation, any and all right, title and interest of Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in any Credit or the Drawing Documents relating thereto).

“**Released Merchandise**” means, with respect to a Credit, all Property released (including pursuant to a forwarders cargo receipt or by any other means whatsoever) or consigned to Applicant or any Person designated by Applicant in connection with such Credit or related LOI.

“**Standard Letter of Credit Practice**” means, for Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the applicable Credit.

“**UCP**” means Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by Bank on the date such Credit is issued.

“**UN Convention**” means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

**2. Limitation of Liability; Indemnification. (a)** Without limiting any provision of the Credit Agreement covering the limitation of liability of the issuing bank (including any exception set forth therein), Bank and each other Indemnitee shall not be responsible to Applicant for, and Bank’s rights and remedies against Applicant and Applicant’s obligation to reimburse Bank under the Credit Agreement shall not be impaired by: (i) honor of a presentation under any Credit which on its face substantially complies with the terms of such Credit; (ii) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (X) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (Y) under a new name of the beneficiary; (iii) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit; (iv) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under any Credit or of any Drawing Documents; (v) disregard of any non-documentary conditions stated in any Credit; (vi) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized to give such Instruction; (vii) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors in interpretation of technical terms or in translation; (viii) any delay in giving or failing to give any notice; (ix) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (x) any breach of contract between the beneficiary and Applicant or any of the parties to the underlying transaction; (xi) assertion or waiver of any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (xii) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; or (xiii) acting or failing to act as required or permitted under Standard Letter of Credit Practice (or in the case of other independent undertakings or guarantees, the UN Convention) applicable to where it has issued, confirmed, advised or negotiated such Credit, as the case may be.

(b) Without limiting any provision in the Credit Agreement covering the indemnification of the issuing bank by the Applicant (including any limitation or exception set forth therein) (“**Indemnity Provisions**”), such Indemnity Provisions shall apply to Bank and each related Indemnitee notwithstanding the occurrence of any of the events specified in clause (a) of this Section 2.

(c) If a Credit is to be governed by a law other than that of the State of New York, Bank shall not be liable for any Costs resulting from any act or omission by Bank in accordance with the UCP or the ISP, as applicable, and Applicant shall indemnify Bank for all such Costs.

**3. Foreign Currency.** Unless otherwise previously agreed by the Bank, if an amount drawn under any Credit is in non-United States dollar (“foreign currency”), Applicant shall reimburse Bank, on demand, the United States dollar equivalent of such drawn amount based on the Bank’s actual cost of settlement of its obligation. Applicant’s obligation to make payments in any currency (the “Contract Currency”) shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment or otherwise, that is expressed in or converted into any currency other than the Contract Currency, except to the extent that such tender or recovery results in the actual receipt by Bank at its designated office of the full amount of the Contract Currency specified to be payable hereunder. Applicant’s obligation to make payments in the Contract Currency shall be enforceable as an alternative or additional cause of action to the extent that such actual receipt is less than the full amount of the Contract Currency specified to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder. Applicant shall indemnify Bank for any shortfall in such actual receipt.

**4. Representations and Warranties.** Applicant hereby represents and warrants on and as of the date hereof, and the date of each issuance, amendment, renewal and extension of a Credit, as applicable, that (i) this Agreement constitutes the legal, valid and binding obligation of Applicant enforceable against it in accordance with its terms; (ii) the representations and warranties set forth in the Credit Agreement are true and correct; and (iii) if applicable, no goods or vessels used to transport goods related to such Credit will be the subject of any Sanctions.

**5. Remedies.** If at any time there shall occur and be continuing any action for a temporary restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with any Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to Bank or which otherwise threatens to extend or increase Bank’s contingent liability beyond the time, amount or other limit provided in such Credit or this Agreement then, Applicant shall, upon Bank’s demand, deliver to Bank, as additional security for the Obligations, cash in an amount required by Bank.

**6. Assertion of Rights.** To the extent Bank honors a presentation for which Bank remains unpaid, Bank may assert rights of Applicant and Applicant shall cooperate with Bank in its assertion of Applicant’s rights, if any, against the beneficiary, the beneficiary’s rights against Applicant and any other rights that Bank may have by subordination, subrogation, reimbursement, indemnity or assignment.

#### **7. Notices, S.W.I.F.T., Electronic Transmissions.**

**(a) Notices.** Unless otherwise provided in the Credit Agreement, notices to Bank shall be sent to the address of Bank as set forth in the Credit and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to Applicant shall be sent to the address set forth in the Application unless advised otherwise in writing.

**(b) S.W.I.F.T.** Bank may transmit a Credit and any amendment thereto by S.W.I.F.T. message and thereby bind Applicant directly and as indemnitor to the S.W.I.F.T. rules.

**(c) Electronic Transmissions.** Bank is authorized to accept and process any Application and any amendments, transfers, assignments of proceeds, Instructions, consents, waivers and all documents relating to the Credit or the Application which are sent by electronic transmission using the system provided by Bank, including S.W.I.F.T., electronic mail, facsimile or other computer generated telecommunications (“Electronic Transmission”) and such Electronic Transmission shall have the same legal effect as an original and shall be binding upon and enforceable against Applicant. Bank may, but shall not be obligated to, require authentication of such Electronic Transmission or receipt of original documents prior to acting on such Electronic Transmission. If it is a condition of the Credit that payment may be made upon receipt by Bank of an Electronic Transmission advising negotiation, Applicant hereby agrees to reimburse Bank on demand for the amount indicated in such Electronic Transmission advice, and further agrees to hold Bank harmless if the documents fail to arrive, or if, upon the arrival of the documents, Bank should determine that the documents do not comply with the terms and conditions of the Credit.

#### **8. COMMERCIAL CREDITS**

**(a) Pledge of Underlying Goods and Title Documents.** As security for the payment and performance of all obligations and liabilities of Applicant to Bank in respect of any and all commercial Credits and LOIs issued hereunder (if any) and under this Agreement, Applicant hereby grants to Bank a continuing lien and security interest in all of Applicant’s right, title and interest in, to and under all the underlying goods relating to the commercial Credits and the title documents evidencing such goods and all



products and proceeds of the foregoing (whether now existing or hereafter created or acquired) which have been or at any time shall be delivered to, received by or otherwise come into the possession or control of Bank, its correspondents or Applicant in connection with each Credit.

**(b) Acceptance of Drawing Documents; No Waiver.** Applicant's acceptance or retention of a Drawing Document presented under or in connection with any Credit (whether or not the document is genuine) or of any Released Merchandise shall ratify Bank's honor of the presentation and preclude Applicant from raising a defense, set-off or claim with respect to Bank's honor of such Credit. Bank shall not be required to seek any waiver of discrepancies from Applicant or to grant any waiver of discrepancies which Applicant approves or requests.

**(c) Possession of Drawing Documents.** If Bank shall agree to honor (accept) Drawing Documents under a Credit on a time draft or deferred payment basis, Applicant shall not take possession of the Drawing Documents or the underlying Property except for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with such Property in a manner preliminary to its sale or exchange. An Instruction to release any such Drawing Document or Property shall be deemed a representation by Applicant to Bank that Applicant seeks such release for one of said purposes. In each such case, Applicant shall apply the proceeds of Property to the Obligations relating to the applicable Credit.

**(d) Absence of Written Instructions.** In the absence of written instructions to the contrary, Applicant agrees that (i) if the Credit authorizes drawings and/or shipments in installments and any installment is not drawn and/or shipped within the period allowed for that installment but Applicant waives such discrepancy, Bank is authorized to honor any subsequent installments so long as documents for such installments are presented within the period allowed for such installments; and (ii) each negotiated Credit shall expire at the counters of the nominated person even if notice of the presentation or any documents contained in the presentation is not received by Bank until after the expiry date of the Credit or any installment thereof.

**(e) Release of Documents or Claiming of Goods from the Carrier.** In the event Bank, upon Applicant's request, agrees to deliver to Applicant, a customs broker or any other person designated by Applicant, any of the documents of title relating to the Credit, prior to having received payment in full of all the Obligations, Applicant agrees to obtain possession of any goods represented by such documents within twenty-one days after the date of delivery of such documents, and if Applicant fails to do so, Applicant agrees to return such documents or to have them returned to Bank prior to the expiration of the twenty-one day period. Applicant further agrees to execute and deliver to Bank receipts for such documents and the goods represented thereby identifying and describing such documents and goods. If Applicant claims from the carrier any goods identified in the shipping documents required under the Credit, (by virtue of a steamship release, air release, letter of indemnity or any other means), with or without the assistance of Bank, and such goods have been released to Applicant or a customs broker or agent acting on Applicant's behalf, Applicant hereby authorizes Bank to immediately, and without further inquiry and consideration, debit any account of Applicant in an amount equal to the fair market value of such goods, that have been released, together with any out-of-pocket charges or expenses owing to Bank.

## 9. STANDBY CREDITS

**(a) Installments.** If the Credit is issued subject to UCP 600, unless otherwise agreed, in the event that any installment of the Credit is not drawn within the period allowed for that installment, the Credit may continue to be available for any subsequent installments in the sole discretion of Bank, notwithstanding Article 32 of UCP 600.

**(b) Auto Extend Notice.** If the Credit provides for automatic extension without amendment, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give notice of nonextension if Applicant wishes the Credit not to be extended. Any decision to extend or not extend the Credit shall be in Bank's sole discretion and judgment. Applicant hereby acknowledges that in the event Bank notifies the beneficiary of the Credit that it has elected not to extend the Credit and the beneficiary draws on the Credit after receiving the notice of non-extension, Applicant acknowledges and agrees that Applicant shall have no claim or cause of action against Bank or defense against payment under the Agreement for Bank's discretionary decision to extend or not extend the Credit.

**(c) Pending Expiry Notice.** If a Credit's terms and conditions provide that Bank give beneficiary a notice of pending expiration, Applicant agrees that it will notify Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which Bank must give such notice of the pending expiration date. In the event Applicant fails to so notify Bank and the Credit is extended, Applicant's Obligations under this Agreement shall continue in effect and be binding on Applicant with regard to the Credit as so extended.

**10. Waiver of Defense; Joint and Several Liability.** Applicant waives any defense whatsoever which might constitute a defense available to, or discharge of, a surety or a guarantor. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and Property of such Persons shall apply to any liabilities, obligations and Property of any and all of them.

**11. Termination.** This Agreement is a continuing agreement and may not be terminated by Applicant except upon (i) thirty (30) days' prior written notice of such termination by Applicant to Bank at the address of Bank set forth on the most recent Credit issued hereunder, (ii) payment of all Obligations and (iii) the expiration or cancellation of all Credits issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of a sovereign or commercial entity, which is to issue a guarantee or undertaking on Applicant's behalf in connection therewith, or is issued as support for such a guarantee, Applicant shall remain liable with respect to such Credit until Bank is fully released in writing by such entity.

**12. Amendment; Waiver.** Bank shall not be deemed to have amended or modified any term hereof, or waived any of its rights unless Bank consents in writing to such amendment, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to such waiver, nor as to any continuance of a breach after such waiver. Bank's consent to any amendment, modification or waiver does not mean that Bank shall consent or has consented to any other or subsequent Instruction to amend, modify, or waive a term of this Agreement or any Credit.

**13. Commencement of Action.** Any action or proceeding in respect of any matter arising under or in connection with Credits, the Applications or this Agreement must be brought by Applicant against Bank within the time period specified in Section 5-115 of the Uniform Commercial Code.

**14. Jurisdiction; Waiver of Jury Trial; Governing Law.** Applicant agrees to be bound by the provisions in the Credit Agreement relating to jurisdiction, venue, and waiver of jury trial and that such provisions shall also apply to this Agreement. This Agreement shall be construed in accordance with and governed by the laws of the State of New York.

**15. Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of Bank and Applicant and their respective successors and assigns permitted hereby, except that Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer any right or benefit upon any Person (other than the parties hereto, the Indemnified Persons and their respective successors and permitted assigns).

**16. Counterparts; Integration; Electronic Execution.** This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the Credit Agreement constitute the entire contract and final agreement among the parties relating to the subject matter and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

**17. Survival.** The provisions of Sections 2, 8(a), 11, 14 and 17 shall survive and remain in full force and effect regardless of the consummation of any transactions contemplated hereby, the reimbursement or repayment of any drawings or Obligations, the expiration or termination of the Credits or LOIs or the termination of this Agreement or any provision hereof.

**IN WITNESS WHEREOF**, the Applicant hereto has caused this Agreement to be duly executed and delivered by its respective authorized officer as of the day and year written below.

APPLICANT/OBLIGOR  
**MARIN CLEAN ENERGY**

By:  
Name:  
Title:  
Date:

## ANNEX I TO CONTINUING AGREEMENT

If Bank issues an LOI or endorses a bill of lading at the instruction of Applicant or otherwise pursuant hereto, Applicant agrees as follows:

Except as otherwise set forth in this Annex I or expressly set forth elsewhere in this Agreement, an LOI shall be deemed issued by Bank subject to the same terms and conditions set forth herein for Credits, including, without limitation, payment obligations, indemnification provisions and limitations of liability benefiting Bank and other Indemnified Persons. Applicant shall be liable for payments made under any LOI on demand and otherwise in accordance with its absolute obligation to reimburse the Bank set forth in the Credit Agreement. Bank shall have the right in its sole discretion and without notice to or approval of Applicant, to pay, settle or adjust any claim or demand made against or upon Bank in connection therewith without inquiry or determination, on Bank's part, of the circumstances, merits or validity of any claim or demand. Applicant shall take whatever steps are necessary to obtain the shipping documents concerning the Released Merchandise. Upon Applicant's receipt of such shipping documents, Applicant shall deliver them to the carrier, duly endorsed by all parties whose endorsement is required by the carrier, and obtain from the carrier and deliver to Bank, the LOI and a release of Bank's liability to the carrier. Bank may make payments against any drawing under the Credit related to an LOI, whether or not the drawing shall comply with the terms and conditions of such Credit, without any liability whatsoever to Bank. Applicant expressly acknowledges that Applicant may be required to reimburse Bank for payments made by Bank under both the LOI and such Credit with respect to the same Released Merchandise. Applicant shall account by delivering to Bank, immediately upon the receipt thereof by Applicant, the proceeds of the sale of the Released Merchandise or the documents related thereto in whatever form received (with Applicant's endorsement where necessary) to be applied by Bank to the payment of any drawing under the Credit. If any proceeds shall be notes, accounts, acceptances, or in any form other than cash, they shall not be applied by Bank until paid in cash. Bank shall have the option at any time to sell or discount these items and so apply the net proceeds, conditionally upon final payment of these items. Applicant shall pay all charges in connection with the Released Merchandise and shall at all times hold it separate and apart from the Property of Applicant and shall definitively show such separation in all its records and entries. Applicant shall at all times keep the Released Merchandise fully insured at Applicant's expense in favor of, and to the satisfaction of, Bank against loss by fire, theft, and any other risk to which it may be subject. Applicant shall deposit the insurance policies with Bank upon its demand. If for any reason any of such policies fail to provide for payment of the loss thereunder to Bank as its interest may appear, Applicant hereby (1) assigns and makes the loss payable under any of such policies payable to Bank as its interest may appear, (2) assigns to Bank all of the avails and proceeds of any and all of such policies, and (3) agrees to accept such avails and proceeds in trust for Bank and to forthwith deliver the same to Bank in the exact form received (with the endorsement of Applicant where necessary). Bank shall have no responsibility for the existence, quantity, quality, condition, value or delivery of any Released Merchandise or the correctness, validity or genuineness of the documents purporting to represent Released Merchandise.

## FEE AGREEMENT

This FEE AGREEMENT dated November [29], 2019 (as amended, modified or restated from time to time, this “*Fee Agreement*”), is by and between the MARIN CLEAN ENERGY, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “*Borrower*”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Lender*”).

Reference is made to the Revolving Credit Agreement, dated as of November [29], 2019 (as amended, modified, extended or restated from time to time, the “*Agreement*”), entered into between the Borrower and the Lender. Capitalized terms not otherwise defined herein have the meanings set forth in the Agreement.

This Fee Agreement is the Fee Agreement referenced in the Agreement and the terms of this Fee Agreement are incorporated by reference into the Agreement. This Fee Agreement and the Agreement are to be construed as one agreement between the Borrower and the Lender, and all obligations hereunder are to be construed as obligations thereunder. All references to amounts due and payable under the Agreement will be deemed to include all amounts, fees and expenses payable under this Fee Agreement.

### ARTICLE I FEES.

*Section 1.1 Undrawn Fees.* The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the Closing Date to and including the earlier of the Maturity Date and the date the Commitment is terminated in full (the “*Commitment End Date*”), and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the Commitment End Date, and on the Commitment End Date (each, a “*Payment Date*”), a non-refundable undrawn fee (the “*Undrawn Fee*”) in an amount equal for each day during such calculation period to the product of (x) [ ] per annum (the “*Undrawn Fee Rate*”), (y) the Unutilized Commitment (as defined below) for such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The term “*Unutilized Commitment*” as used in this Fee Agreement means, for any day, the number obtained by subtracting the Revolving Credit Exposure as of 5:00 p.m. New York City time on such day from the Commitment in effect at as of 5:00 p.m. New York City time on such day.

The Undrawn Fee shall be calculated from and including one Payment Date (or, in the case of the first Undrawn Fee payment, the Closing Date) to but excluding the next Payment Date (each, a “*Payment Period*”), and the Lender shall provide the Borrower with an invoice for each Undrawn Fee; provided, however, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such Undrawn Fee.

*Section 1.2 Letter of Credit Fees.* The Borrower agrees to pay to the Lender, in immediately available funds, for the period from and including the date of issuance of each Letter of Credit to but excluding the date such Letter of Credit is terminated (the “*LC Termination Date*”),

and in arrears on the first Business Day of each April, July, October and January occurring thereafter to the LC Termination Date, and on the LC Termination Date (each, a “*LC Payment Date*”), a non-refundable undrawn fee (the “*LC Facility Fee*”) in an amount equal for each day during such calculation period to the product of (x) [ ] per annum for a Letter of Credit with a term no greater than one year, [ ] per annum for a Letter of Credit with a term greater than one year but less than two years, and [ ] per annum for a Letter of Credit with a term greater than two years but less than three years (such applicable rate, the “*LC Facility Fee Rate*”), (y) the stated amount of such Letter of Credit as of 5:00 p.m. New York City time on such day and (z) a fraction the numerator of which is 1 and denominator of which is 360.

The LC Facility Fee shall be calculated from and including one LC Payment Date (or, in the case of the initial LC Facility Fee payment in respect of a Letter of Credit, the date such Letter of Credit is issued (unless such date of issuance is a LC Payment Date)) to but excluding the next LC Payment Date (each, a “*LC Payment Period*”), and the Lender shall provide the Borrower with an invoice for each LC Facility Fee; provided, however, that the failure of the Lender to do so shall not relieve the Borrower from its obligation to pay such LC Facility Fee.

*Section 1.3 Issuance or Drawing Fees.* The Borrower agrees to pay to the Lender a non-refundable drawing fee of [ ] for each issuance or drawing under a Letter of Credit, which fee shall be earned on the issuance or drawing date and shall be payable upon invoice on the next LC Payment Date (or, if there is no further LC Payment Date, the LC Termination Date).

*Section 1.4 Amendment Waiver or Consent Fees.* The Borrower agrees to pay to the Lender on the date on which the Borrower requests from the Lender (i) an amendment, supplement or modification to the Agreement or any other Basic Document, (ii) a consent under, or a waiver of any provision of, the Agreement or any other Basic Document or (iii) the transfer of any Letter of Credit, a non-refundable fee to be determined by the Lender at the time of such amendment, supplement or modification or waiver or consent or transfer, but in any event at a minimum of [ ], plus, in each case, the reasonable fees and expenses of legal counsel to the Lender; provided, however, that in the case of a simple extension with no modifications to any Basic Document, there shall be no fee of the Lender required hereunder, though reasonable fees and expenses of legal counsel to the Lender shall still be applicable.

*Section 1.5 Termination Fee; Reduction Fee.*

(a) The Borrower hereby agrees to pay to the Lender a termination fee in connection with any termination of the Commitment by the Borrower prior to the date that is [ ], in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such termination, (2) the Commitment (without regard to any outstanding Loans, Letters of Credit or LC Disbursements) and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such termination to but excluding the Maturity Date, and the denominator of which is 360 (the “*Termination Fee*”), which Termination Fee shall be paid on or before the date of such termination; provided, however, that no Termination Fee shall be payable if the Commitment is terminated prior to Mid-Point Date as a result of (i) the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of

the Agreement as a result of a Change in Law, unless the Borrower replaces the Commitment with a lender agreement provided by a bank (a “*Lender Agreement*”) or other financial institution that is also subject to the effects of such Change in Law, in which case the Termination Fee shall be payable, or (ii) a good faith determination by the Borrower that the Commitment is no longer needed and all outstanding Loans and LC Disbursements are paid in full on or prior to the termination date from a source of funds that does not, directly or indirectly, involve a Lender Agreement. No termination in full of the Commitment shall become effective unless and until all amounts payable by the Borrower to the Lender under the Agreement and this Fee Agreement (including without limitation the amount payable, if any, pursuant to this Section 1.5(a)) have been paid in full.

(b) The Borrower agrees not to permanently reduce the Commitment below the Commitment in effect as of the Closing Date prior to the [ ], without the payment by the Borrower to the Lender of a reduction fee (the “*Reduction Fee*”) in connection with each and every permanent reduction of the Commitment in an amount equal to the product of (1) the Undrawn Fee Rate in effect on the date of such permanent reduction, (2) the amount of the permanent Commitment reduction and (3) a fraction, the numerator of which is equal to the number of days from and including the date of such reduction to the Maturity Date, and the denominator of which is 360; provided, however, that no Reduction Fee shall be payable if the Commitment is permanently reduced prior to Mid-Point Date as a result of (i) the Lender requesting compensation for increased costs or loss of return from the Borrower pursuant to Section 2.12 of the Agreement as a result of a Change in Law, unless the Borrower replaces the permanently reduced Commitment with a Lender Agreement provided by a bank or other financial institution that is also subject to the effects of such Change in Law, in which case the Reduction Fee shall be payable, or (ii) a good faith determination by the Borrower that the amount of the Commitment being permanently reduced is no longer needed and, if such permanent reduction requires the prepayment or repayment of Loans or LC Disbursements, that such outstanding Loans and LC Disbursements are paid in full on or prior to the reduction date from a source of funds that does not, directly or indirectly, involve a Lender Agreement. Under no circumstances shall the Borrower permanently reduce the Commitment below the Revolving Credit Exposure unless in connection with such permanent reduction the Borrower reduces the Revolving Credit Exposure (whether by prepayment of Loans or return and cancellation of Letters of Credit) so that after giving effect to such permanent reduction the Revolving Credit Exposure is not greater than the reduced Commitment.

*Section 1.6 Applicable Margin.* As used in the Agreement and this Fee Agreement, the “Applicable Margin” means [ ]

*Section 1.7 Default Rate.* For purposes of this Fee Agreement and the Agreement, “*Default Rate*” means, with respect to any Loans (but not Letters of Credit), the then applicable Adjusted LIBO Rate or Base Rate plus the Applicable Margin plus [ ], and with respect to any Letter of Credit that has not triggered a Reimbursement Loan, the then applicable LC Facility Fee Rate plus [ ].

ARTICLE II MISCELLANEOUS.

*Section 2.1 Legal Fees.* The Borrower shall pay the reasonable legal fees and expenses of the Lender incurred in connection with the preparation and negotiation of the Agreement, this Fee Agreement and certain other Basic Documents in an amount not to exceed \$35,000 plus disbursements.

*Section 2.2 Amendments.* No amendment to this Fee Agreement will become effective without the prior consent of the Borrower and the Lender, which consent must be in writing and signed by the Lender and an Authorized Representative of the Borrower.

*Section 2.3 Governing Law.* This Fee Agreement shall be deemed to be a contract under, and for all purposes shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York without giving effect to conflicts of laws provisions (other than New York general obligations laws 5-1401 and 5-1402); *provided*, that the obligations of the Borrower hereunder shall be governed by the laws of the State of California without regard to choice of law rules.

*Section 2.4 Counterparts.* This Fee Agreement may be executed in two or more counterparts, each of which will constitute an original but both or all of which, when taken together, will constitute but one instrument. This Fee Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by attaching a pdf copy to an email, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

*Section 2.5 Severability.* Any provision of this Fee Agreement which is prohibited, unenforceable or not authorized in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions hereof or affecting the validity, enforceability or legality of such provision in any other jurisdiction.

[SIGNATURE PAGES TO FOLLOW]

**NP DRAFT 10/25**

IN WITNESS WHEREOF, the parties hereto have caused this Fee Agreement to be duly executed and delivered by their respective officers or representatives thereunto duly authorized on the date first set forth above.

MARIN CLEAN ENERGY

By: \_\_\_\_\_  
Name:  
Title:

[By: \_\_\_\_\_  
Name:  
Title:

JPMORGAN CHASE BANK, NATIONAL  
ASSOCIATION

By \_\_\_\_\_  
Name: Allyson Goetschius  
Title: Executive Director



## RESOLUTION NO. 2019-07

### A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A REVOLVING CREDIT AGREEMENT WITH JPMORGAN CHASE BANK, N.A.

**WHEREAS**, Marin Clean Energy (“MCE”) is a joint powers authority established on December 19, 2008, and organized under the Joint Exercise of Powers Act (Government Code Section 6500 et seq.); and

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Contra Costa, the County of Napa, the County of Solano, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the City of Concord, the Town of Corte Madera, the Town of Danville, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Martinez, the City of Mill Valley, the Town of Moraga, the City of Napa, the City of Novato, the City of Oakley, the City of Pinole, the City of Pittsburg, the City of San Ramon, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, MCE has determined the need for a revolving line of credit to be used for general agency purposes and to provide credit support for future power purchase contracts; and

**WHEREAS**, MCE staff has negotiated the terms of a revolving line of credit with JPMorgan Chase Bank, N.A. (the “Revolving Credit Agreement”); and

**WHEREAS**, the Revolving Credit Agreement allows MCE to borrow cash or to direct the issuance of standby letters of credit in an aggregate principal amount not to exceed \$40,000,000, to be used for general corporate purposes or as credit support for MCE’s forward purchases of energy.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of MCE that the Board hereby authorizes and approves:

(i) the execution and delivery of the Revolving Credit Agreement with JPMorgan Chase Bank, N.A. and any related, ancillary documents;

(ii) the Board Chair and Chief Operating Officer as authorized representatives of MCE (“Authorized Representatives”);

(3) any one (1) of the Authorized Representatives to execute and deliver the Revolving Credit Agreement and any such related, ancillary documents in substantially

the same form presented to the Board of Directors of MCE, with such modifications as such Authorized Representative shall approve as in the best interests of MCE; and

(iv) any one (1) of the Authorized Representatives to borrow and authorize advances or standby letters of credit from time to time under the Revolving Credit Agreement in such amounts as in its judgment should be borrowed and to execute and deliver any requests or other documents and agreements as any Authorized Representative may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Revolving Credit Agreement.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 21st day of November 2019, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
CHAIR, MCE BOARD

ATTEST:

\_\_\_\_\_  
SECRETARY, MCE BOARD



MARIN COUNTY | NAPA COUNTY | UNINCORPORATED CONTRA COSTA COUNTY | UNINCORPORATED SOLANO COUNTY  
BENICIA | CONCORD | DANVILLE | EL CERRITO | LAFAYETTE | MARTINEZ | MORAGA | OAKLEY | PINOLE  
PITTSBURG | RICHMOND | SAN PABLO | SAN RAMON | WALNUT CREEK

**DRAFT**

**Board of Directors Meeting  
Thursday, November 21, 2019  
7:00 P.M.**

**Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901  
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94920**

**Agenda Page 1 of 2**

1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Report from Chief Executive Officer (Discussion)
5. Consent Calendar (Discussion/Action)
  - C.1 Approval of 6.20.19 Meeting Minutes
  - C.2 Approval of 9.18.19 Meeting Minutes
  - C.3 First Agreement with EV Charging Pros
  - C.4 Approved Contracts Update
6. Receive Applicant Analysis and Consider 1. Resolution 2019-05 of the Board of Directors of MCE approving the Cities of Vallejo and Pleasant Hill as Members of MCE; 2. Amendment 14 to the MCE JPA Agreement; and 3. Direction to Submit Amendment No. 7 to the MCE Implementation Plan and Statement of Intent (Discussion/Action)
7. FY 2019/20 Budget Amendment (Discussion/Action)



Agenda material can be inspected at 1125 Tamalpais Avenue, San Rafael, CA 94901 on the Mission Avenue side of the building and at One Concord Center, 2300 Clayton Road, Concord, CA 94520 at the Clayton Road entrance. The meeting facilities are in accessible locations. If you are a person with a disability and require this document in an alternate format (example: Braille, Large Print, Audiotape, CD-ROM), you may request it by using the contact information below. If you require accommodation (example: ASL Interpreter, reader, note taker) to participate in any MCE program, service or activity, you may request an accommodation by calling (415) 464-6032 (voice) or 711 for the California Relay Service or by e-mail at [djackson@mceCleanEnergy.org](mailto:djackson@mceCleanEnergy.org) not less than **four work days** in advance of the event.

- 8.** Approval of Resolution 2019-06 Establishing a New Operating Reserve Fund (Discussion/Action)
- 9.** Amendments to MCE's Policy 013: Reserve Policy (Discussion/Action)
- 10.** Approval of Resolution 2019-07 Approving and Authorizing the Execution and Delivery of a Revolving Credit Agreement with JPMorgan Chase Bank, N.A. (Discussion/Action)
- 11.** Information Security & Governance Policies (Discussion/Action)
- 12.** New Board Member Additions to Committees (Discussion/Action)
- 13.** LIFT Application to the CPUC (Discussion)
- 14.** Overview of California EV Infrastructure Program (CALeVIP) and how MCE could benefit (Discussion)
- 15.** Board Matters & Staff Matters (Discussion)
- 16.** Adjourn