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Technical Committee Meeting Thursday, August 1, 2019 8:30 A.M.

Charles F. McGlashan Board Room, 1125 Tamalpais Avenue, San Rafael, CA 94901
Mt. Diablo Room, 2300 Clayton Road, Suite 1150, Concord, CA 94520
City of El Cerrito, 10890 San Pablo Avenue, Hillside Conference Room, El Cerrito, CA 94530
City of San Ramon, 7000 Bollinger Canyon Road, Room 256, San Ramon, CA 94583

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 6.6.19 Meeting Minutes
 - C.2 First Amendment to First Agreement with Build It Green
6. MCE 2018 Annual Power Source Disclosure Report Attestation (Discussion/Action)
7. Proposed Confirmation Letter with Wellhead Power eXchange, LLC (Discussion/Action)
8. Regulatory Impacts on GHG-free Targets (Discussion)
9. Time of Use Rates (Discussion)
10. Committee Matters & Staff Matters (Discussion)
11. Adjourn



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 not less than **four work days** in advance of the event.



August 1, 2019

TO: MCE Technical Committee

FROM: Brian Goldstein, Consultant

RE: Proposed Confirmation Letter with Wellhead Power eXchange, LLC (Agenda #07)

ATTACHMENT: Confirmation Letter with Wellhead Power eXchange, LLC

Dear Technical Committee Members:

SUMMARY:

As a California Load Serving Entity (“LSE”), MCE is assigned a compliance obligation by the California Public Utilities Commission (“CPUC”) and California Independent System Operator (“CAISO”) to procure generating capacity (“resource adequacy” or “RA”) meeting 115% of its expected monthly peak demand (i.e., 15% reserve margin). As part of this RA procurement obligation, MCE must procure a portion from Local areas within PG&E’s service territory as well as a portion from flexible resources, which are generating resources that have ramping capability or are dispatchable. MCE has met its CPUC and CAISO assigned annual year-ahead and monthly compliance obligations since its launch in 2010.

Earlier in 2019, the CPUC issued a rulemaking that contemplated creating a three-year forward Local RA procurement obligation starting with the 2020 – 2022 compliance cycle. Prior to the CPUC voting on the proposed rulemaking, the CPUC issued a revised proposed decision that considered a new concept of increasing the Local RA areas within PG&E’s service territory from two to seven. Shortly thereafter, the CPUC approved the multi-year Local RA procurement requirement as well as the change to seven Local areas.

MCE is requesting approval for a new RA transaction that provides a compliance benefit for one of the seven Local RA obligations assigned to MCE as well as satisfies the new multi-year Local RA contracting requirement. In addition, this contract allows for the conversion of a natural gas fired generation resource to a much cleaner and more efficient hybrid battery storage asset that provides grid reliability. This transaction not only helps to satisfy a portion of MCE’s RA compliance obligation with the CPUC and CAISO, but it also aligns with MCE’s low carbon objectives.

Background – Wellhead Power eXchange, LLC

- Headquartered in Sacramento, CA

- Total California generating capacity of 400 MW
 - Fresno, CA
 - Yuba City, CA
 - San Diego, CA
 - Orange County, CA
- California power generating assets include natural gas fired, hybrid gas and battery storage, solar, cogeneration, and combined heat and power technologies

Contract Overview

- Project: Fresno Cogeneration; interconnected at Kerman substation
- Project location: Fresno, California (Fresno County), in PG&E service territory
- Project will utilize its current natural gas fired generating technology for Year 1 and then convert to natural gas battery storage hybrid technology at the beginning of Year 2 and through the end of the contract term. This includes the integration of a lithium-ion battery energy storage system with the gas turbine sufficiently sized to allow the resource to qualify for Spinning Reserves
- Contract start date: January 1, 2020
- Contract term: 11 years
 - MCE can terminate after Year 7
- Monthly RA value: 48 MW
- RA Price: Flat fixed price for Year 2 through Year 11; separately negotiated price for Year 1 prior to the battery hybrid conversion
- No credit/collateral obligations for MCE
- MCE would receive financial compensation and have a right to terminate the contract in the event of Seller's failure to successfully achieve certain development milestones
- MCE would receive financial protection from costs associated with changes in law and compliance therewith
 - Specific change in law provisions around "Central Buyer" and "Clean RA"

Summary:

The Fresno Cogeneration project is a good fit for MCE's resource portfolio based on the following considerations:

- The project size supports a portion of MCE's current and future RA requirements
- Timing of initial RA deliveries aligns with MCE's new multi-year Local RA compliance obligations
- The project is being converted from its existing natural gas fired technology to a battery hybrid technology that is expected to reduce GHG-emissions by 60% and provide greater grid reliability
- The project is located within Greater Fresno Local area and satisfies a portion of MCE's new Greater Fresno Local RA requirement
- The project is already operational per the original technology and configuration; conversion occurs after Year 1
- RA from the project is competitively priced

Recommendation: Authorize execution of Confirmation Letter with Wellhead Power eXchange, LLC for RA capacity.

Proposed Execution Version

CONFIRMATION LETTER

This confirmation letter (“Confirmation”) confirms the Transaction between Wellhead Power eXchange, LLC, a Delaware limited liability company (“Seller”) and Marin Clean Energy, a California joint powers authority (“Buyer”), and each individually a “Party” and together the “Parties”, dated as of July __, 2019 (the “Confirmation Effective Date”) in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 18, 2019, together with any and all exhibits, schedules or supplements thereto or incorporated therein by reference, each in force and effect from time to time between the Parties (collectively, the “Master Agreement”), and as amended and supplemented by this Confirmation. In the event of any conflict between this Confirmation and the Master Agreement, this Confirmation will govern. The definitions and provisions contained in the Master Agreement are incorporated into this Confirmation, except as otherwise modified herein. The Master Agreement and this Confirmation, including any applicable appendices, exhibits or amendments thereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties. Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 “Alternate Capacity” means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5 (and subject to the restrictions specified therein).
- 1.2 “Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 “Availability Incentive Payments” has the meaning set forth in the Tariff.
- 1.4 “Availability Standards” shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 “Buyer” has the meaning specified in the introductory paragraph hereof.
- 1.6 “CAISO” means the California Independent System Operator Corporation or its successor.
- 1.7 “Capacity Replacement Price” means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.
- 1.8 “CIRA Tool” means the CAISO Customer Interface for Resource Adequacy.

- 1.9 “Clean RA” has the meaning set forth in Article 12 hereof.
- 1.10 “Confirmation” has the meaning specified in the introductory paragraph hereof.
- 1.11 “Confirmation Effective Date” has the meaning specified in the introductory paragraph hereof.
- 1.12 “Contingent Firm RA Product” means the Product with the terms and conditions specified in Section 3.2 hereof.
- 1.13 “Contract Price” means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the “RA Capacity Price Table” set forth in Section 4.9.
- 1.14 “Contract Quantity” means, with respect to each day of each Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in the Contract Quantity (MWs) table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.15 “CPUC” means the California Public Utilities Commission.
- 1.16 “CPUC Decisions” means, to the extent applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, and 16-06-045 and subsequent decisions related to resource adequacy as issued from time to time by the CPUC.
- 1.17 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSEs to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.18 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.19 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.20 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product for such Showing Month, including the amount of Contract Quantity for which Seller has elected to provide Alternate Capacity in accordance with the terms of this Confirmation, minus any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity.
- 1.21 “Excusable Event” means any of the following events that causes Seller to be unable to deliver all or a portion of the Contract Quantity: (a) a Planned Outage that is acceptably noticed pursuant to the Notification Deadline in accordance with Section 4.4(a), (b) a reduction in Unit NQC and/or Unit EFC as provided in Section 4.4(c), or (c) those events described under the definition of “Unit Firm” in the Master Agreement that excuse Seller’s performance.

- 1.22** “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.23** “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.24** “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25** “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.26** “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.27** “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.28** “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.29** “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.30** “LRA” means Local Regulatory Authority as defined in the Tariff.

- 1.31 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.32 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.33 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.34 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.
- 1.35 “Net Qualifying Capacity” has the meaning set forth in the Tariff.
- 1.36 “Notification Deadline” has the meaning specified in Section 4.5 hereof.
- 1.37 “Outage” means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.38 “Planned Outage” means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.39 “Product” has the meaning specified in Article 3 hereof.
- 1.40 “RA Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.41 “RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and/or Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR and/or Flexible RA Attributes of the capacity provided by a Unit.
- 1.42 “RAR” means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.43 “RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.44 “Replacement Capacity” has the meaning specified in Section 4.7 hereof.
- 1.45 “Replacement Unit” has the meaning specified in Section 4.5.

- 1.46 “Resold Product” has the meaning specified in Section 9 hereof.
- 1.47 “Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.48 “RMR Agreement” has the meaning set forth in the Tariff.
- 1.49 “Scheduling Coordinator” has the same meaning as in the Tariff.
- 1.50 “Seller” has the meaning specified in the introductory paragraph hereof.
- 1.51 “Showing Month” shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.52 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.53 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.54 “Termination Payment” has the meaning specified in Article 6 hereof.
- 1.55 “Transaction” for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.56 “Unit” shall mean the generation assets described in Article 2 hereof.
- 1.57 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.58 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

The Fresno Hybrid facility (the “Unit”) is gas-fired electricity generating resource that will be converted over to the following hybrid generating technology on or before January 1, 2021: Hybrid generating technology that shall include integration of a lithium-ion battery energy storage system with the gas turbine sufficiently sized to allow the resource to qualify for Spinning Reserves from a minimum net power output (Pmin) of 0.0 MW. The Unit is described in further detail below.

The Name, NQC, and EFC are still subject to change after conversion to hybrid technology; however, in no case will the NQC or EFC be less than the Contract Quantity.

Name	Fresno Cogeneration
Location	Fresno
CAISO Resource ID	[REDACTED]
Unit SCID	[REDACTED]
Unit Pmin until December 31, 2020	Greater than 0.00 MW
Unit Pmin starting January 1, 2021	0.00 MW
Unit NQC	[REDACTED]
Unit EFC	[REDACTED]
Resource Type	Natural Gas
Resource Category (1, 2, 3 or 4)	4
Flexible RAR Category (1, 2 or 3)	1
Point of Interconnection With The CAISO Controlled Grid (“Substation”)	Kerman
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Greater Fresno and PG&E Other
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	None
Run Hour Restrictions	None

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

For each day of each Showing Month that is part of the Delivery Period, Seller shall provide to Buyer, pursuant to the terms of this Agreement, RA Attributes and, if applicable, LAR and/or Flexible RA Attributes for a Contingent Firm RA Product, as specified in Sections 3.1 and 3.2 below (the “Product”). The Product does not confer to Buyer any right to the electrical output from the Units. Rather, the Product confers the right to include the Designated RA Capacity in RAR Showings, LAR Showings, Flexible RAR Showings, if applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Buyer as part of this Transaction and Buyer shall not be responsible for compensating Seller for Seller’s commitments to the CAISO required by this Confirmation. Seller retains the right to sell any RA Capacity from a Unit in excess of that Unit’s Contract Quantity and any RA Attributes, LAR

Attributes or Flexible RA Attributes not otherwise transferred, conveyed, or sold to Buyer under this Confirmation.

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes and, if applicable, LAR and/or Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

Flexible RA Product

The Designated RA Capacity is a Flexible RA Product. For avoidance of doubt, the Flexible RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- FCR Attributes with LAR Attributes
- FCR Attributes with RAR Attributes

Generic RA Product

The Designated RA Capacity is a Generic RA Product. For avoidance of doubt, the Generic RA Product to be delivered by Seller to Buyer hereunder, shall include the following Product attributes:

- RAR Attributes
- LAR Attributes

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Product from the Units in the amount of the Contract Quantity specified in Section 4.3. If the Units are not available to provide the full amount of the Contract Quantity as a result of an Excusable Event, then, subject to Section 4.4(a) or 4.4(c), as applicable, Seller shall have the option to notify Buyer that either (a) Seller will not provide the portion of Contract Quantity attributable to such event during the period of such non-availability (which period shall be specified in such notice) or (b) Seller will supply Alternate Capacity pursuant to Section 4.5(b) to fulfill the remainder of the Contract Quantity during such period.

If the Unit is not available to provide the full amount of the Contract Quantity as a result of any reason other than an Excusable Event, Seller shall have the option to supply Alternate Capacity pursuant to Section 4.5(b) to fulfill the remainder of the Contract Quantity during such period.

If Seller has elected to provide Alternate Capacity under Section 4.4(a), 4.4(c) or 4.5(b), and fails to supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period, Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. If Seller has not elected to provide Alternate Capacity under Section 4.4(a) or 4.4(c) and does not provide a portion of the Contract Quantity attributable to such event, then Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

Subject to Article 11 and 12, the Delivery Period shall be [REDACTED] inclusive.

4.2 Delivery Point

The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

4.3 Contract Quantity

The Contract Quantity for each Monthly Delivery Period shall be:

CONTRACT QUANTITY (MWs)

Contract Month/Year	Total Local and Flexible RAR Contract Quantity (MWs)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Contract Year (All Months)	Total Local and Flexible RAR Contract Quantity (MWs)

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity pursuant to Section 4.5(b), which when combined with any Product from the Unit, shall not exceed the Contract Quantity for the affected portion of such Showing Month.

- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to (i) a Planned Outage as set forth in Section 4.4(a) above, or (ii) a reduction in Unit NQC and/or Unit EFC as set forth in Section 4.4(c) below, and Seller does not elect to provide Alternate Capacity, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.

- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller’s obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then (A) Seller shall notify Buyer as soon as reasonably possible, and (B) Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity pursuant to Section 4.5(b) up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The “Notification Deadline” in respect of a Showing Month shall be twenty (20) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a “Replacement Unit”), then Seller may, at no cost to Buyer, provide Buyer with Alternate Capacity from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in no event may such generating unit be a nuclear facility or coal facility and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. Any Alternate Capacity (i) must have the same or comparable LAR Attributes and Flexible RA Attributes as the Product and (ii) shall qualify as Clean RA (as defined under Article 12 below), unless otherwise agreed by Buyer. If Seller notifies Buyer in writing as to the particular Replacement Units and such Replacement Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month. If Seller notifies Buyer in writing of its intent to provide Alternate Capacity pursuant to this Section 4.5 and Buyer is unable to utilize the Alternate Capacity under Tariff rules governing the substitution or replacement of capacity products, Seller may be liable for costs or charges incurred by Buyer under Sections 4.7 and 4.8.
- (c) If Seller fails to provide Buyer any portion of the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, or if Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (b) above, then (i) Buyer may, but shall not be required to, purchase such Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof (A) if such failure is the result of a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, unless Buyer is unable to utilize the Alternate Capacity for reasons identified in the last sentence of subpart (b) above, or (B) if Seller has notified Buyer pursuant to Section 3.2 that the Unit is not capable of providing the full amount of the Contract Quantity for any Monthly Delivery Period and has not notified Buyer that it will provide Alternate Capacity for some or all of the Contract Quantity not provided.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each day of each Showing Month.
- (b) Seller shall submit, or cause the Unit’s Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing

Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so (it being understood that any Designated RA Capacity subject to such a request from Buyer will be deemed to have been provided to Buyer for all purposes under this Confirmation); and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

- (c) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if (i) Buyer has elected to submit the Product from the Unit in its Resource Adequacy Plan and such submission is accepted by the CPUC and the CAISO but the Supply Plan and Resource Adequacy Plan are not matched in the CIRA Tool due to a Seller error, and are rejected by CAISO or (ii) Seller fails to submit the volume of Designated RA Capacity for any Showing Month pursuant to this Confirmation. Buyer will have received the Contract Quantity if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or, (ii) Seller correctly submits the Supply Plan and the Supply Plan and/or Resource Adequacy Plan are not matched in the CIRA Tool due to a Buyer error, or (iii) Seller complies with Buyer's instruction to withhold all or part of the Contract Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Contract Quantity if Buyer fails or chooses not to submit the Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

4.7 Damages for Failure to Provide Designated RA Capacity

If Seller fails to provide Buyer with the Designated RA Capacity of Product for any Showing Month, and such failure is not excused under the terms of the Agreement, then the following shall apply:

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller from the Unit or as Alternative Capacity with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided or replaced by Seller; provided, however, that if any portion of such Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market

prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity (including costs and expenses reasonably incurred by Buyer in purchasing such Replacement Capacity), and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided or replaced by Seller nor purchased by Buyer pursuant to Section 4.7(a); minus (ii) the Designated RA Capacity not provided or replaced by Seller for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may, in addition to any other rights or remedies available to Buyer, offset those damages owed it against any CAISO revenues or future amounts it may owe to Seller under this, Confirmation pursuant to the Master Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Sections 4.4 and 4.5, then Seller also shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to the failure to provide such notice, provided that the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any applicable adjustments pursuant to Section 4.4 and due to requests from Buyer pursuant to Section 4.6(b), Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, to the extent not otherwise paid by Seller to Buyer under Section 4.7(b), resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity for any portion of the Delivery Period for which notice is not timely provided in accordance with Sections 3.2, 4.4, and 4.5;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity for any portion of the Delivery Period as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder for each day of the Delivery Period.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may, in addition to any other rights or remedies available

to Buyer, offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of this Confirmation and Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (i) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon first day of the Showing Month) and (ii) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be adjusted to reflect any portion of Designated RA Capacity for the prior Showing Month that was not delivered at the time of the CAISO filing for such Showing Month.

RA CAPACITY PRICE TABLE

Contract Year (All Months)	Local and Flexible RAR Capacity Price (\$/kW-month)

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource

adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments or payments made under a successor program to the Residual Unit Commitment program, but excluding payments described in clauses (a) through (e) above). All such revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, Seller shall indemnify Buyer for any such revenues received by Seller that are not subsequently remitted to Buyer, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller fails to pay such revenues to Buyer, Buyer may, in addition to any other rights or remedies available to Buyer, offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. In order to verify the accuracy of such revenues, Buyer shall have the right, at its sole expense during normal working hours after reasonable prior notice, to retain an independent third party reasonably acceptable to Seller to audit any documents, records, or data of Seller associated with the Contract Quantity. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance. Seller shall likewise have no liability for the failure of Buyer to comply with any Tariff provisions, including any penalties or fines imposed on Buyer for such noncompliance.

ARTICLE 6. FAILURE TO COMPLETE FACILITY CONVERSION TO HYBRID TECHNOLOGY

Notwithstanding any other provision in the Agreement, if Seller has not completed the conversion of the Unit to the hybrid technology by [REDACTED]



ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

Buyer and Seller shall, throughout the Delivery Period, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Buyer's right to the use of the Contract Quantity for the sole benefit of Buyer's applicable RAR, LAR and Flexible RAR. Such commercially reasonable actions shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain to the extent reasonably possible the benefits of the bargain struck by the Parties on the Confirmation Effective Date. The Parties acknowledge that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings which may necessitate such amendments.

7.2 Seller Representations and Warranties

Seller represents, warrants and covenants to Buyer that, throughout the Delivery Period:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or

- analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
 - (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
 - (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
 - (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
 - (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
 - (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
 - (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
 - (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.
 - (l) No portion of the Designated RA Capacity or any Alternate Capacity provided under this Confirmation is or will be from Units that utilize coal or coal materials as a source of fuel. Seller understands and acknowledges that it is Buyer's policy to not purchase or accept products from generators that utilize coal or coal materials as a source of fuel. Any future replacement of the Units or the Designated RA

Capacity, if necessary, shall not be from generators that utilize coal or coal materials as a source of fuel.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans. Notwithstanding anything to the contrary contained herein or the Master Agreement, neither party is prohibited from disclosing the terms of this Transaction to any rating agency or its representatives, so long as such receiving party is subject to a confidentiality agreement or non-disclosure agreement with the party disclosing such information that requires the receiving party to maintain the confidentiality of such information, or is otherwise subject to a professional duty to maintain the confidentiality of such information.

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Buyer is required to make public this Confirmation (which may be partially redacted by Buyer) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Buyer that Seller considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement (“Requestor”) pursuant to the California Public Records Act for production, inspection and/or copying of this Agreement or any information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon as practical shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of this Confirmation. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action within thirty (30) days, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor’s demand and is not required to defend against it.

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder and any associated rights, in each case, acquired under this Agreement, but no such sale shall be considered an assignment of Buyer’s rights hereunder or create any contractual privity between Seller and any such purchaser. In the event Buyer re-sells all or a portion of the Product and any associated rights acquired under this Agreement (“Resold Product”), Seller agrees, and agrees to cause each Unit’s SC, to follow

Buyer's instructions that are consistent with this Confirmation and the Tariff with respect to providing such Resold Product to subsequent purchasers of such Resold Product. Seller further agrees, and agrees to cause each Unit's SC, to take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to allow such subsequent purchasers to use such Resold Product. Seller acknowledges and agrees that with respect to any Resold Product, if Buyer incurs any liability to any purchaser of such Resold Product due to the failure of Seller or a Unit's SC to comply with the terms of this Agreement, and Seller would have had liability to Buyer under this Agreement for such failure had Buyer not sold the Resold Product to a subsequent purchaser, then Seller shall be liable to Buyer under this Agreement, including without limitation, pursuant to Sections 4.7 and 4.8, for the amounts it would have been liable to Buyer for had such Resold Product not been sold to a subsequent purchaser.

ARTICLE 10. MARKET BASED RATE AUTHORITY

Upon Buyer's written request, Seller shall, in accordance with Federal Energy Regulatory Commission (FERC) Order No. 697, submit a letter of concurrence in support of any affirmative statement by Buyer that this contractual arrangement does not transfer "ownership or control of generation capacity" from Seller to Buyer as the term "ownership or control of generation capacity" is used in 18 CFR Section 35.42. Seller shall not, in filings, if any, made subject to Order Nos. 652 and 697, claim that this contractual arrangement conveys ownership or control of generation capacity from Seller to Buyer.

ARTICLE 11. MODIFICATION OF DELIVERY PERIOD

Buyer, at its sole discretion, may elect to modify the Delivery Period [REDACTED]

ARTICLE 12. REGULATORY CHANGE

The Parties acknowledge that an essential purpose of this Agreement is to provide a Resource Adequacy Product that meets the resource adequacy requirements (RAR) and other compliance objectives of Buyer, and to support the development of new hybrid capacity pursuant to SB 1136 ("Clean RA"). Accordingly, [REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 13. CREDIT AND COLLATERAL REQUIREMENTS

Within thirty (30) days of the Confirmation Effective Date, Seller shall deliver Performance Assurance to Buyer in the amount [REDACTED]

(“Performance Security”). The Performance Security shall be recalculated each year on the anniversary of the Confirmation Effective Date and any excess Performance Assurance held by Buyer shall be returned to Seller (if cash) or reduced (if in the form of a Letter of Credit) within thirty (30) days of such anniversary.

Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (a) the Delivery Period has expired or terminated early; and (b) all payment obligations of Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security.

With respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Confirmation to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (a) cash, or (b) a substitute Letter of Credit from a Qualified Institution, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events, shall constitute an Event of Default:

- (i) the issuer of the outstanding Letter of Credit shall fail to meet the definition of a Qualified Institution;
- (ii) the issuer of such Letter of Credit becomes Bankrupt;
- (iii) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;
- (iv) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (v) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (vi) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than ninety (90) days prior to the expiration of the outstanding Letter of Credit.

ARTICLE 14. NO RECOURSE TO MEMBERS OF BUYER

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer is and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no recourse to, and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

ARTICLE 15. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. The Parties may rely on electronic, facsimile or scanned signatures as originals under this Confirmation. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

ARTICLE 16. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and (together with the Master Agreement) shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a written document executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a written document executed by both Parties.

[Signatures appear on the following page.]

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

WELLHEAD POWER EXCHANGE, LLC, a Delaware limited liability company

MARIN CLEAN ENERGY, a California joint powers authority

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$XXXXXXXX

Expiry Date: January [XX], 2026

Beneficiary:

Marin Clean Energy
Attn: Garth Salisbury, Director of Finance
1125 Tamalpais Avenue
San Rafael, CA 94901

Ladies and Gentlemen:

By the order of Wellhead Power eXchange, LLC (“Applicant”), we, [*Bank Name*] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$XXXXXXXX (XX Million United States Dollars) (“Available Amount”), pursuant to that certain Confirmation dated as of XXXXX, 2019 and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on January [XX], 2026 (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

The Drawing Certificate may be presented by (a) physical delivery, (b) facsimile to (xxx) xxx-xxxx, or (c) email to xxxxx@yyyy.com, or such other e-mail address as specified from time-to-time by the Issuer. Transmittal by facsimile or email shall be deemed delivered when received. The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile or email) hereunder are to

be directed to Issuer at [*Issuer Address*]. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date, we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

All Issuer charges (including charges for transfers of this Letter of Credit) are for the account of Applicant.

This Letter of Credit shall not be amended except with the written concurrence of Beneficiary, Applicant, and Issuer.

Unless otherwise expressly stated herein, this Letter of Credit is subject to and governed by the rules of the "International Standby Practices 1998", International Chamber of Commerce, Publication No. 590 ("ISP 98"), and as to matters not governed by ISP 98, shall be governed by and construed in accordance with the laws of the State of California.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [*Issuer Address and Contact Information*], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at xxx-xxx-xxxx and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Director of Finance, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, 1125 Tamalpais Avenue, San Rafael, CA 94901, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXXX] (the "Letter of Credit") issued by [*Bank Name*] (the "Bank") by order of Wellhead Power eXchange, LLC (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are parties to that certain Confirmation dated as of XXXXX, 2019 (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in full force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Marin Clean Energy and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Marin Clean Energy by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

[Name and Title of Authorized Representative]

Date _____