



Board of Directors Meeting
Thursday, March 16, 2017
7:00 P.M.

Kathrin Sears, Chair
County of Marin

Tom Butt, Vice Chair
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Don Tatzin
City of Lafayette

Kevin Haroff
City of Larkspur

Sashi McEntee
City of Mill Valley

Brad Wagenknecht
County and Cities of Napa

Denise Athas
City of Novato

P. Rupert Russell
Town of Ross

Ford Greene
Town of San Anselmo

Arturo Cruz
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

Kevin Wilk
City of Walnut Creek

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674

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

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1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
C.1 2.16.17 Meeting Minutes
5. Proposed Fiscal Year 2017/18 Rates (Discussion/Action)
6. Proposed Fiscal Year 2017/18 Budget (Discussion/Action)
7. Power Purchase Agreement with MCE Solar One, LLC for Local Renewable Energy (Discussion/Action)
8. New Board Member Additions to MCE Committees (Discussion/Action)
9. Green and Healthy Homes Initiative Presentation (Discussion)



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10. Board Member & Staff Matters (Discussion)

11. Adjourn



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DRAFT

MCE BOARD MEETING MINUTES

Thursday, February 16, 2017

7:00 P.M.

THE CHARLES F. MCGLASHAN BOARD ROOM

1125 TAMALPAIS AVENUE, SAN RAFAEL, CA 94901

Roll Call: Director Kate Sears called the regular Board meeting to order at 7:06 p.m. An established quorum was met.

Present: Denise Athas, City of Novato
Sloan Bailey, Town of Corte Madera
Tom Butt, Vice Chair, City of Richmond
Barbara Coler, Town of Fairfax
Kevin Haroff, City of Larkspur
Greg Lyman, City of El Cerrito
Claire McAuliffe, Alternate, City of Belvedere
Sashi McEntee, City of Mill Valley
Emmett O'Donnell, Town of Tiburon
P. Rupert Russell, Town of Ross
Kate Sears, Chair, County of Marin
Don Tatzin, City of Lafayette
Brad Wagenknecht, County of Napa
Kevin Wilk, City of Walnut Creek
Ray Withy, City of Sausalito

Absent: Arturo Cruz, City of San Pablo
Ford Greene, Town of San Anselmo
Andrew McCullough, City of San Rafael
Alan Schwartzman, City of Benicia

Staff: Greg Brehm, Director of Power Resources
John Dalessi, Operations and Development
Carol Dorsett, Operations Associate
Darlene Jackson, Board Clerk
Elizabeth Kelly, General Counsel
David McNeil, Finance and Project Manager
Byron Vosburg, Power Supply Contracts Manager
Dawn Weisz, Chief Executive Officer

1. Swearing In of New Board Member Kevin Wilk

CEO Dawn Weisz conducted the Oath of Office with new Board Member Kevin Wilk from the City of Walnut Creek. Director Wilk was welcomed to the Board.

DRAFT**2. Board Announcements (Discussion)**

Board member Greg Lyman introduced City of El Cerrito Alternate, Paul Fadelli.

3. Public Open Time (Discussion)

There were none.

4. Report from Chief Executive Officer (Discussion)

CEO Dawn Weisz reported on the following:

- Welcomed newest Board Member Kevin Wilk, City of Walnut Creek.
- Acknowledged newly appointed Board member Arturo Cruz, City of San Pablo who was unable to attend tonight's meeting.
- Customer Programs Business Plan was distributed to each Board member and the Customer Programs team was acknowledged for their work on the Business Plan.
- Ribbon cutting ceremony at Freethy Industrial Park in Richmond on February 14, 2017. The Public Affairs team was acknowledged for their work in coordinating this event.
- Meeting Date Reminders:
 - Technical Committee will meet Thursday March 2nd at 9:00AM.
 - Executive Committee will meet Friday March 3rd at 12:00PM.

5. Consent Calendar (Discussion/Action)

- C.1 1.19.17 Meeting Minutes
- C.2 Approved Contracts Update
- C.3 New MCE Staff Position

Chair Sears opened the public comment period and there were no speakers.

ACTION: It was M/S/C (Haroff/O'Donnell) to approve Consent Calendar items C.1. It was M/S/C (Lyman/O'Donnell) to approve Consent Calendar items C.2 and C.3. Motion carried by unanimous vote: (Abstain on C.1: Bailey, Coler, McAuliffe and Wilk) (Absent: Cruz, Greene, McCullough, Russell and Wagenknecht).

6. Proposed Budget Amendment for FY 2016/17 (Discussion/Action)

Finance Manager, David McNeil, presented this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

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ACTION: It was M/S/C (Haroff/Tatzin) to approve the proposed Amendment to the FY 2016/17 Operating Fund Budget. Motion carried by unanimous vote: (Absent: Cruz, Greene, McCullough, Russell and Wagenknecht).

7. Proposed Rates for FY 2017/18 (Discussion/Action)

John Dalessi, Operations and Development presented this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

ACTION: It was M/S/C (Bailey/Lyman) to accept the proposed rates contained in Attachment A, subject to approval of final FY 2017/18 rates in March 2017. Motion carried by unanimous vote: (Absent: Cruz, Greene, McCullough and Russell).

8. Proposed Budgets for FY 2017/18 (Discussion/Action)

David McNeil, Finance Manager, presented this discussion item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

ACTION: It was M/S/C (Haroff/Bailey) to accept the FY 2017/18 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund Budgets, subject to final approval in March 2017. (Absent: Cruz, Greene and McCullough).

9. Delegation of Authorities and Contracting (Discussion/Action)

Beth Kelly, General Counsel, introduced this discussion item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

ACTION: It was M/S/C (Bailey/Athas) to adopt Proposed Resolution 2017-02 Delegating Contracting Authorities and approving updated Executive and Technical Committee Overview and Scope documents. (Absent: Cruz, Greene and McCullough).

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10. Board Member & Staff Matters (Discussion)

There were none.

11. Adjournment

The Board of Directors adjourned the meeting at 9:32 p.m. to the next Regular Board Meeting on March 16, 2017.

Kate Sears, Chair

Attest:

Dawn Weisz, Secretary



March 16, 2017

TO: MCE Board of Directors

FROM: John Dalessi, Pacific Energy Advisors

RE: Proposed Rates for Fiscal Year 2017/18 (Agenda Item #05)

ATTACHMENT: Proposed Rates for FY 2017/18

Dear Board Members:

SUMMARY:

The Marin Clean Energy Community Choice Aggregation Implementation Plan and Statement of Intent (“Implementation Plan”) describes the policies and procedures for setting and modifying electric rates for the Marin Clean Energy (MCE) program. As described in the Implementation Plan, the MCE annual ratesetting process is coordinated with the establishment of fiscal year program budgets. MCE rates are typically reviewed on an annual basis during the month of January to determine whether rate changes are warranted in consideration of the next fiscal year’s proposed budget, rate competitiveness, rate stability, customer understanding, efficiency and equity among customers.

Staff has completed its assessment and, following consultation with an Ad Hoc Committee of the MCE Board and the MCE Executive Committee, recommends that MCE reduce rates by an average of 3.7% beginning April 1, 2017.

Various alternative proposals were considered by staff, in consultation with the MCE Rates Ad Hoc Committee, in arriving at the recommended rate proposal. The alternative scenarios included maintaining current MCE rates as well as the alternative of adjusting MCE rates to achieve customer cost parity with PG&E. The recommended rate proposal was selected as best achieving the goals of making progress towards building adequate financial reserves while maintaining rate competitiveness. Proposed rates that were developed consistent with this recommendation were presented at the February 2017 MCE Board Meeting, and with conclusion of the 30-day public comment period, are now recommended for your Board’s approval.

BACKGROUND – MCE RATESETTING CYCLE, POLICIES AND PROCESS

Ratesetting Cycle

MCE typically adjusts its rates on an annual basis, and the new rates go into effect on or about April 1. Ratesetting is coordinated with the annual budgeting cycle due to the inherent linkages between the MCE Budget and MCE rates. Rates could be adjusted more frequently, if necessary, to ensure recovery of all MCE program costs, but this is not typical and has not been necessary to date.

Proposed rates are typically presented to your Board in February, based on the proposed upcoming fiscal year budget. This release of the proposed rates initiates a thirty-day public review and comment period. If rate increases are being proposed, the affected MCE customers are provided with notice of said rate increase. Following completion of the thirty-day public review and comment period, final rates are adopted by your Board in March and placed into effect on April 1. Final rates may differ from the initially proposed rates to account for changes resulting from adoption of the final fiscal year budget, consideration of public comments received during the aforementioned review period, and/or other factors that may be considered by your Board.

Ratesetting Objectives

MCE has established various objectives that are considered in designing MCE rates. These ratesetting objectives are as follows:

Revenue sufficiency: rates must recover all expenses, debt service and other expenditure requirements, and build prudent reserves; i.e., the “revenue requirement”.

Rate competitiveness: rates must allow MCE to successfully compete in the marketplace to retain and attract customers.

Rate stability: rate changes should be minimized to reduce customer bill impacts.

Customer understanding: rates should be simple, transparent and easily understood by customers.

Equity among customers: rate differences among customers should be justified by differences in usage characteristics and/or cost of service.

Efficiency: rates should encourage conservation and efficient use of electricity (e.g., off-peak vehicle charging).

To the extent that the objectives may be in tension with one another, the rate proposal attempts to strike an appropriate balance. For example, a cost-of-service analysis might suggest that a particular rate should be increased, but the increase might be limited in the interest of rate stability and/or rate competitiveness. In accordance with the Implementation Plan, the policy of revenue sufficiency may not be violated; however, the Board may use discretion in how the other ratesetting objectives are reflected in MCE rates.

Ratesetting Process

The ratesetting cycle begins with a forecast of MCE electric energy sales for the coming fiscal year. The forecast includes the number of customers that are expected to be enrolled and take service on each of the MCE rate schedules as well as the monthly billing quantities expected under each rate schedule. Depending upon the rate schedule in question, billing quantities can include monthly kWh, kWh during specified time-of-use periods (e.g., on-peak, partial peak, off-peak), maximum monthly kW demand and maximum kW demand during specified time-of-use periods. The forecasted billing quantities are used to derive a forecast of revenues at current (and proposed) MCE rates.

The projected revenue at current rates, termed “present rate revenues”, is compared to fiscal year budget items that must be funded through such rates (the “revenue requirement”) to determine whether rate adjustments are warranted for purposes of addressing any projected surplus or deficit.

As an interim step in the rate design process, the revenue requirement is first allocated to customer classes. Customers are classified based on end-use and other service characteristics in an attempt to represent groups of customers with relatively similar cost-of-service profiles. MCE has established nine customer classes that include: residential (E-1), small commercial (A-1 and A-6), medium commercial (A-10), large commercial (E-19), industrial (E-20), agricultural (Ag), street lighting (SL) and traffic control (TC) end uses. Revenues are allocated based on a cost of service analysis, assessment of rate competitiveness, and other policy considerations.

Typical end uses within the commercial customer classes are described below:

Rate Group	Example End Use
E-1	Residential
A-1 and A-6	Small office, small retail
A-10	Bank, restaurant, mixed use retail
E-19	Department store, large office building, grocery store
E-20	Institutional, hospital, college, water treatment facility
Ag	Agricultural
SL-1	Street and area lighting
TC-1	Traffic lights

Rates are designed for the various rate schedules associated with each customer class in order to recover the revenue requirement allocated to that class. There are currently 37 rate schedules under which MCE customers may take service subject to the relevant eligibility criteria. MCE determines rate schedule eligibility by mapping each MCE rate schedule to an equivalent PG&E rate schedule; customers contacting PG&E to change rate schedules (e.g., selection of an optional time-of-use rate or a net energy metering rate) would automatically be placed on a corresponding MCE rate schedule.

FY 2017/18 PROPOSED RATES

MCE’s current rates are projected to yield sufficient revenues to recover the proposed FY 2017/18 expenditures and generate a contribution to reserves of \$15.4 million or 7.5% of revenue. Staff recommends reducing MCE rates by an average of 3.7% to yield a projected reserve contribution of \$7.9 million, equating to 4% of fiscal year revenues. At these levels, costs for MCE customers, on average, would be slightly below the costs

that would be incurred under PG&E service. This recommendation was presented to your Board at the February 16, 2017 MCE Board Meeting, with a request that final approval be considered at the March Board meeting, following the customary 30-day public review period pertaining to rate matters, discussed above. MCE has received no comments from the public regarding this rate proposal and recommends your Board adopt the recommendation.

FY 2017/18 Revenue Requirement

For ratesetting purposes, the revenue requirement is the term used to describe the aggregate revenues that rates are designed to collect. The FY 2017/18 revenue requirement is based on the proposed FY 2017/18 Budget for MCE’s Operating Fund, inclusive of the targeted 4% contribution to reserves.¹ The proposed revenue requirement for FY 2017/18 is \$198,042,798 as shown in Table 1. Revenues that would be collected at present rates are estimated to be \$205,652,338. The difference of \$7,609,799 represents an average rate decrease of approximately 3.7%.

The proposed revenue requirement, including a reconciliation to the proposed FY 2017/18 Budget, is shown in Table 1:

Table 1: Proposed FY 2017/18 Revenue Requirement

<i>Revenue Requirement</i>	
Proposed FY 2017/18 Operating Fund Budget Revenue	\$198,710,759
Uncollectible Account Expenses, NEM and Deep Green Revenue Adjustments	\$-667,961
Proposed Revenue Requirement	\$198,042,798
Present Rate Revenues	\$205,652,338
Surplus in Funds	\$7,609,799
Average Rate Decrease	3.7%

Revenue Allocation

The proposed revenue requirement was allocated to rate groups in a manner intended to bring average rates for all customer classes, inclusive of PG&E surcharges (Power Charge Indifference Adjustment or “PCIA” and the Franchise Fee Surcharge or “FFS”), closer to parity with PG&E. The proposed revenue changes by customer class are shown in Table 2:

¹ The difference between the revenue requirement used for ratesetting and the budgeted revenue is due to the revenue deficiencies associated with uncollectible customer accounts as well as costs and revenues associated with the net energy metering (NEM) and Deep Green programs.

Table 2: Proposed Class Revenue Allocation

Rate Group	Revenue at Present Rates	Revenue at Proposed Rates²	Change in Revenues	% Change
E-1	86,893,228	82,587,247	(4,305,982)	-5.0%
A-1	27,235,009	26,148,981	(1,086,027)	-4.0%
A-6	6,670,002	6,552,679	(117,322)	-1.8%
A-10	34,065,283	33,453,809	(611,473)	-1.8%
E-19	31,260,320	30,130,398	(1,129,923)	-3.6%
E-20	16,664,883	16,333,200	(331,682)	-2.0%
Ag	1,545,244	1,540,327	(4,917)	-0.3%
SL	1,186,881	1,170,710	(16,171)	-1.4%
TC	131,489	125,631	(5,858)	-4.5%
Total	205,652,338	198,042,983	(7,609,355)	-3.7%

As can be seen from the table, the proposed rate changes are not uniform across the different customer classes served by MCE. The proposed differential rate adjustments were made based on a comparative rate analysis and designed to bring average MCE customer costs for all customer classes below what the costs would be under bundled PG&E rates. The resulting average cost comparisons are shown in Table 3. The cost figures in Table 3 represent total delivered electricity costs, inclusive of generation charges, distribution and other delivery charges, and, for MCE customers, the PCIA and Franchise Fee surcharges.

Table 3: Proposed Rate Comparative Analysis Summary

Rate Group	Total MCE Generation + PG&E Charges³	Revenue at Current PG&E Bundled Rates⁴	Total Cost Difference	% Cost Difference
E-1	242,421,473	242,561,188	(139,715)	-0.1%
A-1	78,713,387	78,758,752	(45,365)	-0.1%
A-6	16,719,018	16,728,653	(9,636)	-0.1%
A-10	84,788,159	84,837,025	(48,866)	-0.1%
E-19	72,723,083	72,764,996	(41,913)	-0.1%
E-20	32,393,386	32,412,055	(18,669)	-0.1%
Ag	3,878,830	3,881,066	(2,235)	-0.1%
SL	3,400,173	3,402,132	(1,960)	-0.1%
TC	424,896	425,141	(245)	-0.1%
Total	535,462,405	535,771,009	(308,604)	-0.1%

² Revenue at proposed rates varies slightly from the revenue requirement due to rounding.

³ Includes MCE charges and PG&E delivery and PCIA/Franchise Fee surcharges.

⁴ Includes PG&E generation and delivery charges.

Rate Design

The individual rate components on each rate schedule were examined in relation to the costs of providing electric service as well as how they compare to the corresponding PG&E rate, after taking PCIA surcharges into consideration. Adjustments were made to better align MCE rate components with those charged by PG&E so that individual customer rate comparisons will be more uniform for all MCE customers. Generally speaking, reductions were made to off-peak energy rates, while increases were made to demand charges and certain on-peak or partial peak energy rates. The reductions in off-peak energy rates were limited where they would otherwise result in rates that are below the cost of wholesale energy. The net effect of the rate design changes is to reduce revenues from each customer class as shown in Table 2; however, the impacts on individual customer bills will vary depending upon specific usage characteristics. A comparison of current and proposed rates is included in Attachment A.

Termination Fees

MCE's rates and charges include a Termination Fee applicable to customers departing MCE service after the initial sixty-day post enrollment opt-out period. The Termination Fee is proposed to remain unchanged for FY 2017/18. The Administrative Fee component of the Termination Fee would remain at \$5 for residential customers and \$25 for non-residential customers. The Cost Recovery Charge component of the Termination Fee, which would apply in the event MCE is unable to recover the costs of supply commitments attributable to the customer that is terminating service, would remain at zero.

Recommendation: Adopt the proposed rates for FY 2017/2018 contained in Attachment A.

AI #05_Att: Proposed Rates for FY 2017/18

MARIN CLEAN ENERGY
PRESENT AND FY 2017/2018 PROPOSED RATES, EFFECTIVE APRIL 1, 2017

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
<u>RESIDENTIAL CUSTOMERS</u>				
E-1, EL-1, EM, EML, ES, ESL, ESR, ESRL, ET, ETL	E-1			
	ENERGY CHARGE (\$/KWH)	All Energy	0.07200	0.06800
E-6, EL-6	E-6			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.18600	0.18600
		Summer Part Peak	0.07800	0.08200
		Summer Off-Peak	0.05300	0.04300
		Winter Partial Peak	0.07300	0.06500
		Winter Off-Peak	0.05300	0.05200
EV-A, EV-B	EV			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.17500	0.20000
		Summer Part Peak	0.07800	0.07500
		Summer Off-Peak	0.04400	0.03000
		Winter Peak	0.06300	0.05500
		Winter Partial Peak	0.04400	0.03000
		Winter Off-Peak	0.04400	0.03000
E-TOU-A, EL-TOU-A	E-TOU-A			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.15700	0.15300
		Summer Off-Peak	0.08200	0.07800
		Winter Peak	0.07000	0.06600
		Winter Off-Peak	0.05600	0.05200
E-TOU-B, EL-TOU-B	E-TOU-B			
	ENERGY CHARGE (\$/KWH)			
		Summer Peak	0.17400	0.17800
		Summer Off-Peak	0.07200	0.07200
		Winter Peak	0.07300	0.06900
		Winter Off-Peak	0.05400	0.04900

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
<u>COMMERCIAL, INDUSTRIAL AND GENERAL SERVICE CUSTOMERS</u>				
A-1-A	A-1-A			
	ENERGY CHARGE (\$/KWH)			
		SUMMER	0.09300	0.09200
		WINTER	0.06200	0.05700
A-1-B	A-1-B			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.10900	0.10800
		PART-PEAK	0.10300	0.08600
		OFF-PEAK	0.08100	0.05700
		<u>WINTER</u>		
		PART-PEAK	0.07000	0.08400
		OFF-PEAK	0.05500	0.06300
A-6	A-6			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.30200	0.34000
		PART-PEAK	0.10800	0.10200
		OFF-PEAK	0.05100	0.04500
		<u>WINTER</u>		
		PART-PEAK	0.08400	0.07100
		OFF-PEAK	0.05100	0.05200
A-10-A	A-10-A			
	ENERGY CHARGE (\$/KWH)			
		SUMMER	0.08700	0.08100
		WINTER	0.06200	0.05800
	DEMAND CHARGE (\$/KW)			
		SUMMER MAX	2.80000	4.85000
A-10-B	A-10-B			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.10700	0.13500
		PART-PEAK	0.08800	0.08200
		OFF-PEAK	0.07500	0.05400
		<u>WINTER</u>		
		PART-PEAK	0.06900	0.06500
		OFF-PEAK	0.05800	0.04900
	DEMAND CHARGE (\$/KW)			
		SUMMER MAX	2.80000	4.85000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE		
E-19-S, V	E-19-S	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>				
		PEAK	0.10900	0.10500		
		PART-PEAK	0.07500	0.06500		
		OFF-PEAK	0.05200	0.04000		
		<u>WINTER</u>				
		PART-PEAK	0.07100	0.05900		
		OFF-PEAK	0.05000	0.04500		
		DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>				
		PEAK	8.30000	12.60000		
		PART-PEAK	1.70000	3.10000		
		E-19-P, V	E-19-P	ENERGY CHARGE (\$/KWH)		
				<u>SUMMER</u>		
PEAK	0.11000			0.09700		
PART-PEAK	0.07100			0.05800		
OFF-PEAK	0.05000			0.03500		
<u>WINTER</u>						
PART-PEAK	0.06500			0.05300		
OFF-PEAK	0.05000			0.04000		
DEMAND CHARGE (\$/KW)						
<u>SUMMER</u>						
PEAK	8.10000			11.25000		
PART-PEAK	1.70000			2.75000		
E-19-T, V	E-19-T			ENERGY CHARGE (\$/KWH)		
				<u>SUMMER</u>		
		PEAK	0.08400	0.06000		
		PART-PEAK	0.06500	0.04800		
		OFF-PEAK	0.05100	0.03400		
		<u>WINTER</u>				
		PART-PEAK	0.05700	0.05000		
		OFF-PEAK	0.04900	0.03800		
		DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>				
		PEAK	8.40000	12.40000		
		PART-PEAK	1.80000	3.10000		

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
E-19-R-S, V-R-S	E-19-R-S			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.20100	0.24000
		PART-PEAK	0.09300	0.09500
		OFF-PEAK	0.05200	0.03900
		<u>WINTER</u>		
		PART-PEAK	0.07100	0.06000
		OFF-PEAK	0.05000	0.04500
E-19-R-P, V-R-P	E-19-R-P			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.20500	0.23000
		PART-PEAK	0.09000	0.08800
		OFF-PEAK	0.05000	0.03400
		<u>WINTER</u>		
		PART-PEAK	0.06500	0.05300
		OFF-PEAK	0.05000	0.04000
E-19-R-T, V-R-T	E-19-R-T			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.18200	0.23000
		PART-PEAK	0.08400	0.08500
		OFF-PEAK	0.05100	0.03200
		<u>WINTER</u>		
		PART-PEAK	0.05700	0.05000
		OFF-PEAK	0.04900	0.03800

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
E-20-S	E-20-S			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.10200	0.09500
		PART-PEAK	0.07000	0.06000
		OFF-PEAK	0.04900	0.03600
		<u>WINTER</u>		
		PART-PEAK	0.06300	0.05500
		OFF-PEAK	0.04600	0.04100
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		PEAK	7.70000	12.20000
		PART-PEAK	1.60000	3.00000
E-20-P	E-20-P			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.10700	0.10200
		PART-PEAK	0.07100	0.06100
		OFF-PEAK	0.05000	0.03700
		<u>WINTER</u>		
		PART-PEAK	0.06200	0.05600
		OFF-PEAK	0.04900	0.04200
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		PEAK	8.50000	13.40000
		PART-PEAK	1.80000	3.15000
E-20-T	E-20-T			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.07600	0.06200
		PART-PEAK	0.05900	0.04900
		OFF-PEAK	0.04600	0.03400
		<u>WINTER</u>		
		PART-PEAK	0.05700	0.05100
		OFF-PEAK	0.04500	0.03900
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		PEAK	9.90000	15.85000
		PART-PEAK	2.10000	3.75000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
E-20-R-S	E-20-R-S			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.18100	0.22000
		PART-PEAK	0.08600	0.09000
		OFF-PEAK	0.04900	0.03700
		<u>WINTER</u>		
		PART-PEAK	0.06300	0.05500
		OFF-PEAK	0.04600	0.04200
E-20-R-P	E-20-R-P			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.19500	0.24000
		PART-PEAK	0.08700	0.08900
		OFF-PEAK	0.05000	0.03700
		<u>WINTER</u>		
		PART-PEAK	0.06200	0.05500
		OFF-PEAK	0.04900	0.04200
E-20-R-T	E-20-R-T			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.17800	0.23000
		PART-PEAK	0.07900	0.08400
		OFF-PEAK	0.04600	0.03500
		<u>WINTER</u>		
		PART-PEAK	0.05700	0.05100
		OFF-PEAK	0.04500	0.04000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
<u>AGRICULTURAL CUSTOMERS</u>				
AG-1-A	AG-1-A			
	ENERGY CHARGE (\$/KWH)	SUMMER	0.08500	0.07700
		WINTER	0.06800	0.05800
	CONNECTED LOAD (\$/HP)	SUMMER MAX	1.10000	1.35000
		WINTER MAX	-	-
AG-1-B	AG-1-B			
	ENERGY CHARGE (\$/KWH)	SUMMER	0.07400	0.08000
		WINTER	0.05800	0.05700
	DEMAND CHARGE (\$/KW)	SUMMER MAX	1.60000	2.00000
		WINTER MAX	-	-
AG-RA	AG-RA			
	ENERGY CHARGE (\$/KWH)	<u>SUMMER</u>		
		PEAK	0.19500	0.24200
		OFF-PEAK	0.04900	0.04500
		<u>WINTER</u>		
		PART-PEAK	0.05400	0.05200
		OFF-PEAK	0.04600	0.04200
	CONNECTED LOAD (\$/HP)	SUMMER	1.1000	1.3000
		WINTER	0.0000	0.0000
AG-RB	AG-RB			
	ENERGY CHARGE (\$/KWH)	<u>SUMMER</u>		
		PEAK	0.20700	0.21500
		OFF-PEAK	0.05800	0.04500
		<u>WINTER</u>		
		PART-PEAK	0.05300	0.04100
		OFF-PEAK	0.04400	0.03500
	DEMAND CHARGE (\$/KW)	<u>SUMMER</u>		
		MAX	1.5000	1.9000
		PEAK	1.6000	2.1500
		WINTER	0.0000	0.0000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
AG-VA	AG-VA			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.17700	0.21000
		OFF-PEAK	0.04900	0.04300
		<u>WINTER</u>		
		PART-PEAK	0.05500	0.05100
		OFF-PEAK	0.04700	0.04000
	CONNECTED LOAD (\$/HP)			
		SUMMER	1.1000	1.3500
		WINTER	0.0000	0.0000
AG-VB	AG-VB			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.18100	0.18500
		OFF-PEAK	0.05500	0.04400
		<u>WINTER</u>		
		PART-PEAK	0.05100	0.03900
		OFF-PEAK	0.04400	0.03500
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		MAX	1.4000	1.7500
		PEAK	1.7000	2.2500
		WINTER	0.0000	0.0000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
AG-4-A, AG-4-D	AG-4-A			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.12600	0.13700
		OFF-PEAK	0.05200	0.04600
		<u>WINTER</u>		
		PART-PEAK	0.05500	0.05100
		OFF-PEAK	0.04600	0.04000
	CONNECTED LOAD (\$/HP)			
		SUMMER	1.10000	1.35000
		WINTER	-	-
AG-4-B, AG-4-E	AG-4-B			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.09600	0.09900
		OFF-PEAK	0.05400	0.04900
		<u>WINTER</u>		
		PART-PEAK	0.05300	0.04600
		OFF-PEAK	0.04400	0.03900
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		MAX	1.90000	2.35000
		PEAK	1.90000	2.50000
		WINTER	-	-
AG-4-C, AG-4-F	AG-4-C			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.10500	0.11600
		PART-PEAK	0.05900	0.05600
		OFF-PEAK	0.04200	0.03800
		<u>WINTER</u>		
		PART-PEAK	0.04800	0.04100
		OFF-PEAK	0.04000	0.03700
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		PEAK	4.40000	5.90000
		PART-PEAK	0.80000	1.00000
		WINTER	0.00000	0.00000

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
AG-5-A, AG-5-D	AG-5-A			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.11600	0.12600
		OFF-PEAK	0.05600	0.05100
		<u>WINTER</u>		
		PART-PEAK	0.05800	0.05500
		OFF-PEAK	0.04900	0.04400
	CONNECTED LOAD (\$/HP)			
		SUMMER	2.80000	3.70000
		WINTER	-	-
AG-5-B, AG-5-E	AG-5-B			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.11100	0.11000
		OFF-PEAK	0.03400	0.03200
		<u>WINTER</u>		
		PART-PEAK	0.05200	0.04500
		OFF-PEAK	0.02800	0.02800
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		MAX	3.50000	4.45000
		PEAK	4.30000	5.55000
		WINTER	-	-
AG-5-C, AG-5-F	AG-5-C			
	ENERGY CHARGE (\$/KWH)			
		<u>SUMMER</u>		
		PEAK	0.08900	0.09000
		PART-PEAK	0.04800	0.04500
		OFF-PEAK	0.03500	0.03200
		<u>WINTER</u>		
		PART-PEAK	0.04200	0.03700
		OFF-PEAK	0.03200	0.03000
	DEMAND CHARGE (\$/KW)			
		<u>SUMMER</u>		
		PEAK	7.90000	10.30000
		PART-PEAK	1.50000	1.90000
		WINTER	-	-

AI #05_Att: Proposed Rates for FY 2017/18

PG&E EQUIVALENT SCHEDULE	MCE RATE SCHEDULE	UNIT/PERIOD	PRESENT RATE	PROPOSED RATE
<u>STREET AND OUTDOOR LIGHTING</u>				
LS-1, LS-2, LS-3, OL-1	SL			
	ENERGY CHARGE (\$/KWH)		0.07600	0.07500
TC-1	TC-1			
	ENERGY CHARGE (\$/KWH)		0.06700	0.06400
<u>DEEP GREEN OPTION</u>				
Customers electing the Deep Green service option will pay the applicable rate for the Light Green service option plus the Deep Green Energy Charge.				
	ENERGY CHARGE (\$/KWH)		0.01000	0.01000
<u>LOCAL SOL OPTION</u>				
For customers taking service under the Local Sol service option, the MCE generation charges of the participating customer's otherwise applicable tariff will be replaced with the following Local Sol Rate:				
	ENERGY CHARGE (\$/KWH)		-	0.14200
<u>Voltage Discount</u>				
For rate schedules not segregated by service voltage, each component of the standard rate shall be discounted for primary or higher service voltage.			4%	4%



March 16, 2017

TO: MCE Board of Directors

FROM: David McNeil, Finance and Project Manager
Michael Maher, Maher Accountancy

RE: Proposed Budgets for Fiscal Year 2017/18 (Agenda Item #06)

ATTACHMENT: Proposed FY 2017/18 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund Budgets

Dear Board Members:

SUMMARY:

Before the end of every fiscal year, MCE's Board has the responsibility to set forth Budgets for MCE's Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund for the upcoming fiscal year (FY). These Budgets authorize Staff to spend funds within the limits set forth in each budget line item and collect revenue. The attached proposed Budgets reflect MCE's anticipated revenue, expenditures, and contingencies for FY 2017/18. FY 2016/17 Budgets and projected results for the FY 2016/17 Operating Fund have been provided for information and comparative purposes.

Pursuant to MCE's Implementation Plan, the proposed Budgets were submitted to your Board in February along with proposed rates for the upcoming year. Proposed rates were made available to the public for a thirty-day review period. Staff requests your Board approve the proposed FY 2017/18 Budgets.

Operating Fund Budget

The attached Proposed FY 2017/18 Operating Fund Budget sets forth the following budget line items:

Revenue – electricity (+\$20,361,000, 11% increase): Budgeted electricity revenues are based on estimates of customer electricity usage and proposed rates. The increase in revenue results from the inclusion of new communities in September 2016. Budgeted revenues incorporate an average decrease in rates of 9% that took effect in September 2016 and an additional proposed average rate decrease of 3.7% that would take effect in April 2017. Electricity revenues also include revenues associated with MCE's Deep Green program and an allowance for uncollectable accounts.

Other revenue (-\$115,000, 92% decrease): Other revenue includes operating revenue that does not represent sales of electricity and includes such items as insurance claims and cost recovery. Other revenue frequently relates to unanticipated events that occur during the year.

Cost of energy (+\$21,463,000, 13% increase): Cost of energy includes expenses associated with purchase of energy products, charges by the California Independent Systems Operator (CAISO) for scheduled load, and services performed by the CAISO. Credits for energy generation scheduled into

the CAISO market are netted from the Cost of energy. Increased energy costs reflect the cost of purchasing additional energy products to serve new customers enrolled in September 2016.

Service fees – PG&E (+\$232,000, 18% increase): Service fees are based on the number of meters served by MCE and per meter rates charged by PG&E and are expected to increase as a result of the inclusion of new communities in September 2016.

Personnel (+\$1,498,000, 29% increase): Increased budgeted personnel costs result from the full year impact of staff added during FY 2016/17 pursuant to the Board-approved FY 2016/17 Operating Fund Budget, new hires planned for FY 2017/18, the application of Cost of Living Adjustments (COLA) effective January 1st of each year, and performance-based increases to current staff salaries consistent with MCE's Board-approved Employee Handbook.

Data manager (+\$120,000, 3% increase): Data manager costs are based on the number of meters served by MCE and per meter rates charged by MCE's data manager. Increased data manager costs incorporate the effect of including new communities in September 2016 and reduced rates offered by the data manager which went into effect at that time.

Technical and scheduling services (+\$44,000, 6% increase): Technical services costs are based on a fixed charge per MWh of electricity usage. Technical services costs are expected to increase as a result of the inclusion of new communities in September 2016 and the scheduled rollout of new services provided by MCE's scheduling coordinator.

Legal and regulatory services (-\$73,000, 9% decrease): Legal counsel expenses support MCE's contracting and regulatory activities. Legal counsel expenses are expected to decrease as a result of staff performing more contracting work in-house and reduced long term procurement activity anticipated in FY 2017/18.

Communications and related services (+\$147,000, 15% increase): Communications and related services include the costs associated with print, online, and other advertising, printing and mailing customer notices, events, and sponsorships. Increased costs are expected as a result of the inclusion of new communities in September 2016, which increased the number of customers served by MCE by approximately 50%.

Other services (+\$273,000, 58% increase): Other services encompass expenses which are not captured in other budget categories, and include accounting, auditing, information technology, and other services. Increased other services result from the growth of the agency and from costs that may be incurred in connection with MCE's recent request for offers for data management and other services.

General and administration (+\$124,000, 28% increase): General and administration costs include office, data, travel, dues and subscriptions, and other related expenses. Increased costs are associated with support for California Community Choice Association (CalCCA) and the increased number of employees.

Occupancy (+\$122,000, 30% increase): Occupancy costs include the costs of leasing MCE's office, utilities, and building maintenance. Increased occupancy costs result in part from contracted increases in building lease expenses.

Local pilot programs (+\$165,000, 330% increase): Local pilot programs support residential demand side management pilot programs offered in MCE's service territory including the My Energy Insight program, Richmond Advanced Energy Communities, and transportation electrification. Increased costs are intended in part to fund new programs launched during FY 2017/18.

Marin County green business program (no change): Marin County's green business program is a voluntary partnership among business leaders, government agencies, and non-profit organizations

which promotes environmental responsibility, good business practices, and community concern among local businesses. MCE sponsors Marin County's green business program via a \$10,000 annual grant.

Low income solar programs (+\$5,000, 14% increase): Low income solar programs support residential rooftop solar for low income participants. Increased costs are intended to fund increased activity in this area.

Grant and other income (+\$65,000, 87% increase): Grants are provided by government and non-government organizations to support activities connected to MCE's mission. FY 2017/18 grant income represents grants provided by the Bay Area Air Quality Management District (BAAQMD) and the Transportation Authority of Marin (TAM) in connection to the construction of a solar carport and electric vehicle charging stations in MCE's parking lot. Other income represents income for administrative services performed by MCE Staff for California Community Choice Association (CalCCA).

Interest income (+\$45,000, 92% increase): Increased interest income is expected to result from an increase in interest rates and higher balances in savings accounts at River City Bank.

Interest expense and financing costs (+\$136,000, 39% increase): These costs are associated with renewal fees on MCE's line of credit, the costs associated with obtaining a credit rating, and a contingency that would support the issuance of letters of credit.

Capital outlay (-\$16,000, 4% decrease): Expenditures associated with capital outlay include various leasehold improvements made at MCE's facilities.

Energy Efficiency Program Fund

The Energy Efficiency Program Fund uses funding authorized by the California Public Utilities Commission (CPUC) to support multifamily, small commercial, single family, and financing sub-programs. The Energy Efficiency Program Fund supports the activities of the Energy Efficiency Program and the Low Income Families and Tenants (LIFT) Pilot Program. Both programs are reimbursable type programs and eligible expenses are reimbursed by the CPUC. Accordingly, the revenue and expenses for these programs offset each other.

Energy Efficiency Program

Energy efficiency has always been an integral component of the MCE vision. In July 2012, MCE submitted an application for funding under the 2013 -2014 Energy Efficiency Funding Cycle (A. 12-11-007). The application was based on the initial Energy Efficiency Plan, and included the following proposed sub-programs:

1. Multifamily
2. Single family utility demand reduction pilot program
3. Small commercial
4. Four financing pilot programs: On Bill Repayment for single family,¹ multifamily, small commercial, and a standard offer pilot.

This application was approved on November 9, 2012, allocating over \$4 million to MCE for the implementation of energy efficiency programs. In November 2014, the CPUC voted to extend the funding at annual levels through 2025, or until the CPUC moves otherwise.

In May 2016, the CPUC authorized an additional \$366,090 to support the inclusion of new communities in MCE's service area. MCE is proposing to use these funds to support existing rebate programs and will initially target the east bay communities of San Pablo, El Cerrito, and Benicia. The CPUC authorized additional funding to support Evaluation, Monitoring, and Verification (EM&V) for the

¹ The on-bill repayment pilot for single family customers was subsequently closed in fall of 2015 after the financial institution withdrew. Funds have since been re-directed to the multifamily energy efficiency program.

purposes of conducting studies on the efficacy of CPUC-funded program process and program impacts (i.e. did the lightbulb reduce energy savings as expected). \$96,342 is allocated for EM&V in FY 2017/18.

FY 2017/18 Energy Efficiency Program Budget

<u>Programs</u>	<u>Budget (\$)</u>
Single Family	233,000
Multifamily	668,000
Small Commercial	659,000
Financing	27,000
Program Subtotal	1,586,000
Evaluation Measurement and Verification (EM&V)	96,000
Total	1,691,000

Low Income Families and Tenants (LIFT) Pilot Program

In November 2016, the CPUC authorized MCE to administer \$3.5 million in low income program funding over a two-year period in support of its proposed Low Income Families and Tenants (LIFT) Pilot Program (Decision 16-11-022.). This pilot will provide funding to deepen the impact of MCE’s multifamily energy efficiency program for income-qualified properties, specifically by providing full cost coverage for improvements that directly benefit tenants (for example, in-unit upgrades and common area measures that provide services to tenants, such as central hot water systems). The pilot also proposes to test the implementation of heat pumps – high efficiency electric heating equipment – which can facilitate switching a building off of carbon-based fuels and enabling deeper greenhouse gas reductions. MCE will also test the ability of working with local community based organizations to engage community members who are not participating in the program due to real or perceived barriers.

The pilot also includes a residential energy education component for single-family residential customers. This program will provide income-qualified customers with access to a mobile phone based energy education platform that will help them identify and act on low or no-cost energy savings opportunities within their homes. To encourage further and sustained improvements, MCE will pilot a Matched Energy Savings Account (MESA), which will match customer bill savings on a dollar per dollar basis. Funds from the MESA will be available to the customer for further investment in their home.

Two Year LIFT Pilot Program Budget

<u>Sector</u>	<u>Budget (\$)</u>	<u>Target Savings (KWh)</u>	<u>Target Savings (Therms)</u>	<u>Target Housing Units</u>
Multifamily	2,941,283	340,863	16,302	1,482
Single-family	558,717	23,831	2,371	300
Total	3,500,000	357,165	26,202	1,782

The LIFT program is scheduled for launch in April 2017 and would be funded the CPUC’s Energy Savings Assistance Programs (ESAP) funds. Of the \$3.5 million authorized by the CPUC over a two-year period, Staff proposes to budget revenues and expenditures equal to \$1.75 million in FY2017/18.

Proposed revenues and expenditures for the Energy Efficiency Program Fund total \$3,441,000, which is equal to an increase of \$1,855,000 from the previous year.

Local Renewable Energy Development Fund

This Local Renewable Energy Development Fund is financed by a transfer from the Operating Fund equal to 50% of the premium for Deep Green service. These resources are used to plan, create, and develop local energy efficient projects. The transfer from the Operating Fund is expected to equal expenditures from this fund. In FY 2014/15, FY 2015/16, and FY 2016/17 expenditures from the Local Renewable Energy Development Fund expenditures supported the development of MCE Solar One. In

FY 2017/18 expenditures from this fund are intended to support costs related to the construction of a solar carport and electric vehicle charging stations at the MCE office.

Renewable Energy Reserve Fund

This Renewable Energy Reserve Fund is intended for the procurement or development of renewable energy not planned for in the Operating Fund. Resources may accumulate from year to year. In FY 2015/16 your Board approved the transfer of \$1 million from the Operating Fund to the Renewable Energy Reserve Fund. In May 2016 your Board approved expenditures from the Renewable Energy Reserve Fund to support MCE Solar One development costs not expended in the Local Renewable Energy Development Fund and revenues associated with the transfer of MCE Solar One to a new developer.

Staff propose to budget revenue in FY 2017/18 to support the transfer of MCE Solar One to sPower under the terms of the proposed Purchase and Sale Agreement presented to your Board at its March 2017 meeting. Under this Agreement MCE would receive proceeds from the sale of MCE Solar One assets totaling \$800,000. The Agreement includes a number of terms which must be fulfilled ("conditions precedent") before the Agreement becomes effective. These terms may be fulfilled before or after MCE's March 31, 2017 year end. Under these circumstances, it is appropriate to budget revenues associated with the MCE Solar One Purchase and Sale Agreement in both FY 2016/17 and FY 2017/18. Proposed FY 2017/18 expenditures are intended to fund predevelopment work for new local renewable energy projects that support MCE's mission.

FISCAL IMPACT: The net impact of increasing the Proposed Operating Fund Budget is an \$8,356,000 contribution to MCE's net position during FY 2017/18. The budgeted contribution to the net position is equal to 4% of revenues, consistent with MCE's Rate Setting Guidelines. If approved, budgeted revenues would entirely offset expenditures in the Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund, and these funds will not impact MCE's net position.

RECOMMENDATION: Approve the FY 2017/18 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund Budgets.

MARIN CLEAN ENERGY				
OPERATING FUND				
Proposed Budget				
Fiscal Year 2017/18				
	FY 2016/17 Projected	Proposed 2017/18 Budget	Variation from Projected (\$)	Variation from Projected (%)
ENERGY REVENUE				
Revenue - Electricity (net of allowance)	178,350,000	198,711,000	20,361,000	11%
Other Revenue	125,000	10,000	(115,000)	-92%
TOTAL ENERGY REVENUE	178,475,000	198,721,000	20,246,000	11%
ENERGY EXPENSES				
Cost of energy	152,579,000	174,042,000	21,463,000	13%
Service fees - PG&E	1,255,000	1,487,000	232,000	18%
TOTAL ENERGY EXPENSES	153,834,000	175,529,000	21,695,000	14%
NET ENERGY REVENUE	24,641,000	23,192,000	(1,449,000)	-7%
OPERATING EXPENSES				
Personnel	4,743,000	6,241,000	1,498,000	29%
Data manager	3,674,000	3,794,000	120,000	3%
Technical and scheduling services	762,000	806,000	44,000	6%
Legal and regulatory services	817,000	744,000	(73,000)	-9%
Communications and related services	986,000	1,133,000	147,000	15%
Other services	469,000	742,000	273,000	58%
General and administration	443,000	567,000	124,000	28%
Occupancy	403,000	525,000	122,000	30%
Local Pilot Programs	50,000	215,000	165,000	330%
Marin County green business program	10,000	10,000	-	0%
Low income solar programs	35,000	40,000	5,000	14%
TOTAL OPERATING EXPENSES	12,392,000	14,817,000	2,425,000	19%
OPERATING INCOME	12,249,000	8,375,000	(3,874,000)	-47%
NONOPERATING REVENUES				
Grant and other income	75,000	140,000	65,000	87%
Interest income	84,000	130,000	46,000	92%
TOTAL NONOPERATING REVENUES	159,000	270,000	111,000	89%
NONOPERATING EXPENSES				
Interest expense and financing costs	32,000	168,000	136,000	39%
Depreciation (supplemental)	100,000	121,000	21,000	21%
TOTAL NONOPERATING EXPENSES	132,000	289,000	157,000	35%
CHANGE IN NET POSITION	12,276,000	8,356,000	(3,920,000)	-50%
Budgeted net position beginning of period	29,531,000	41,807,000		
Change in net position	12,276,000	8,356,000		
Budgeted net position end of period	41,807,000	50,163,000		
CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER				
Capital Outlay	383,000	367,000	(16,000)	-4%
Depreciation (supplemental)	(100,000)	(121,000)	(21,000)	21%
Repayment of Loan Principal		-	-	
Transfer to Renewable Energy Reserve		-	-	
Transfer to Local Renewable Energy Development Fund	173,000	186,000	13,000	8%
TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS & OTHER	456,000	432,000	(24,000)	
Budgeted net increase (decrease) in Operating Fund balance	\$ 11,820,000	\$ 7,924,000	\$ 3,896,000	53%

MARIN CLEAN ENERGY			
ENERGY EFFICIENCY PROGRAM FUND			
Proposed Budget			
Fiscal Year 2017/18			
	2016/17 Budget	Proposed 2017/18 Budget	Change
REVENUE AND OTHER SOURCES:			
Public purpose energy efficiency program	\$ 1,586,000	1,691,000	105,000
Public purpose Low Income Families and Tenants pilot program	-	1,750,000	1,750,000
TOTAL REVENUE AND OTHER SOURCES:	1,586,000	3,441,000	1,855,000
EXPENDITURES AND OTHER USES:			
Public purpose energy efficiency program	1,586,000	1,691,000	105,000
Public purpose Low Income Families and Tenants pilot program		1,750,000	1,750,000
TOTAL EXPENDITURES AND OTHER USES:	1,586,000	3,441,000	1,855,000
Net increase (decrease) in fund balance	-	-	

LOCAL RENEWABLE ENERGY DEVELOPMENT FUND			
Proposed Budget			
Fiscal Year 2017/18			
	2016/17 Budget	Proposed 2017/18 Budget	Change
REVENUE AND OTHER SOURCES:			
Transfer from Operating Fund	\$ 173,000	186,000	13,000
EXPENDITURES AND OTHER USES:			
Capital outlay and other expenditures	173,000	186,000	13,000
Net increase (decrease) in fund balance	-	-	-

RENEWABLE ENERGY RESERVE FUND			
Proposed Budget			
Fiscal Year 2017/18			
	2016/17 Budget	Proposed 2017/18 Budget	Change
REVENUE AND OTHER SOURCES:			
Other proceeds*	\$ 761,000	800,000	\$ 1,561,000
Transfer from Operating Fund	-	-	-
	761,000	-	1,561,000
EXPENDITURES AND OTHER USES:			
	940,000	225,000	1,165,000
Net increase (decrease) in fund balance	\$ (179,000)	575,000	-

*Other proceeds relate to the pending transfer of MCE Solar One and are expected to occur in either FY 2016/17 or FY 2017/18



March 16, 2017

TO: MCE Board of Directors

FROM: David Potovsky, Power Supply Contracts Manager

RE: Power Purchase Agreement with MCE Solar One, LLC for Local Renewable Energy (Agenda Item #07)

ATTACHMENT: A. Power Purchase Agreement with MCE Solar One, LLC for Local Solar Energy
B. Purchase and Sale Agreement with MCE Solar One, LLC

Dear Board Members:

Overview:

In 2013, MCE staff began studying the feasibility of a potential photovoltaic solar development on a brownfield site in the City of Richmond. The MCE Solar One Project (“Project”) originated with MCE’s expressed interest in local renewable energy development from within its service territory and the offer of a long-term land lease from Chevron Products Company (CPC).

The proposed Project fulfills many of MCE’s goals including developing energy projects within its own service territory and the creation of local jobs. MCE required a commitment to ensure that any contractors working on the Project pay prevailing wage and guarantee a minimum of 50% Richmond-resident labor force. To accomplish this goal, the chosen contractor would start by soliciting bids from qualified Richmond based sub-contractors. They would also engage the services of RichmondBUILD. RichmondBUILD is a public-private partnership focused on training workers for the construction and renewable energy fields. All participants of RichmondBUILD come from low income households. The program’s reputation for placing graduates in well-paying jobs has resulted in more than 100 applicants for the 35 available seats in each class.

On March 5, 2015, your Board approved a Power Purchase Agreement (PPA) with Stion MCE Solar One, LLC (Stion Solar One) for the purchase of energy, capacity and renewable attributes from the Project. In the summer of 2015, MCE initiated an Environmental Impact Report (EIR) to determine the nature and extent of the Project’s potential impact on the environment. In the fall of 2015, the Board adopted a resolution to certify the final EIR and directed staff to proceed with Project implementation.

Over a period of 12 months, Stion Corporation failed to meet the conditions precedent set forth in the PPA. This resulted in a termination of the PPA on March 23, 2016 with no further obligations to MCE. In May of 2016 the Board authorized staff to receive revenues and make expenditures related to this Project. Staff then negotiated agreements for services required to keep the Project moving forward. Specific tasks have included site preparation, installation and monitoring of environmental protection measures, implementation of utility interconnection, engineering and system design, submittal of building plans, and construction planning. As a result of the termination of the previous PPA, MCE staff presented to and discussed options with the Ad Hoc Contracts Committee, and issued a request for offers for developers to finance, build and operate the proposed Project. MCE received six offers,

all of which provided an improved levelized cost of energy (LCOE) as compared to the costs contemplated in the Stion PPA.

Sustainable Power Group (sPower) was selected from the proposals received based upon the following criteria:

- PPA rate
- Buyout option pricing
- Experience developing complex projects
- Experience building solar projects on closed landfills (sPower and the General Contractor have two completed projects and another four are currently under construction)
- Extensive portfolio of completed large projects
- Established company with strong financial backing, including the ability to finance construction activity on their own balance sheet
- Experience working with CCAs and Municipalities

MCE staff negotiated the attached PPA with sPower for the purchase of energy, capacity and renewable attributes from the Project with a guaranteed capacity of 10.5 MW. Renewable energy volumes produced by the facility would complement MCE's existing renewable energy supply with output from a local generating project.

All assets from the previous developer, including the PG&E interconnection, have been assigned to MCE. These assets will be sold to sPower, operating as MCE Solar One, LLC, under the attached Purchase and Sale Agreement for the sum of \$800,000, which will cover most of the expenses incurred during the development process.

Location & Project Viability:

The Project area includes three parcels in the City of Richmond, CA, bordered by North Castro Street on the east side and totaling approximately 60 acres. Professional designers and engineers evaluated the site and determined that approximately 49 acres are useable, including 0.8 acres for a proposed visitor center/public viewing kiosk. The site is zoned M-3, Heavy Industrial District, upon which public utilities, both major and minor, are permitted uses.



Project Description:

The Project would involve site preparation, installation and operation of a 10.5 MW solar photovoltaic (PV) system. The installation would include approximately 36,000 non-reflective solar panels, which, in combination with 15 utility-scale inverters, would convert sunlight into electricity. The electricity would be fed directly into the PG&E utility grid from a point adjacent to the site. MCE has completed the Small Generator Interconnection Agreements (SGIA) with PG&E. All due diligence work on the Project is now complete. Construction would commence in March or April 2017 with commercial operation slated for the fourth quarter of 2017.

The Project would be built in two distinct areas of the site including a closed landfill and a filled and compacted fertilizer pond. The proposed landfill site would host a 6 MW system that would be composed of a series of non-penetrating, ballasted, fixed-tilt PV arrays. The panels would extend from about 30 inches above grade to a maximum height of eight feet. The fertilizer pond would host a 4.5 MW single axis tracking PV array. These arrays would extend from at least 30 inches above grade to a maximum of height of eight feet in its highest position. All inverters and transformers would be mounted on concrete pads. The pads on the capped landfill would be placed above ground so as to not penetrate the landfill cap. Multiple pad mounted transformers would be connected by above-grade conduits to switching substations and pole mounted metering connected to existing 12.47 kilovolt PG&E distribution lines.



Ballasted arrays



Tracking arrays

Portfolio Fit:

MCE's development of the Project would benefit the public by allowing MCE to provide electricity from local renewable resources to customers. MCE's status as a California Joint Powers Authority and the public benefit that would result from MCE's involvement in the Project were key factors in CPC's decision to lease the property to MCE.

Counterparty Strength:

Headquartered in Salt Lake City with offices in San Francisco, Long Beach and New York City, sPower is one of the largest private owners of operational utility-scale solar assets in the United States. sPower is both a renewable developer and an independent power producer, with 150+ completed solar projects throughout the U.S., over 1,100 MW in operating assets, 200 MW in the construction pipeline, and over 6,000 MW of projects under active development. sPower has been backed by Fir Tree Partners, a private investment fund. To date the partnership has built a \$2.5 billion portfolio of solar PV and wind projects.

sPower has ongoing relationships with JP Morgan, US Bank, PNC Bank, Wells Fargo and DLL to provide long-term tax equity financing for their projects. They currently have nine closed tax equity funds that provide tax equity to their projects. sPower's finance team has raised over \$900 million in equity, \$950 million in tax equity, and \$1 billion in debt and for their portfolio of projects.

sPower has significant experience contracting with public agencies. The majority of their customers are municipal utilities and CCAs. The current list includes MCE, Lancaster Choice Energy, the City of Palo Alto, Southern California Public Power Authority (Riverside, Azusa, Pasadena, Vernon, Colton), and Los Angeles Department of Water and Power.

On February 24, 2017, sPower announced that an agreement had been reached to transition the company from direct ownership by Fir Tree Partners to ownership through a combination of two companies, the AES Corporation (NYSE: AES) and Alberta Investment Management Corporation (AIMCo). Each company will directly and independently purchase and own slightly below 50% equity interests in sPower, and the transaction is expected to close by the third quarter of 2017.

AES is one of the largest independent power providers in the country. Their 2015 revenues were \$15 billion, with \$37 billion in total assets. After closing, AES' ownership of renewable energy projects in operation and under construction will grow from 8,278 MW to 9,552 MW, including hydroelectric, wind, solar and energy storage. AIMCo is one of Canada's largest and most diversified institutional investment managers with more than \$90 billion of assets under management. They are responsible for the investments of 26 pension, endowment and government funds in the province of Alberta.

Project Overview:

- Project size: 10.5 MW of new solar PV – capable of supplying the annual electric needs of approximately 3,400 MCE residential customers
- Project location: City of Richmond – within MCE's service territory
- Project will utilize proven solar PV technology
- Guaranteed commercial operation date: Q4 2017
- Contract term: 20 years
- Buyout options: Years 6, 10, 15 and 20
- Expected annual energy production: Approximately 22,000 MWhs
- Energy price: Fixed, flat energy price applicable to each year of contract
- No credit/collateral obligations for MCE

Summary:

The MCE Solar One Project and the sPower PPA are a good fit for MCE's resource portfolio based on the information above as well as the following key considerations:

- The Project size supports MCE's renewable energy requirements
- The Project has passed through all stages of pre-development and is now ready to enter the construction phase
- The PPA is competitively priced

Recommendation: Authorize finalization and execution of Power Purchase Agreement and Purchase and Sale Agreement with MCE Solar One, LLC for local renewable energy supply.

**PROPOSED EXECUTION
VERSION 3/16/2017**

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: MCE Solar One, LLC, a Delaware limited liability company

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: 10.5 MW AC photovoltaic electric generating facilities located in the City of Richmond, Contra Costa County, California

Guaranteed Commercial Operation Date: 12/31/2017

Milestones:

Identify Milestone	Date for Completion
Evidence of Site Control	Complete
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, []Neg Dec, []Mitigated Neg Dec, [x]EIR	Complete
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	Phase I: Complete Phase II: Complete
Executed Interconnection Agreements	Phase I: Complete Phase II: Complete
Financial Close	Complete
Construction Start	Complete
Initial Synchronization	12/1/17
Distribution Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)	12/1/17
Commercial Operation Date	12/31/17

Delivery Term: Fifteen (15) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	22,082
2	21,972
3	21,862
4	21,752
5	21,644
6	21,535
7	21,428
8	21,321
9	21,214
10	21,108
11	21,002
12	20,897
13	20,793
14	20,689
15	20,585
If the Delivery Term is extended	
16	20,483
17	20,380
18	20,278

Contract Year	Expected Energy (MWh)
19	20,177
20	20,076

Contract Price:

Contract Year	Contract Price (\$/MWh)
1 – 15	\$ [REDACTED]
If applicable, 16-20	\$ [REDACTED]

Product:

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
 - Portfolio Content Category 1
 - Portfolio Content Category 2
 - Portfolio Content Category 3
- Capacity Attributes, if any

Scheduling Coordinator: Buyer/Buyer Third-Party

Development Security: \$630,000 (\$60 per kW AC)

Performance Security: \$630,000 (\$60 per kW AC)

Damage Payment: (As described under Damage Payment definition in Article 1) \$1,496,453

Notice Addresses:

Seller:

MCE Solar One, LLC c/o sPower
 Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749
 Attention: Control Room
 Phone No.: (801) 679-3500
 Fax No.: (801) 679-3501
 Email: operations@spower.com

With a copy to:

MCE Solar One, LLC, LLC c/o sPower
Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749
Attention: General Counsel
Phone No.: (801) 679-3500
Fax No.: (801) 679-3501
Email: legal@spower.com

Scheduling:

Email: realtime@spower.com, outages@spower.com
Phone No.: (855) 679-3553
Fax No.: N/A

Buyer:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attention: Greg Brehm, Director of Power Resources
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

With a copy to (which shall not be required for Notice purposes):

Troutman Sanders LLP
100 SW Main St., Suite 1000
Portland, Oregon 97204
Attention: Stephen Hall
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER

MCE Solar One, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

BUYER

Marin Clean Energy, a California joint powers authority

By: _____

MCE Chairperson

By: _____

MCE CEO

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Exhibit L	Form of Letter of Credit
Exhibit M	Buyout Option

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the photovoltaic electric generating facilities to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of 10.5 MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and any Capacity Attributes;

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.13.

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

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the power or authority, through ownership of voting securities, by contract or otherwise to direct the management of such Person.

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

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Availability Incentive Payments**” has the meaning set forth in the CAISO Tariff.

“**Available Capacity**” means the capacity from the Facility, expressed in MWs, that is available to generate Product.

“**Bankrupt**” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

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

(a) the CAISO provides notice, including through the Automated Dispatch System, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to produce less Energy from the Facility than forecasted to be produced from the Facility for a period of time;

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

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

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

(iii) submitted a Self-Schedule for less than the full amount of Energy forecasted to be produced from the Facility; and

(c) if the Project is subject to a Planned Outage, Forced Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the Buyer Bid Curtailment shall not include any energy that was not generated due to such Planned Outage, Forced Outage, Force Majeure Event or Curtailment Period.

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure Event and/or Curtailment Order.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure Event and/or a Curtailment Period during the same time period. The duration of any Buyer Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up, not to exceed the Ramp Rate designated in Exhibit K.

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

“CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.

“CAISO Approved Meter” means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use.

“CAISO Charges Invoice” has the meaning set forth in Section 4.3(d).

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

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio

Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**CEQA**” means the California Environmental Quality Act, Public Resources Code 21000 *et. seq.*, and the related Guidelines, California Code of Regulations, Title 14, Division 6, chapter 3, Sections 15000-15387.

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

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

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

Furthermore, it shall not be a “Change of Control” as a result of (i) transfers of any economic and voting interests to a YieldCo or a subsidiary of a YieldCo that is owned by the YieldCo and Affiliates of sPower and other Persons that have transferred projects to such subsidiary of the YieldCo or (ii) the financing of the Facility through a tax equity transaction under which the tax equity investors hold equity interests in Seller or such intermediate entities.

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

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

“**Commercial Operation Delay Damages**” means (a) for the first sixty (60) days of delay: Two Thousand Dollars (\$2,000) per day, and (b) thereafter, an amount equal to (i) the Development Security amount required hereunder less One Hundred Twenty Thousand Dollars (\$120,000), divided by (ii) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 19.1.

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

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

“**Contract Price**” has the meaning set forth in Exhibit C.

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

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

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, agreed to by Seller and Buyer and incorporated into this Agreement.

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

“CPUC” means the California Public Utilities Commission, or successor entity.

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including through the ADS, to curtail Energy deliveries for: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for: (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

(d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator;

provided, however, that Curtailment Order shall not include any Buyer Bid Curtailment or Buyer Curtailment Order.

"Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Daily Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"Damage Payment" means the dollar amount that equals twelve (12) months minimum expected revenue of the Facility based on Guaranteed Energy Production, which will be calculated prior to the Effective Date.

"Day-Ahead Forecast" has the meaning set forth in Section 4.4(c).

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

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period or Buyer's unexcused failure to take delivery of the Product, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, the result of the equation reasonably calculated and provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period, less the amount of Metered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

"Delivery Point" means the PNode designated by the CAISO for the Facility.

"Delivery Term" shall mean the period of fifteen (15) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement or extended in accordance with Section 2.1(b).

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

“Development Security” means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet.

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

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

“EIRP Forecast” means the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point.

“Eligible Intermittent Resource Protocol” or **“EIRP”** has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“Energy” means metered electrical energy, measured in MWh, which is produced by the Facility.

“Energy Deviation” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Facility; and (b) Metered Energy plus Deemed Delivered Energy.

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

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

“Expected Energy” has the meaning set forth in Section 4.7.

“Facility” has the meaning set forth in the Preamble and as further described in Exhibit A attached hereto.

“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

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

“FMM Schedule” has the meaning set forth in the CAISO Tariff.

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

“Forced Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

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

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

“Future Environmental Attributes” shall mean any and all emissions, air quality and other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes, if any.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to

Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"Green Tag Reporting Rights" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"Guaranteed Capacity" means 10.5 MW AC capacity measured at the Delivery Point.

"Guaranteed Commercial Operation Date" has the meaning set forth in Exhibit B.

"Guaranteed Construction Start Date" has the meaning set forth in Exhibit B.

"Guaranteed Energy Production" has the meaning set forth in Section 4.7.

"Imbalance Energy" means the amount of Energy, in any given Settlement Period or Settlement Interval, by which the amount of Metered Energy deviates from the amount of Scheduled Energy.

"Indemnified Party" has the meaning set forth in Section 17.1.

"Indemnifying Party" has the meaning set forth in Section 17.1.

"Initial Synchronization" means the initial delivery of Energy from the Facility to the Delivery Point.

“Installed Capacity” means the actual generating capacity of the Facility in MW AC, measured at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

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

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

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

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

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

“Joint Powers Agreement” means that certain Joint Powers Agreement dated December 19, 2008 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

“Lease” means that certain Solar Energy Facility Site Lease, dated November 4, 2015, by and between Chevron Products Company (“Lessor”) and Buyer (“Lessee” under the Lease), whereby Lessor leased to Buyer certain real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller, including any backleverage financing), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a

lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

“**Letter(s) of Credit**” means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit L.

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

“**Losses**” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, if any, and Renewable Energy Incentives.

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

“**Metered Energy**” means the electric energy generated by the Facility, expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

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

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

“**Multiplier**” has the meaning set forth in Section 3.9(b).

“**MW**” means megawatts measured in alternating current.

“**MWh**” means megawatt-hour measured in AC.

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

“**Negative LMP Costs**” has the meaning set forth in Section 3.3.

“**NERC**” means the North American Electric Reliability Corporation or any successor entity.

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

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

“**Non-Availability Charges**” has the meaning set forth in the CAISO Tariff.

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

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

“**NQC list**” has the meaning set forth in CAISO Tariff.

“**Participating Intermittent Resource Protocol**” or “**PIRP**” has the meaning set forth in the CAISO Tariff or a successor CAISO program for intermittent resources.

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Pacific Gas and Electric Company.

“**Parties**” and “**Party**” have the meaning set forth in the Preamble.

“**Performance Measurement Period**” has the meaning set forth in Section 4.7.

“**Performance Security**” means (i) cash or (ii) a Letter of Credit, in the amount specified on the Cover Sheet.

“**Permitted Transferee**” means any entity that has, or is controlled by another Person that has, all of the following:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

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

“**Person**” means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust,

incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

“Planned Outage” means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

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

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

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

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

“Product” means (i) Energy, (ii) Green Attributes (PCC1) and (iii) Capacity Attributes, if any.

“Progress Report” means a progress report including the items set forth in Exhibit G and delivered pursuant to Section 2.3.

“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the solar photovoltaic electric generation industry for facilities of similar size, type, location, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own

financial wherewithal and that of such Person's credit support or direct or indirect parent) under this Agreement.

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

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

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

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

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Replacement Capacity Attributes” has the meaning set forth in Exhibit F.

“Replacement Energy” has the meaning set forth in Exhibit F.

“Replacement Green Attributes” has the meaning set forth in Exhibit F.

“Replacement Green Attributes Value” has the meaning set forth in Exhibit F.

“Replacement Product” has the meaning set forth in Exhibit F.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

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

“SC Set-Up Fee” has the meaning set forth in Section 4.3.

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

“Scheduled Energy” means the Energy included in the Schedule awarded in the applicable CAISO market (which, as of the Effective Date, the Parties intend to be the Day-Ahead Market) and developed in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

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

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

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

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

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

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

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

“Settlement Period” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

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

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

“**sPower**” means Sustainable Power Group, LLC, a Delaware Limited Liability Company.

“**Station Use**” means:

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

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

“**Sublease**” means that certain Sublease Agreement, by and between Buyer (“Sublessor”) and Seller (“Sublessee”), for real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

“**System Emergency**” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

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

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

“**Test Energy**” means the Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has

conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

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

“**Ultimate Parent**” means FTP Power LLC.

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

“**WECC**” means the Western Electricity Coordinating Council or its successor.

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

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

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of July 15, 2013, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

“**YieldCo**” means an entity (a) in which (i) at least a majority of the voting equity securities are owned, directly or indirectly, by sPower, or (ii) sPower directly or indirectly maintains the right to appoint a majority of the board of directors or similar governing body of such entity (or where the general partner is a wholly owned subsidiary of sPower and other investors are the limited partners), (b) that has issued, or has publicly announced an intention to issue, equity to the public in a registered securities offering, (c) that intends to distribute a significant portion of its cash flows from owned, operating assets to its investors, and (d) that has acquired or intends to acquire, among other assets, projects owned by sPower and its Affiliates.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

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

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

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

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

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

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

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

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

(k) the expression "and/or" shall connote "any or all of";

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

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

1.3 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to

assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term; Buyer Option.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“**Contract Term**”).

(b) Seller may extend the Delivery Term for one (1) additional five (5) year period by delivering written notice of such extension to Buyer not less than six (6) months prior to the expiration of the fifteenth (15th) Contract Year, unless terminated earlier as set forth herein.

(c) [Reserved]

(d) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(e) Seller hereby grants to Buyer an option to purchase the Facility subject to the terms and at the time set forth in Exhibit M.

2.2 Conditions Precedent to Delivery Term.

The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer certificates from a licensed professional engineer substantially in the form of Exhibits I-1 and I-2;

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

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

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all applicable conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after COD, expects to timely complete) all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has delivered the Performance Security to Buyer; and

(h) Seller has paid Buyer, or Buyer has drawn on the Development Security, for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. At Buyer's request, Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's failure to perform its obligations hereunder, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90th) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is

not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

2.5 **Buyer's CEQA Obligations.** From and after the Effective Date, Buyer shall promptly initiate and diligently conduct all required review under CEQA, including coordinating with the "lead agency," and making such findings as are required or permitted to be made by a responsible agency under Section 15096 of the CEQA Guidelines with respect to the Facility. Upon completion of such review, Buyer shall provide and post such notices as are specified in Section 21152(a) of CEQA, as applicable.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Except for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement Product.

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

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

(a) Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) If, at any point in any Contract Year, the amount of Metered Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, then, for each additional MWh of Product, as measured by the amount of Metered Energy plus Deemed Delivered Energy, if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Contract Price or (ii) the Day-Ahead Market price for the applicable Settlement Interval.

(c) If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Metered Energy, in excess of the product of the Installed Capacity and the duration of the Settlement Interval, expressed in hours, then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).

(d) Seller shall receive no compensation from Buyer for Metered Energy or Deemed Delivered Energy during any Curtailment Period, except to the extent such Metered Energy or Deemed Delivery Energy was not subject to a Curtailment Order.

(e) If (i) Buyer fails or is unable to take Product made available at the Delivery Point during any period and such failure to take is not excused by a Seller Default, a Force Majeure Event, or Buyer Bid Curtailment, or (ii) Seller is not able to make available Product due to such Buyer failure or inability, Buyer shall pay Seller, as Seller’s sole remedy, an amount equal to the product of (1) the Deemed Delivered Energy for such period and (2) the Contract Price applicable during such period.

3.4 **Imbalance Energy.** Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. To the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and

conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation such Test Energy, Buyer shall pay Seller an amount equal to seventy-five percent (75%) of the Contract Price for each MWh of Test Energy delivered to Buyer as Metered Energy for the first twenty-eight (28) days that the Facility delivers Test Energy, and after such time the price for any additional Test Energy shall be Zero Dollars (\$0.00) per MWh.

3.8 **Capacity Attributes.** Seller, as assignee of the Interconnection Customer's (as defined in the Interconnection Agreement) rights and obligations under the Interconnection Agreement, shall be responsible for any additional unpaid cost and installation of any upgrades payable by the Interconnection Customer under the Interconnection Agreement.

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer any Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall use commercially reasonable efforts to obtain and maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.13, Seller hereby covenants and agrees to transfer any Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to cause the Facility to be listed as in construction in the NQC list upon issuing a notice to proceed for the construction of the Facility.

3.9 [Reserved]

3.10 **CEC Certification and Verification.** Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the *RPS Eligibility Guidebook, Eighth Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law, with Seller's costs not to exceed the Compliance Expenditure Cap.

3.12 **California Renewables Portfolio Standard.** Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions.**"

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not

obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Metered Energy on an as-generated, instantaneous basis. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), Buyer shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties) or congestion charges associated with Metered Energy after its receipt at and from the Delivery Point. Seller shall be responsible for all charges, penalties, Negative LMPs, ratcheted demand or similar charges, and any transmission related charges, including imbalance penalties or congestion charges associated with Metered Energy up to the Delivery Point. Seller shall also be responsible for any other charges, costs or penalties assessed by CAISO that are associated with the Facility or Seller’s violation of applicable regulatory requirements, including failure to respond to ADS. Each Party shall perform all generation, scheduling, and transmission services in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered in accordance with this Agreement. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Scheduling Coordinator Responsibilities.**

(a) **Buyer as Scheduling Coordinator for the Facility.** Upon initial synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point, provided that Buyer shall be responsible for all acts and omissions of any Buyer-designated third party Scheduling Coordinator and for all costs, charges and liabilities incurred by any such third party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Buyer and any Buyer-designated third party Scheduling Coordinator shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this Agreement, all applicable Laws, and all CAISO requirements (including the CAISO Tariff). At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or any Buyer-designated third party as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's or Buyer's designated third party's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer or in connection with a Buyer Default. Buyer and Seller shall equally share the actual costs (including the costs of Buyer employees or agents if Buyer acts directly as the Facility's Scheduling Coordinator) reasonably incurred by Buyer as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Buyer or Buyer's designated third party to act as the Facility's Scheduling Coordinator or to Schedule the Facility ("SC Set Up Fee"); provided that the SC Set Up Fee shall not exceed Five Thousand Dollars (\$5,000.00). Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer or Buyer's designated third party (in either case, as Seller's SC) shall promptly make available to Seller all such information as is in its possession and necessary to comply with any requirements of Law applicable to Seller or the Facility, including information necessary for filing of "Electric Quarterly Reports" with FERC and information necessary to enable Seller to comply with NERC Generator Owner/Generator Operator requirements.

(b) **Notices.** Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, Forced Outages, Forced Outage reports, clearance requests, or

must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, which such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from the CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

4.4 **Forecasting.** Seller shall provide the forecasts described below. Seller's forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity and expected Metered Energy of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Average Expected Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in the form set forth in Schedule F-1, or as otherwise reasonably acceptable to Buyer.

(b) Monthly Forecast of Available Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Facility's Available Capacity (or if requested by Buyer, the expected Metered Energy). Seller may not change such Schedule past the deadlines provided in this section except in the event of a Forced Outage or Schedule change imposed by Buyer or the CAISO, in which case Seller shall promptly provide Buyer with a copy of any and all updates to such Schedule indicating changes from the then-current Schedule. These notices and changes to the Schedules shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein, then for such unscheduled delivery period only Buyer shall rely on the delivery Schedule provided in the Monthly Delivery Forecast or Buyer's best

estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced Outages (other than a scheduling change imposed by Buyer or CAISO) which results in a change to its deliveries (whether in part or in whole), Seller shall notify Buyer immediately by calling Buyer's on-duty Scheduling Coordinator. Seller shall notify Buyer and the CAISO of Forced Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.4(d), Seller will be responsible for a "**Forecasting Penalty**" equal to the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.4. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K; and further provided that Buyer must avoid Buyer Curtailment Periods in order to satisfy the Lease requirement that the Facility generate electricity at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year and Buyer's failure to do so will be a Buyer default of this Agreement.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders (such as Negative LMPs pursuant only to a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or a Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K and in Section 4.5(a), and further, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the applicable Contract Price.

(c) Reserved.

(d) Failure to Comply. Except if Buyer fails to comply with its obligations in the second proviso to Section 4.5(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

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

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

(a) Facility Maintenance. Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

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

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency or upon Notice of a Curtailment Order pursuant to the terms of the Interconnection Agreement or the CAISO Tariff.

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet (“**Expected Energy**”). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit F. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; *provided further* that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(h), *provided* that Seller fulfills its obligations under Sections 4.8(a) through (h) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused by Seller, or the result of any action or inaction, by Seller, then the amount of Metered Energy (MWh) in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (i) provides Replacement Product (as defined in Exhibit F) that is (A) delivered to Buyer at NP 15 EZ Gen Hub, (B) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (C) delivered upon a schedule reasonably acceptable to Buyer, and (D) delivered to Buyer without imposing additional costs upon Buyer; or (ii) provides replacement WREGIS Certificates from the Facility within ninety (90) days after the conclusion of the applicable Deficient Month and such WREGIS Certificates qualify for the same RPS compliance periods during which the WREGIS Certificate Deficit occurred.

(f) Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

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

ARTICLE 5 TAXES

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

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Energy produced by the Facility using CAISO Approved Meters. Such meters shall be maintained at Seller's cost. Meter data will be adjusted to reflect losses to the Point of Delivery. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 Invoicing.

(a) Seller shall make good faith efforts to deliver an invoice to Buyer for Product and Deemed Delivered Energy no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Facility for any Settlement Period during the preceding month, including the amount of Product in MWh produced by the Facility as read by the CAISO Approved Meter, the amount of Replacement Product delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Contract Price applicable to such Product; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

(b) Buyer, as Scheduling Coordinator, shall provide Seller with all necessary CAISO settlement data and the CAISO Charges Invoice no later than five (5) Business Days

following receipt of the T+12 settlement statements from CAISO in a form mutually agreed upon by Buyer and Seller.

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

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any

required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, including pursuant to Section 4.3(d), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer upon the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of such Daily Delay Damages within fifteen (15) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer (i) on the Commercial Operation Date if Seller elects to maintain its Development Security with Buyer as Performance Security or (ii) within ten (10) days following the Commercial Operation Date if Seller elects to provide a form of Performance Security which differs from the form of Development Security. Seller shall maintain the Performance Security in full force and effect until the Delivery Term has expired or terminated early, provided that Seller shall maintain an amount of Performance Security after the expiration or termination of the Delivery Term equal to the amount of all invoiced but unpaid amounts due from Seller to Buyer, provided further that such Performance Security shall not be

required to be in excess of the amount of the Performance Security required under this Agreement immediately prior to such expiration or termination. Buyer shall promptly return to Seller the portion of the Performance Security not allocated to invoiced but unpaid amounts pursuant to the prior sentence. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

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

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

ARTICLE 9 NOTICES

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

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

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; any Force Majeure as defined under the Lease or Sublease; any impediment to Seller’s ability to operate the Facility as a result of activities at the Site related to remediation of contamination, including repair, maintenance, alteration, or expansion of any monitoring or control system; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of

public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

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

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive three hundred sixty-five (365) day-period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 2.1(d).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.3, and except for Seller’s failure to comply with a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, the exclusive remedy for which is provided in Section 4.5(d)) and such failure is not remedied within thirty (30) days after Notice thereof or such longer period necessary to effect such remedy not to exceed ninety (90) days after Notice (A) if such remedy is feasible through the use of commercially reasonable efforts during such period and (B) so long as the Defaulting Party is diligently and continuously pursuing such remedy;

(iv) such Party becomes Bankrupt;

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

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.

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

(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

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

(iii) if in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within fifteen (15) Business Days after Notice thereof;

(v) [Reserved]

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

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

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

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

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

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

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

(c) With respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) An event of default of Buyer has occurred under the Lease, applicable notice of such default has been provided to Buyer pursuant to the Lease, the applicable cure period, if any, in the Lease has expired and Lessor has provided notice of its exercise of its right to terminate the Lease; or, if for any other reason, the Lease terminates due to Buyer's failure to take any action required or not take any action prohibited of Buyer as Lessee under the Lease, including any Early Termination pursuant to Section 4.1 of the Lease, other than any termination arising from an act or omission of Seller as Sublessee under the Sublease; or

(ii) Any termination of the Sublease as a result of Buyer default thereof.

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

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

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

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

(d) to suspend performance; and

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

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

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party. For the avoidance of doubt, if Buyer is the Defaulting Party, the Parties acknowledge that Seller will be unable to sell Product to any third party due to the exercise of termination provisions of the Lease. Accordingly, for purposes of calculating the Termination Payment and Gains, Losses and Costs, it shall be reasonable for Seller to assume it receives no revenue associated with sales of Product in calculating such amounts and the value of any tax benefits, determined on an after-tax basis, lost due to Buyer's default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives, if any, shall be deemed to be direct damages.

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

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's

calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

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

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN AND EXCEPT AS SET FORTH IN SECTION 19.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION

WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.2, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

EXCEPT AS SET FORTH IN SECTION 19.3, THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the

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

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

The Facility is located in the State of California.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its

terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim and affirmatively waives immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

13.4 **Buyer Covenants.** Buyer covenants that it will remain throughout the Contract Term, a governmental entity, a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and will remain throughout the Contract Term, qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. Continuing throughout the Contract Term, all persons making up the governing body of Buyer will remain the elected or appointed incumbents in their positions and will continue to hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent

to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in the case of (a) or (b), the assignee shall be a Qualified Assignee; *provided, further*, that in each such case of (a) and (b), Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer; *provided, however*, that Seller may initiate the dispute resolution mechanism under Section 16.2 in order to determine whether Seller's assignee meets such definition. Any Change of Control of Seller (whether voluntary or by operation of Law) will require the prior written consent of Buyer, which consent shall not be unreasonably withheld; *provided*, that a Change of Control shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment by Seller, its successors or assigns under clause (a) or (b) of the first sentence of this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been delivered by Buyer.

ARTICLE 15 LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice. Without limiting the foregoing, Buyer acknowledges that, subject to Seller's other obligations under this Agreement, Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements.

15.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in accordance with Article 11 and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of Lender upon foreclosure of Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that, as except as provided in any direct agreements between the Buyer and any Lender as contemplated pursuant to Section 15.2(b), Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

15.3 **Cure Rights of Lender.** Buyer shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and Buyer shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to the Buyer arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender pursuant to Section 15.2(b).

ARTICLE 16 DISPUTE RESOLUTION

16.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. **TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE**

RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **Attorneys' Fees.** In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

**ARTICLE 17
INDEMNIFICATION**

17.1 **Indemnification.**

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Party seeking indemnification (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay

such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 INSURANCE

18.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 1.1(f).

(g) Evidence of Insurance. Within thirty (30) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days' prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 19

CONFIDENTIAL INFORMATION

19.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or

proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement, or (d) to the recipient's Affiliates or to any of the recipient's or its Affiliates' employees, officers, directors, members, agents, representatives, counsel, accountants or auditors, in each case with a need to know such Confidential Information and which are subject to confidentiality agreements or other enforceable obligations no less protective than this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion provided such information does not include Confidential Information of the other Party. The Parties acknowledge and agree that this Agreement is subject to the California Public Records Act (Government Code Section 6250 et seq.). Nothing herein shall be deemed or construed to affect the rights or obligations of either Party to withhold or disclose any such Confidential Information in accordance with the California Public Records Act. The Parties will notify each other in writing promptly upon receipt of any request for information regarding this Agreement pursuant to the California Public Records Act.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Public Statements.** Neither Party shall issue (or cause its Affiliates to issue) a public statement regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 20 MISCELLANEOUS

20.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the

event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications except pursuant to the process set forth in Section 20.8.

20.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

20.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy buyer, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

20.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

20.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

20.7 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

20.8 **Facsimile or Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

20.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a joint powers authority in accordance with the Joint Powers Act pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

20.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event.

EXHIBIT A

DESCRIPTION OF THE FACILITY

The Facility is composed of multiple projects on separate sites with multiple interconnection points and revenue meters as more specifically depicted in (i) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 2 MW 1122-WD) and (ii) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 8.5 MW 1157-WD).

Site Name: Chevron Solar Energy Facility Site

APNs: 561-100-034, 561-100-037, and 561-100-038

County: Contra Costa

Guaranteed Capacity: MW AC: 10.5

P-node/Delivery Point: The Pnode/Delivery Point will be the Pnode assigned by the CAISO. There will be two interconnection points with capacities of 8.5MW to PG&E's 12.47 kV Richmond R 1120 distribution line and 2 MW to PG&E's 12.47 kV Richmond R 1129 distribution circuit.

Additional Information:

Provided that the PNode remains the same, Seller shall have an ability to add or remove APNs from the Site, provided that such APNs be in receipt of a final CUP, with Notice to Buyer.

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility within thirty (30) days after the date for completion of the Construction Start Milestone (as such date may be extended by the Development Cure Period, the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to the Site by Seller and/or its designees, including the physical movement of soil at the Site, grading, grubbing, site access preparation or vegetation removal at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility (“**Construction Start**”). On the date of the beginning of construction (the “**Construction Start Date**”), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable by Seller to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily Delay Damages shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the day that Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by 12/31/2017 (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to

Exhibit B-1

Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.

- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date until the Commercial Operation Date subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of the following delays:
- a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the date for completion of the Construction Start Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller;
 - b. a Force Majeure Event occurs;
 - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by the date for completion of the Initial Synchronization Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 3(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

Exhibit B-2

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
5. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof, and Seller shall replenish the Development Security to its full amount within three (3) Business Days after such draw.
6. **Damage Payment.** Notwithstanding anything to the contrary in this Agreement, except for Buyer’s termination right in connection with Section 11.1(b)(2) with respect to the Guaranteed Commercial Operation Date, Buyer’s sole remedy and Seller’s sole liability for the failure of Seller to meet the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, or for Seller’s failure to reach the Guaranteed Capacity shall be the payment by Seller of Daily Delay Damages, Commercial Operation Delay Damages, or Capacity Damages, as applicable, up to a total aggregate payment no more than the Damage Payment. For the avoidance of doubt, Seller’s total liability to Buyer for Daily Delay Damages, Commercial Operation Delay Damages, Capacity Damages and any other damages under this Agreement prior to the start of the Delivery Term shall not exceed the Damage Payment. If Seller has paid damages to Buyer equal to the Damage Payment, either Party will have a right to terminate this Agreement and neither Party will have any liability to the other Party in connection with such termination except for the obligation specified in Section 2.1(d).

Exhibit B-3

EXHIBIT C

CONTRACT PRICE

The Contract Price of the Product shall be:

Contract Year	Contract Price
1 – 15	\$ [REDACTED]
If the Delivery Term is extended, 16-20	\$ [REDACTED]

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Greg Brehm, Director of Power Resources
Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Fax No: (415) 459-8095
Phone No: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

SELLER:

Sean McBride, General Counsel
sPower
2180 South 1300 East, Suite 600
Salt Lake City, UT 84106
Fax No: (801) 679-3501
Phone No: (801) 679-3506
Email: smcbride@spower.com

EXHIBIT E

RESERVED

Exhibit E - 1

EXHIBIT F**GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (x) \$50/MWh and (y) the market value of Replacement Green Attributes.

D = the Contract Price for the Performance Measurement Period, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

Additional Definitions:

“Adjusted Energy Production” shall mean the sum of the following: Metered Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using the equation provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and

other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Contract Year for which the Replacement Product is being provided.

“**Replacement Energy**” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“**Replacement Product**” means (a) Replacement Energy and (b) Replacement Capacity Attributes.

SCHEDULE F-1

AVERAGE EXPECTED ENERGY (Year 1, subsequent years to be degraded)

Average Expected Energy, MWh Per Hour

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.4	3.6	4.4	4.6	4.8	4.8	4.2	3.2	0.8	(0)	(0)	(0)	(0)	(0)	(0)	(0)
FEB	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.5	2.5	4.7	5.4	6.0	5.9	5.8	4.9	4.0	2.0	0.2	(0)	(0)	(0)	(0)	(0)	(0)
MAR	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.8	4.6	6.6	7.3	7.6	7.9	7.5	7.3	6.1	3.6	0.9	(0)	(0)	(0)	(0)	(0)	(0)
APR	(0)	(0)	(0)	(0)	(0)	0	1.1	3.8	6.2	7.7	8.5	9.0	9.1	9.0	8.4	7.0	5.1	2.1	0.2	(0)	(0)	(0)	(0)	(0)
MAY	(0)	(0)	(0)	(0)	(0)	0.2	1.9	4.6	6.7	8.0	8.6	9.2	9.2	9.1	8.7	7.5	5.8	3.0	0.6	(0)	(0)	(0)	(0)	(0)
JUN	(0)	(0)	(0)	(0)	(0)	0.4	2.2	4.8	6.7	8.2	9.1	9.4	9.4	9.2	8.8	7.9	6.3	3.7	1.1	(0)	(0)	(0)	(0)	(0)
JUL	(0)	(0)	(0)	(0)	(0)	0.2	1.6	3.9	6.1	8.1	9.0	9.5	9.6	9.7	9.1	8.1	6.4	3.8	1.1	0	(0)	(0)	(0)	(0)
AUG	(0)	(0)	(0)	(0)	(0)	0	0.9	3.0	4.9	6.6	8.4	9.2	9.3	9.2	8.6	7.6	5.9	2.9	0.4	(0)	(0)	(0)	(0)	(0)
SEP	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.1	5.6	7.2	8.2	8.4	8.4	8.2	7.3	6.2	3.8	1.0	0	(0)	(0)	(0)	(0)	(0)
OCT	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.9	4.2	5.8	6.7	7.4	7.5	7.1	6.3	4.6	1.8	0.1	(0)	(0)	(0)	(0)	(0)	(0)
NOV	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.0	4.7	5.4	5.8	5.4	4.9	4.2	2.6	0.5	(0)	(0)	(0)	(0)	(0)	(0)	(0)
DEC	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.5	3.3	4.2	4.6	4.6	4.2	3.6	1.8	0.3	(0)	(0)	(0)	(0)	(0)	(0)	(0)

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

EXHIBIT G

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.

EXHIBIT H
RESERVED

Exhibit H - 1

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by _____ [*licensed professional engineer*] (“**Engineer**”) to Marin Clean Energy (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.
- (2) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Transmission System, [Name of Transmission System] on _____ [DATE]_____.
- (4) The Transmission System has provided documentation supporting full unrestricted release for Commercial Operation by [Transmission System as appropriate] on _____ [DATE]_____.
- (5) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on _____ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [licensed professional engineer] (“**Engineer**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Facility performance test under Seller’s EPC contract for the Facility demonstrated peak Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Its: _____

Date: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification (“**Certification**”) of the Construction Start Date is delivered by [SELLER ENTITY] (“**Seller**”) to MARIN CLEAN ENERGY (“**Buyer**”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility was executed on _____;
2. the Limited Notice to Proceed with the construction of the Facility was issued on _____ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____ (such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _____.

[SELLER ENTITY]

By: _____

Its: _____

Date: _____

EXHIBIT K

BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS

Operational characteristics of the Facility for Buyer Bid Curtailment and Buyer Curtailment Orders, which in each case must be equal to or greater than the resource flexibility reflected in the resource Master File, as such term is defined in the CAISO Tariff. Buyer, as Scheduling Coordinator, may request that CAISO modify the Master File for the Facility to reflect the findings of a CAISO audit of the Facility and to ensure that the information provided by Seller is true and accurate. Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to CAISO regarding the operational and technical constraints in the Master File for the Facility are accurate and are actually based on physical characteristics of the resource.

- Nameplate capacity of the Facility: 10.5 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 10 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 10
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 10
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 2 minutes
- Ramp Rate: 2 MW/minute
- Increments of Contract Capacity that can be curtailed: 0.1 MW

Illustrative Example:

	Time	Buyer's Order	Seller's Action
	10:00	Curtailment Order (Curtil to 0 MW at 10:10)	Seller implementing order and ramping down from __ MW (10 minutes)

10:10		At 0 MW
10:10 – 10:15		At 0 MW (minimum down time of 5 min)
10:15	Seller to return to Schedule (__ MW per the Schedule, at 10:23)	Seller implementing order and ramping up
10:23		At Schedule (__ MW, per the Schedule)

EXHIBIT L

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

Marin Clean Energy, a California joint powers authority

1125 Tamalpais Avenue

San Rafael, CA 94901

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of 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] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Power Purchase and Sale Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry of _____, 201_, subject to automatic extensions provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation in person or by courier to

Exhibit L - 1

the Issuer at [insert bank address] or by fax at facsimile no. (xxx) xxx-xxxx. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least sixty (60) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from the Beneficiary (to the extent required herein), to examine the documents and determine whether to accept or reject the documents and to inform Beneficiary accordingly. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

[Bank Name]

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Marin Clean Energy, a California joint powers authority, 1125 Tamalpais Avenue, San Rafael, CA 94901, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Power Purchase and Sale Agreement dated as of _____, 2016 (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 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, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

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

[Specify account information]

Marin Clean Energy, a California joint powers authority

Name and Title of Authorized Representative

Date_____

EXHIBIT M

BUYOUT OPTION

(1) Buyout Option. So long as no Event of Default with respect to Buyer has occurred and is continuing, no later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10th) Contract Year of the Contract Term, and (iii) the twentieth (20th) Contract Year of the Contract Term, if any, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility (the “**Buyout Option**”). If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the higher of the Minimum Purchase Price (as set forth in clause (3) below) or the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below. If Buyer does not deliver such Notice by the deadline set forth above for any purchase date, Buyer will be deemed to have elected not to exercise the Buyout Option with respect to, and only with respect to, the related purchase date. If the Buyout Option occurs under clauses (i) or (ii) above, subject to Section 2.1(d) of this Agreement, this Agreement shall terminate on the date of the closing of the sale of the Facility to Buyer as provided in clause (4) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit M, the Parties shall mutually agree upon an Independent Appraiser on or before the date that is sixty (60) days prior to the last day of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10th) Contract Year of the Contract Term, or (ii) the twentieth (20th) Contract Year of the Contract Term, if any, as the case may be. The Independent Appraiser shall determine, at equally shared expense of Buyer and Seller, the Fair Market Value of the Facility as of the date on which the Buyout Payment is to be paid. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the Independent Appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single Independent Appraiser, each Party shall contract for an Independent Appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two Independent Appraisers.

(3) Minimum Purchase Price. The Minimum Purchase Price shall be:

Purchase Option Date:	Minimum Purchase Price:
Contract Year 7	\$ [REDACTED]
Contract Year 10	\$ [REDACTED]
Contract Year 20	\$ [REDACTED]

(4) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute

all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

(5) Assignment and Assumption of Assumed Contracts and Transferred Permits. At the closing, Seller shall assign and be released from, and Buyer shall assume, and agree to pay, perform, fulfill and discharge all obligations of Seller under the Assumed Contracts and Transferred Permits, but only to the extent such obligations (i) arise after the closing, (ii) do not arise from or relate to any breach by Seller of any provision of any of such Assumed Contracts or Transferred Permits, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the closing that, with notice or lapse of time, would constitute or result in a breach of any of such Assumed Contracts or Transferred Permits, and (iv) are ascertainable, in nature and amount, solely by reference to the express written terms of such Assumed Contracts or Transferred Permits. No later than thirty (30) days prior to the scheduled closing date, Seller shall provide Buyer with a list of Assumed Contracts and Transferred Permits.

(6) Consents. Seller and Buyer will make, and thereafter diligently pursue, all registrations, qualifications or filings and take all other actions necessary or appropriate to obtain any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (“**Consent**”) required to consummate the sale, assignments and transfers contemplated upon the exercise of the Buyout Option.

(7) Costs. Except as otherwise expressly provided in this Exhibit M, each of Buyer and Seller will bear its respective expenses incurred in connection with performance of its obligations under this Exhibit M and the transactions contemplated by the Buyout Option, including all fees and expenses of agents, representatives, counsel, and accountants. Buyer shall be responsible for (i) all filing and registration fees and other expenses incurred in connection with obtaining any Consent and (ii) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed against Buyer or Seller by reason of the transfer of the Facility, the Assumed Contracts and Transferred Permits to Buyer under the Buyout Option and any deficiency, interest or penalty asserted with respect thereto.

(8) Definitions. For purposes of this Exhibit M, the following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Assumed Contracts**” means all contracts entered into by Seller or by which Seller is bound relating to the Facility.

“**Fair Market Value**” means the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm’s-length transaction, to a willing seller under no compulsion to sell on the applicable closing date, taking into account all relevant facts and circumstances relating to the Facility, including operation, maintenance and insurance costs, the cost of removing the Facility and restoring the Site to the condition required by the Sublease at the end of the Sublease term, rent payments under the Sublease and the cost of equipment replacement and repair, and assuming (i) delivery

of the expected generation for the then-remaining term of this Agreement (assuming exercise of Seller's right to extend the Delivery Term under Section 2.1(b)) at the Contract Price, as may be adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding (other than any such proceeding instituted by Buyer or on its behalf), or other material adverse event affecting all or any portion of the Facility prior to and as of the closing date for the purchase under the Buyout Option and (ii) that the buyer of the Facility will receive an assignment of Seller's rights, and will assume Seller's obligations, as Sublessee under the Sublease.

"Independent Appraiser" shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. Except as may be otherwise agreed by the Seller and Buyer, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or advisor to, either Buyer or Seller or their respective Affiliates.

"Transferred Permits" means any approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, notification, certification, registration, ruling, filing with, or right or license of or from a Governmental Authority relating to the Facility.

Proposed Execution Version 3/16/17

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”), effective as of March [], 2017 (the “**Effective Date**”), is by and between Marin Clean Energy, a California joint powers authority (“**Assignor**”), and MCE Solar One, LLC, a Delaware limited liability company (“**Assignee**”).

RECITALS

WHEREAS, Assignor is engaged in the development of the 10.5 MW AC photovoltaic electric generating facility located in the City of Richmond, Contra Costa County, California known as the MCE Solar One project (the “**Project**”);

WHEREAS, Assignor and Assignee intend that, from and after the Closing Date (as defined below), Assignee continue all development of the Project to permit the Project to be constructed, owned, leased, financed, operated and maintained by Assignee, and Assignor and Assignee are entering into this Agreement to effectuate the sale and assignment to Assignee of all Project assets of Assignor required for such purpose; and

WHEREAS, Assignor desires to transfer all of its rights, title and interest in and to the property described on Part A of Schedule 1 (as supplemented as set forth in Section 8(a)(i), the “**Assigned Property**”) and the contracts listed on Part B of Schedule 1 (as supplemented as set forth in Section 8(a)(i), the “**Assigned Agreements**” and, together with the Assigned Property, the “**Assigned Assets**”), and to be released from all of its duties, obligations and liability under the Assigned Agreements from and after the Closing Date, upon payment of the Purchase Price (as defined below).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires, in this Agreement (including in the recitals hereto):

(a) Reference to a given Section, Subsection, clause or Schedule is a reference to a Section, Subsection, clause or Schedule of this Agreement.

(b) The terms “hereof”, “herein”, “hereto”, “hereunder” and “herewith” refer to this Agreement as a whole.

(c) Reference to a given agreement (including the Assigned Agreements), instrument, document or law is a reference to that agreement, instrument, document or law as modified, amended, supplemented and restated through the date as of which such

reference is made, and, as to any law, any successor law and including rules and regulations promulgated thereunder.

(d) Reference to a Person includes its successors and permitted assigns. For purposes hereof, “**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

(e) “Includes” or “including” means “including, for example and without limitation”.

2. Purchase and Sale. Upon the terms and conditions set forth in this Agreement, including satisfaction of the conditions precedent set forth in Section 9, at the Closing, Assignor shall sell, assign, grant, bargain, deliver, convey and transfer to Assignee all of Assignor’s right, title and interest in and to the Assigned Assets, and Assignee shall accept such purchase and assignment and assume all of Assignor’s duties, obligations and liability under the Assigned Agreements accruing from and after the Closing Date. Except as provided in the foregoing sentence, Assignee shall not assume any liabilities or obligations of Assignor of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created. Without limiting the foregoing, the parties acknowledge that (i) the Assignment Agreement (the “**Stion Assignment Agreement**”), entered into as of May 5, 2016, among Stion Corporation, Stion MCE Solar One, LLC (“**Stion LLC**”) and Assignor, (ii) the Power Purchase and Sale Agreement (the “**Stion PPA**”), dated as of March 5, 2015, between Stion LLC and Assignor and (iii) the First Agreement (the “**First Agreement**”, and collectively with the Stion Assignment Agreement and the Stion PPA, the “**Excluded Agreements**”), entered into on June 16, 2016, between BAP Power Corporation (d/b/a Cenergy Power) and Assignor are not Assigned Agreements and that Assignee is not assuming any Excluded Agreement and has no rights or liability thereunder.

3. Compensation. As consideration for the Assigned Assets, Assignee agrees to compensate Assignor for the Assigned Assets on the Closing Date by payment to the account or accounts specified by Assignor in an amount of eight hundred thousand dollars (\$800,000.00) (the “**Purchase Price**”). The parties agree that the deposit (the “**Letter Agreement Deposit**”) made by Assignee to Assignor in the amount of one hundred five thousand dollars (\$105,000) under the letter agreement dated December 7, 2016 between Assignor and Assignee (the “**Letter Agreement**”) shall, notwithstanding any provision in the Letter Agreement to the contrary, be credited against the payment of the Purchase Price by Assignee at the Closing or, if applicable, refunded to Assignee in accordance with Section 25 or Section 27 of this Agreement. For the avoidance of doubt, the parties further agree and acknowledge that if the Closing occurs, the “Contingencies” under the Letter Agreement are deemed to be satisfied and that, if credited to the Purchase Price, the Letter Agreement Deposit will not also be credited to the Development Security (as defined in the PPA) as originally contemplated under the Letter Agreement.

4. Transfer Taxes; Tax Treatment of Compensation.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by Assignee when due. Assignee shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Assignor shall cooperate with respect thereto as reasonably necessary).

(b) The parties agree that none of the Assigned Assets constitute goodwill and that no Internal Revenue Service Form 8594 will be filed in connection with the assignment of the Assigned Assets pursuant to this Agreement. The parties will report, act and file tax returns in all respects and for all purposes consistent with such agreement. The parties will not take any position (whether in audits, tax returns or otherwise) that is inconsistent with such agreement, except to the extent otherwise required by applicable law.

5. Representations and Warranties of Assignor. Except as set forth in Schedule 5, Assignor represents and warrants to Assignee that the statements contained in this Section 5 are true and correct as of the Effective Date and as of the Closing Date. For purposes of this Section 5, “Assignor’s knowledge,” “knowledge of Assignor” and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Assignor, after due inquiry.

(a) Organization and Authority of Assignor; Enforceability. Assignor is a joint powers authority and a community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California. Assignor has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Assignor. This Agreement has been duly executed and delivered by Assignor and constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(b) No Conflicts; Consents. The execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby do not and will not: (i) violate or conflict with the organizational documents of Assignor; (ii) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Assignor, the Assigned Assets or the Project; (iii) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Assignor

is a party or to which any of the Assigned Assets are subject or which relates to the Project; or (iv) result in the creation or imposition of any encumbrance on the Assigned Assets or the Project. No consent, approval, waiver or authorization is required to be obtained by Assignor from any Person (including any governmental authority) in connection with the execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby, other than the consents set forth on Schedule 2, each of which has been obtained and is in full force and effect.

(c) Assigned Property. Assignor owns and has good title to the applicable Assigned Property, free and clear of encumbrances. There have not been any materials supplied or services rendered that could be the subject of a mechanics' lien on the Property (as defined in the Site Lease, and as used herein, the "**Property**") under California Civil Code Section 8400 *et. seq.*, for which amounts remain unpaid by Assignor or any of its affiliates. The Assigned Property is in good condition and is adequate for the uses to which it is being put, and none of the Assigned Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(d) Project Documents. There are no agreements with respect to or relating to the Project other than the Excluded Agreements and the following documents: (w) the Assigned Agreements, (x) the PPA (as defined below), (y) the Sublease (as defined below), relating to that certain Solar Energy Facility Site Lease (the "**Site Lease**"), dated November 4, 2015, by and between Chevron Products Company, as lessor, and Assignor, as lessee, as amended by the First Amendment to Master Lease (as defined below) and (z) the Consent to Sublease (as defined below, and together with the Assigned Agreements, the PPA, the Sublease and the Site Lease, collectively, in each case, the "**Project Documents**"). The execution, delivery and performance by Assignor of the Project Documents and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of Assignor. The Project Documents have been or on the Closing Date will be duly executed and delivered by Assignor, are or on the Closing Date will be in full force and effect and constitute or on the Closing Date will constitute the legal, valid and binding obligation of Assignor, enforceable against Assignor in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity. Assignor has a valid leasehold interest in the Property. None of Assignor or, to Assignor's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Agreement. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Project Document or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. No consent, approval, waiver or authorization is required to be obtained by Assignor from any Person

(including any governmental authority) in connection with the execution, delivery and performance by Assignor (or Assignee as its assignee) of the Project Documents, other than the consents set forth on Schedule 2, each of which has been obtained and is in full force and effect or will be obtained and in full force and effect at or prior to the Closing. True, complete and correct copies of each Assigned Agreement and of the Site Lease, and all amendments and supplements thereto, have been delivered by Assignor to Assignee.

(e) Permits.

(i) Part A of Schedule 3 sets forth a true, correct and complete list of all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents and orders issued or granted by a governmental authority (collectively, “**Permits**”) with respect to the Project (the “**Project Permits**”). Part B of Schedule 3 sets forth a true, correct and complete list of all applications for Project Permits (“**Permit Applications**”).

(ii) To Assignor’s knowledge, each Project Permit is validly issued, final and in full force and effect and, if an appeal period is specified by a governmental rule, the appeal period has expired. All fees and charges with respect to the Project Permits and Permit Applications have been paid in full. Assignor is in compliance in all material respects with all applicable Project Permits. Assignor has not received any written notification from any governmental authority alleging default or violation of any Project Permits. To the knowledge of Assignor, there are no pending proceedings or proceedings threatened in writing, that seek the revocation, cancellation, suspension, lapse or adverse modification of any Project Permit. Assignor has delivered to Assignee true, correct and complete copies of each Project Permit and Permit Application.

(f) Rights Relating to the Project. Other than the Excluded Agreements, Project Permits, the PPA, the Sublease, the Consent to Sublease and the Site Lease, the Assigned Assets constitute all of the rights relating to the development, construction, ownership, operation and maintenance of the Project held by Assignor.

(g) Compliance With Laws. Assignor has complied, and is now complying, with all applicable federal, state and local laws and regulations applicable to the Project and the Property.

(h) Environmental Matters. To Assignor’s knowledge, no Release of Hazardous Material has occurred, and to Assignor’s knowledge, there is no investigation or inquiry by any governmental authority or any other Person with respect to the presence or Release of any Hazardous Material at, onto, from or under the Property. To Assignor’s knowledge, there are no pending or threatened Environmental Claims that have been asserted against Assignor or its affiliates or relating to the Project, or to Assignor’s knowledge, the Property. Assignor is not in material violation of, and has not

received any notice in writing that it is in violation of, any Environmental Law with respect to the Project or the Property. For purposes of this Section 5(h), the following capitalized terms shall have the following meanings:

“Environmental Claim” means any and all administrative or judicial actions, liens, written notices, written complaints or docketed legal proceedings, whether criminal or civil, relating to the Project or the Property based upon, alleging, asserting or claiming any actual or potential (a) violation of any Environmental Law or (b) liability under any Environmental Law for any investigation, cleanup, removal, remediation or response, including the costs thereof, natural resource damages, property damage, personal injury, fines or penalties arising out of, based on, resulting from or related to the presence, release or threatened Release into the environment, of any Hazardous Material.

“Environmental Law” means any law relating to (a) the protection of the air, water, land, natural resources or the environment or (b) the generation, use, handling, treatment, storage, disposal, cleanup, Release or transportation of any Hazardous Materials.

“Hazardous Materials” means any substance, waste, contaminant or material that is listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or contaminant, under or pursuant to any Environmental Law.

“Release” means any disposal, discharge, injection, spill, leaking, leaching, dumping, pumping, pouring, emission, emptying, seeping or migration of any Hazardous Material into or upon any land or water or air or otherwise entering into the environment.

(i) Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation (**“Action”**) of any nature pending or, to Assignor’s knowledge, threatened against or by Assignor (A) relating to or affecting the Project; or (B) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(j) Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Assignor.

(k) Full Disclosure. No representation or warranty by Assignor in this Agreement, and no statement contained in any certificate or other document furnished or to be furnished to Assignee pursuant to this Agreement, contains any untrue statement of

a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. Assignor has delivered or made available to Assignee true, correct and complete copies of all documents in its possession that it reasonably believes are material to Assignee's investment in the Project, and true copies of all amendments to such documents, and all other material information relevant to the Project. All such information provided to Assignee is, taken as a whole, accurate in all material respects and none of such information provided by or on behalf of Assignor contains an untrue statement of material fact or omits to state any material fact which is necessary in order to make the statements therein not misleading in any material respect.

(l) Project Expenses. Except as set forth on Schedule 4, there are no amounts which are due and unpaid under the Assigned Agreements or with respect to the Assigned Agreements.

6. Covenants.

(a) Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Assignee, Assignor shall (x) conduct the development of the Project in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the Project and the Assigned Assets. Without limiting the foregoing, from the date hereof until the Closing Date, Assignor shall:

- (i) preserve and maintain all Project Permits;
- (ii) pay the obligations in respect of the Project when due;
- (iii) maintain the properties and assets included in the Assigned Property in the same condition as they were on the Effective Date, subject to reasonable wear and tear;
- (iv) perform all of its obligations under all Assigned Agreements; and
- (v) comply in all material respects with all laws applicable to the Project or the ownership and use of the Assigned Assets.

(b) Access to Information. From the date hereof until the Closing, Assignor shall (i) afford Assignee and its Representatives (as defined below), during regular business hours, full and free access to and the right to inspect all of the real property, properties, assets, premises, books and records, contracts and other documents and data related to the Project, including the Assigned Assets; (ii) furnish Assignee and its Representatives with such information related to the Project as Assignee or any of its Representatives may reasonably request; and (iii) instruct the Representatives of Assignor to cooperate with Assignee in its investigation of the Project. Any investigation pursuant

to this subsection shall be conducted in such manner as not to interfere unreasonably with the development of the Project. No investigation by Assignee or other information received by Assignee shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Assignor in this Agreement. As used herein, “**Representative**” means, with respect to any Person, any and all directors, officers, employees, actual and prospective financing parties, consultants, financial advisors, counsel, accountants and other agents of such Person.

(c) No Solicitation of Other Bids. Assignor shall not, and shall not authorize or permit any of its affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an inquiry, proposal or offer from any Person (other than Assignee or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Project or the Assigned Assets (a “**Proposal**”); (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Proposal. Assignor shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Proposal.

(d) Notice of Certain Events. From the date hereof until the Closing, Assignor shall promptly notify Assignee in writing of:

(i) any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (x) the business, operations, condition (financial or otherwise) or assets of the Project or the Assigned Assets, (y) the value of the Project or the Assigned Assets, or (z) the ability of Assignor to consummate the transactions contemplated hereby on a timely basis (a “**Material Adverse Effect**”);

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any governmental authority in connection with the transactions contemplated by this Agreement; and

(iv) any actions commenced or, to Assignor’s knowledge, threatened against, relating to or involving or otherwise affecting the Project or the Assigned Assets that, if pending on the Effective Date, would have been required to have been disclosed by Assignor or that relates to the consummation of the transactions contemplated by this Agreement.

Assignee's receipt of information pursuant to this subsection (d) shall not operate as a waiver of, be deemed to amend or supplement or otherwise affect any representation, warranty or agreement given or made by Assignor in this Agreement.

(e) Closing Conditions. From the date hereof until the Closing, Assignor and Assignee shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth herein.

7. Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place on the third (3rd) business day following satisfaction, or waiver by the parties, of the conditions precedent set forth in Section 9, or on such other date as the parties agree in writing (the "**Closing Date**"). Assignor shall provide Assignee with no less than fifteen (15) business days' (or such shorter period acceptable to Assignee) prior written notice of the proposed Closing Date.

8. Closing Deliverables.

(a) Assignor Deliverables. At the Closing, Assignor shall deliver to Assignee the following:

(i) a written update, supplement or amendment to Schedule 1 (Assigned Assets), Schedule 2 (Consents), Schedule 3 (Permits), Schedule 4 (Project Expenses) and Schedule 5 (Exceptions to Representations and Warranties), as may be required to make the representations and warranties set forth in Section 5 true and correct; provided, that no such update, supplement or amendment shall be made without the consent of Assignee and each shall be subject to the approval of Assignee and provided, further, that no such update, supplement or amendment shall cure any breach of any such representation or warranty made as of an earlier date;

(ii) a Bill of Sale, Assignment and Assumption Agreement in the form of Exhibit A (the "**Assignment**"), duly executed by Assignor;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Assignor, certifying: (y) as to true and complete copies of the formational, organizational and governing documents of Assignor, and all resolutions adopted by the board of directors or other governing body of Assignor authorizing the execution, delivery and performance of this Agreement, the Assignment, the PPA, the Sublease, the Consent to Sublease, and the First Amendment to Master Lease (as defined below); and (z) as to the incumbency of any Person executing this Agreement and any other document delivered hereunder;

(iv) the Power Purchase and Sale Agreement in the form of Exhibit B (the "**PPA**"), duly executed by Assignor;

(v) the Sublease Agreement providing for the sublease by Assignor to Assignee of the Property (as defined in the Site Lease) (the “**Sublease**”), duly executed by Assignor, and the Consent to Sublease providing for the consent by Chevron Products Company to the Sublease (the “**Consent to Sublease**”), duly executed by Assignor and Chevron Products Company, in each case in form and substance reasonably satisfactory to Assignee;

(vi) the First Amendment to Solar Energy Facility Site Lease (the “**First Amendment to Master Lease**”), duly executed by Chevron Products Company and Assignor, in form and substance reasonably satisfactory to Assignee;

(vii) the consents set forth in Schedule 2, each in form and substance reasonably satisfactory to Assignee and duly executed by the parties thereto;

(viii) recent bank statements from Wells Fargo Bank, National Association (the “**Escrow Agent**”) showing the amount then held in escrow under the Escrow Agreements listed in Part B of Schedule 1 (the “**Escrow Agreements**”);

(ix) an unconditional final lien waiver for the amount paid with respect to any item of Assigned Property constructed by a third party contractor for Assignor or its affiliate, each in form and substance reasonably satisfactory to Assignee;

(x) an estoppel certificate from Chevron Products Company as required by Section 12.2.1 of the Site Lease in form and substance reasonably satisfactory to Assignee; and

(xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Assignee, as may be required to give effect to this Agreement.

(b) Assignee Deliverables. At the Closing, Assignee shall deliver to Assignor (i) the Purchase Price, (ii) the Assignment, duly executed by Assignee, and (iii) the PPA, the Sublease and the Consent to Sublease, each duly executed by Assignee.

9. Conditions to Obligations of Assignee. The obligations of Assignee to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Assignee’s waiver, at or prior to the Closing, of each of the following conditions:

(a) the representations and warranties of Assignor contained in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

(b) Assignor shall have duly (i) performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date and (ii) delivered all deliverables specified in Section 8(a);

(c) Assignee shall have received evidence reasonably satisfactory to Assignee that the Assigned Assets are free and clear of all liens and encumbrances, including without limitation, receipt of UCC, judgment, litigation and tax lien searches on Assignor and any prior owners of the Assigned Assets;

(d) Assignee shall have received a title report for the Property of a recent date in form and substance reasonably satisfactory to Assignee;

(e) Assignee shall have received an ALTA survey of the Property of a recent date in form and substance reasonably satisfactory to Assignee, showing, among other things, the location of the exceptions to title noted in the title report delivered pursuant to Section 9(d); and

(f) from the Effective Date, there shall not have occurred any event or events that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

10. Purchased Assigned Assets “AS IS”; Assignee’s Acknowledgment Regarding Same. Assignee agrees, warrants, and represents that (a) Assignee is acquiring the Assigned Assets on an “AS IS” and “WITH ALL FAULTS” basis based solely on Assignee’s own investigation of the Assigned Assets and the representations and warranties of Assignor set forth above and (b) neither Assignor nor any representative of Assignor has made any warranties, representations or guarantees, express, implied or statutory, written or oral, in respect of the Assigned Assets, other than the representations and warranties of Assignor set forth above. Assignee agrees, warrants and represents that, except as set forth in this Agreement (including the representations and warranties of Assignor set forth above), Assignee has relied, and shall rely, solely upon Assignee’s own investigation of all such matters, and that Assignee assumes all risks with respect thereto.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic means shall be deemed to be effective as manual delivery thereof.

12. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof

and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

13. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of California without regard to the conflicts of law provisions thereof. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

14. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from a party identifying such dispute, the parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after notice of the dispute, a party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15. Expenses; Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by a party of any covenant or condition herein contained, the prevailing party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action. Except as set forth in the prior sentence, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

16. Amendments and Modifications. This Agreement may not be amended, supplemented or otherwise modified, nor may any obligations hereunder be deemed waived, except by a written instrument signed by each of the parties hereto.

17. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

18. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

19. Severability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect, and this Agreement shall be interpreted so as to give full effect to its terms and still be valid and enforceable.

20. Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

21. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purposes of this Agreement and the transfer of the Assigned Assets to Assignee. Without limitation of the foregoing, Assignor agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered to Assignee all such other acts, deeds, assignments, transfers, conveyances, powers of attorney, assurances, additional instruments, notices, and other documents all to more fully and effectively grant, convey and assign to Assignee the Assigned Assets conveyed hereby and intended so to be.

22. Indemnification.

(a) From and after the Closing Date, Assignor shall defend, indemnify and hold harmless Assignee and its affiliates and their respective officers, directors, employees, partners, managers, members, stockholders, counsel, accountants, financial advisers, agents, engineers and consultants from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including reasonable attorneys' fees and disbursements ("**Losses**"), to the extent arising from or relating to (a) any inaccuracy in or breach of any of the representations or warranties of Assignor contained in this Agreement, or (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Assignor pursuant to this Agreement.

(b) From and after the Closing Date, Assignee shall defend, indemnify and hold harmless Assignor and its affiliates and their respective officers, directors, employees, partners, managers, members, stockholders, counsel, accountants, financial advisers, agents, engineers and consultants from and against all Losses, to the extent arising from or relating to (a) any inaccuracy in or breach of any of the representations or warranties of Assignee contained in this Agreement, or (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Assignee pursuant to this Agreement.

(c) Each party's aggregate obligation to indemnify for all matters under this Section 22 shall not exceed eight hundred thousand dollars (\$800,000), plus the reasonable costs and expenses incurred by such party for the defense of any claims. No claims for indemnification shall be recoverable hereunder until the aggregate amount of all losses exceeds fifty thousand dollars (\$50,000) (the "**Deductible**"), at which time the indemnifying party shall be required to indemnify for all Losses in excess of the Deductible subject to the limit set forth in this Section 22(c). Neither party shall be liable to the other party for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties contained in this Agreement if the claiming party had actual knowledge of such inaccuracy or breach prior to the Closing.

(d) The rights and remedies provided in this Section are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

(e) Each indemnified party will act in good faith to take commercially reasonable steps to mitigate all Losses, which steps shall include availing itself of any reasonably and commercially practicable defenses, limitations, rights of contribution, and claims against third Persons and other rights at law or equity, provided that once the indemnifying party assumes the defense of a claim, the indemnified party's obligations under this Section 22(e) in respect of the Losses relating to such claim shall be limited to providing reasonable cooperation with the indemnifying party in the defense of such claim and, prior to such time, the indemnified party's obligations under this Section 22(e) to pursue defenses, limitations, rights of contribution and claims against third parties shall be subject to the indemnifying party's payment of the costs thereof (including reasonable attorneys' fees).

(f) The indemnifying party shall assume and thereafter conduct (at its sole expense) the defense of any third party claim; provided, that the indemnifying party shall not consent to the entry of any judgment or enter into any settlement with any third party without the prior written consent of the indemnified party (not to be unreasonably withheld, delayed or conditioned).

(g) Unless and until the indemnifying party assumes the defense of the third party claim as provided above, the indemnified party may defend against the third party claim in any manner it may reasonably deem appropriate (at the indemnifying party's sole expense); provided, that to the extent that the indemnifying party is not provided with the opportunity to assume the defense of such third party claim, the indemnifying party shall not be responsible for the payment of any fees of counsel of the indemnified party in respect of such matter. In no event will the indemnified party consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the indemnifying party (not to be unreasonably withheld, delayed or conditioned) unless the indemnifying party disclaims liability for the indemnification of such third party claim.

23. Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

24. Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL,

EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, OTHER THAN DAMAGES THAT HAVE BEEN AWARDED TO A THIRD PARTY WHOSE CLAIM IS SUBJECT TO INDEMNIFICATION HEREUNDER.

25. Termination.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by the mutual written consent of Assignor and Assignee;

(ii) by Assignee by written notice to Assignor if: (x) Assignee is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Assignor pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 9 and such breach, inaccuracy or failure has not been cured by Assignor within ten (10) days of Assignor's receipt of written notice of such breach from Assignee; or (y) any of the conditions set forth in Section 9 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by May 1, 2017; or

(iii) by Assignor by written notice to Assignee if Assignor is not then in material breach of any provision of this Agreement and any of the conditions set forth in Section 9 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by May 1, 2017.

(b) In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except as set forth in Sections 22 and 23 and except that upon such termination Assignor shall return the Letter Agreement Deposit to Assignee.

26. Interconnection Agreements. From and after the Closing Date, Assignee agrees to pay when due all amounts payable under (x) Sections 4, 5 and 6 of that certain Small Generator Interconnection Agreement (SGIA), dated August 5, 2015, between Pacific Gas and Electric Company ("PG&E") and Stion LLC for Project Chevron 2MW 1122-WD (as assigned to Assignor and as otherwise amended and modified, "SGIA 1122") and (y) Sections 4, 5 and 6 of that certain Small Generator Interconnection Agreement (SGIA), dated February 16, 2016, between PG&E and Stion LLC for Project Chevron 8.5 1157-WD (as assigned to Assignor and as otherwise amended and modified, "SGIA 1157" and, together with SGIA 1122, the "SGIAs") (such amounts, collectively, the "IA Payments"). If the Closing occurs, within sixty (60) days following

receipt of the final accounting under Section 6 of each SGIA (each, a “**Final Accounting**”), Assignee shall calculate the sum of (a) the aggregate amounts held by the Escrow Agent under the Escrow Agreements on the Closing Date *less* (b) any IA Payments paid by Assignee after the Closing Date *plus* (c) any reimbursements to Assignee under Section 6 of each SGIA (such sum, the “**True-Up Amount**”). Assignee shall provide supporting documentation for the calculation of the True-Up Amount to Assignor. If the True-Up Amount is a positive number, and provided that all amounts held by the Escrow Agent under the Escrow Agreements have been released to Assignee, Assignee agrees to pay to Assignor, no later than sixty (60) days after each Final Accounting, such True-Up Amount, in immediately available funds. If the True-Up Amount is a negative number, Assignor agrees to pay to Assignee, no later than sixty (60) days after each Final Accounting, the absolute value of such True-Up Amount, in immediately available funds.

27. Assignee Termination Right. Notwithstanding anything to the contrary contained in this Agreement or any contract or agreement referred to herein, Assignee shall have the right to terminate the PPA and the Sublease (“**Termination Right**”) at any time prior to the Commercial Operation Date (as defined in the PPA) if, after request by Assignee, Chevron Products Company does not (a) consent to the grant of a mortgage or deed of trust on, and/or security interest in, Assignee’s rights under the Sublease and Assignee’s rights in the Project and the PPA to secure a loan or other financing of the Project (“**Project Loan**”), (b) enter into a customary lender’s consent with the Person(s) making the Project Loan which, among other things, requires that Chevron Products Company provide such Person(s) with notices of default under the Site Lease and a right to cure such defaults for a period of time in excess of the cure periods and grace periods in the Site Lease and permits such Person(s) to foreclose on the Sublease, the Project and the PPA and to transfer the Sublease, the Project and the PPA to a qualified successor (as agreed by Chevron Products Company and such Person(s)) in connection with the exercise of remedies under the Project Loan or (c) consent to the tax equity financing of the Project (including through a sale-leaseback financing of the Project) by Assignee if Assignee or the tax equity investor(s) reasonably determines that such consent is necessary under the Site Lease or the Consent to Sublease. If Assignee exercises the Termination Right by giving Assignor no less than fifteen (15) days’ notice of the termination date, the PPA and Sublease shall automatically terminate on the date specified as the termination date in such notice without further liability to either Assignee or Assignor under either agreement, other than the obligations expressly set forth below. In such event, Assignee and Assignor shall take all such actions and execute, acknowledge and deliver all such further documents that are reasonably necessary to (i) transfer all of Assignee’s rights, title and interest in and to the Assigned Assets back to Assignor (subject to receipt of required consents and approvals) and (ii) evidence the termination of the PPA and the Sublease (including filing of a memorandum of termination of the Sublease in the public records). After completion of the obligations in clause (ii) of the immediately preceding sentence and at the time of the transfer in clause

(i) of the immediately preceding sentence, Assignor shall refund the Purchase Price paid by Assignee and deliver the Development Security (as defined in the PPA) and the Deposit (as defined in the Sublease) to Assignee, and Assignor and Assignee shall have no further obligations under the PPA, Sublease or this Agreement after such termination date (other than obligations which expressly survive the termination of the PPA, Sublease or this Agreement under the terms of such agreements).

28. Notices. Any notice required, permitted or contemplated hereunder shall be in writing and addressed to the applicable party at the following address:

If to Assignor:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attention: Greg Brehm, Director of Power Resources
Fax No.: (415) 459-8095
Phone No.: (415) 464-6037
Email: gbrehm@mceCleanEnergy.org

with a copy to (which shall not constitute notice):

Troutman Sanders LLP
100 SW Main St., Suite 1000
Portland, Oregon 97204
Attention: Stephen Hall
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

If to Assignee:

MCE Solar One, LLC c/o sPower
Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749
Attention: General Counsel
Phone No.: (801) 679-3500
Fax No.: (801) 679-3501
Email: legal@spower.com

Each notice required, permitted or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) business days following the date of the postmark on the envelope in which such notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next business day after the same is delivered by the sending party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the

sending party provides a copy of such electronic notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

ASSIGNOR:

MARIN CLEAN ENERGY,
a California joint powers authority

By: _____
MCE Chairperson

By: _____
MCE CEO

ASSIGNEE:

MCE SOLAR ONE, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

Schedule 1
to Purchase and Sale Agreement

Assigned Assets

Part A - Assigned Property

1. Bio Mitigation Fencing
2. Security Fencing
3. Surveys, designs, solar resource studies, geotechnical reports, soils reports, and other reports and studies relating to the Project
4. All building permit design sets submitted in connection with applications for a building permit
5. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Stion Corporation, its officers, employees and agents in the course of implementing that certain First Agreement between MCE and Stion Corporation, dated October 27, 2014, as assigned and delivered to, or otherwise in the possession of, MCE pursuant to the Stion Assignment Agreement

Part B - Assigned Agreements

1. Small Generator Interconnection Agreement (SGIA), dated August 5, 2015, between Pacific Gas and Electric Company (“**PG&E**”) and Stion MCE Solar One, LLC (“**Stion LLC**”) for Project Chevron 2MW 1122-WD (“**SGIA 1122**”), as assigned to Marin Clean Energy (“**MCE**”) pursuant to the Assignment Agreement, dated May 5, 2016, between Stion Corporation, Stion LLC and MCE (the “**SGIA Assignment**”) (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated July 24, 2016, between Stion LLC, MCE and PG&E), as amended by the First Amendment to the Small Generator Interconnection Agreement, dated October 26, 2016, between MCE and PG&E
2. Small Generator Interconnection Request (Application Form), dated January 21, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
3. Fast Track Process Initial Review, dated February 5, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
4. Fast Track Process Supplemental Review, dated March 22, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
5. Small Generator Interconnection Agreement (SGIA), dated February 16, 2016, between PG&E and Stion LLC for Project Chevron 8.5 1157-WD (“**SGIA 1157**”), as assigned to MCE pursuant to the SGIA Assignment (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated August 4, 2016,

between Stion LLC, MCE and PG&E (the “**SGIA 1157 Consent to Assignment**”), as amended by the First Amendment to the Small Generator Interconnection Agreement, dated August 24, 2016, between MCE and PG&E

6. Small Generator Interconnection Request (Application Form), dated January 23, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
7. Electrical Independence Test Report, dated March, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
8. System Impact Study report, dated July 8, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
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10. Escrow Agreement between Stion LLC, PG&E and Wells Fargo Bank, National Association, dated August 24, 2015, relating to SGIA 1122, as assigned to MCE pursuant to the SGIA Assignment
11. Escrow Agreement between Stion LLC, PG&E and Wells Fargo Bank, National Association, dated August 24, 2015, relating to SGIA 1157, as assigned to MCE pursuant to the SGIA Assignment

Schedule 2
to Purchase and Sale Agreement

Consents

1. Consent of PG&E to the Assignment of the SGIA 1122, the SGIA 1157 and the other related Assigned Agreements listed as items 2-4 and 6-9, inclusive, in Part B of Schedule 1
2. Consent of Wells Fargo Bank, National Association and of PG&E, to the assignment of the Escrow Agreements listed in Part B of Schedule 1
3. [Port Authority of San Francisco authorization for the Site Lease and Sublease]¹

¹ Subject to further due diligence

Schedule 3
to Purchase and Sale Agreement

Permits

Part A - Project Permits

[_____]

Part B - Permit Applications

[_____]

Schedule 4
to Purchase and Sale Agreement

Project Expenses

	Date	Num	Name	Memo	Debit
ABLE FENCE COMPANY, INC.					
	11/29/2016	6714	ABLE FENCE COMPANY, INC.	Furnish labor and materials to install chain link fencing and gates at the Solar Field Array.	77,865.00
	08/01/2016	2016-08-01	ABLE FENCE COMPANY, INC.	Lost time on 8/1/16 at Chevron site in Richmond	1,706.00
Total ABLE FENCE COMPANY, INC.					79,571.00
BAP POWER CORPORATION (Cenergy)					
	10/10/2016	11924	BAP POWER CORPORATION	Utility locating	1,200.00
Total BAP POWER CORPORATION					1,200.00
BARNETT ENVIRONMENTAL					
	03/31/2015	031505	BARNETT ENVIRONMENTAL	CEQA Coordination	1,785.93
	05/21/2015	051510	BARNETT ENVIRONMENTAL	CEQA Coordination	1,800.00
	07/23/2015	071511	BARNETT ENVIRONMENTAL	CEQA Coordination	900.00
	09/01/2015	061511	BARNETT ENVIRONMENTAL	CEQA Coordination	1,200.00
	09/10/2015	081511	BARNETT ENVIRONMENTAL	CEQA Coordination	1,500.00
	10/10/2015	091508	BARNETT ENVIRONMENTAL	CEQA Coordination	600.00
	10/31/2015	101504	BARNETT ENVIRONMENTAL	CEQA Coordination	2,400.00
	11/30/2015	111510	BARNETT ENVIRONMENTAL	CEQA Coordination	1,150.05
	03/17/2016	031602	BARNETT ENVIRONMENTAL	CEQA Coordination	3,046.65
	08/01/2016	071606	BARNETT ENVIRONMENTAL	CEQA Coordination	1,870.38
	09/30/2016	091612	BARNETT ENVIRONMENTAL	CEQA Coordination - WEAP Training (fencing)	696.60
	11/14/2016	101615	BARNETT ENVIRONMENTAL	CEQA Coordination - WEAP Training (fencing)	984.18
Total BARNETT ENVIRONMENTAL					17,933.79
CHEVRON PRODUCTS COMPANY					
	12/03/2015	MCE-151203	CHEVRON PRODUCTS COMPANY	Solar Energy Facility - BCDC & RWQCB Applications, Development of BMPs, Preconstruction	5,438.00
	08/01/2016	MCE-160831	CHEVRON PRODUCTS COMPANY	Solar Energy Facility - Ongoing EHS and Biological support	3,335.00
	09/01/2016	MCE-160519	CHEVRON PRODUCTS COMPANY	April Solar Energy Facility - Ongoing EHS and Biological support	10,465.00
Total CHEVRON PRODUCTS COMPANY					19,238.00
CONTRA COSTA COUNTY CLERK RECORDER					
	11/19/2015	2015-11-19	CONTRA COSTA COUNTY CLERK RECORDER	Notice of Determination	3,119.75
Total CONTRA COSTA COUNTY CLERK RECORDER					3,119.75
GERALD CABRERA					
	11/01/2014	1975	GERALD CABRERA	Consulting relating to Solar Site	2,240.00
	01/16/2015	1976	GERALD CABRERA	Consulting relating to Solar Site	1,440.00
	05/01/2015	1980	GERALD CABRERA	Consulting relating to Solar Site	1,280.00
Total GERALD CABRERA					4,960.00

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GOEBEL CONSTRUCTION, INC					
	10/24/2016	0010329	GOEBEL CONSTRUCTION, INC	Landfill 15 erosion control installation	57,661.00
	11/07/2016	0010362	GOEBEL CONSTRUCTION, INC	Landfill 15 erosion liner repair	103,205.00
	01/30/2017	219	GOEBEL CONSTRUCTION, INC	Solar Array Site Grading - Chevron	117,476.00
	02/02/2017	290	GOEBEL CONSTRUCTION, INC	Solar Array Site Grading - Chevron	9,609.00
Total GOEBEL CONSTRUCTION, INC					287,951.00
GREG BREHM					
	11/30/2015	2015-12-10	GREG BREHM	Contra Costa Recorder Fees - Memorandum of Lease	79.50
Total GREG BREHM					79.50
MASTERCARD - CARD SERVICE CENTER PA #4516					
	01/03/2017	2016-12-29	MASTERCARD - CARD SERVICE CENTER PA #4	FastSigns (Signage for Solar One)	903.48
Total MASTERCARD - CARD SERVICE CENTER PA #4516					903.48
NET ELECTRIC INC					
	09/12/2016	16-164	NET ELECTRIC INC	Solar One - project services performed through 7/28	25,572.50
Total NET ELECTRIC INC					25,572.50
PG&E (Non-Energy)					
	11/18/2016	0007594374-6	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW - costs through October 2016	39,696.10
	08/01/2016	0007514868-4	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW, and distribution upgrades	9,737.65
	08/01/2016	0007531099-5	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW	4,272.51
	08/01/2016	0007558529-9	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW	4,271.38
	09/19/2016	0007574646-1	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW - costs through August 2016	4,999.32
	10/20/2016	0007585388-7	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW - costs through September 2016	13,243.29
	12/01/2016	0007577580-9	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW - Supplemental Review	7,136.29
	12/01/2016	0007602656-6	PG&E (Non-Energy)	Interconnection Facilities - Chevron 2MW - costs through November 2016	6,520.78
Total PG&E (Non-Energy)					89,877.32
PG&E Electric Generation Interconnection					
	01/01/2015		PG&E Electric Generation Interconnection	Relassifying PG&E Electric Generation Inter Connection Request Fee on 12/11/14 to Solar Fa	800.00
	01/26/2015	2015-01-26	PG&E Electric Generation Interconnection	Interconnection Fee	800.00
	02/17/2015	2015-02-17	PG&E Electric Generation Interconnection	Supplemental Review	2,500.00
	03/31/2016		PG&E Electric Generation Interconnection	To recognize expense for portion of deposit not returned - Reverse of GJE OB -- To record	12,489.85
Total PG&E Electric Generation Interconnection					16,589.85
RINCON CONSULTANTS INC					
	11/07/2014	2014-11-07	RINCON CONSULTANTS INC	Environmental design - Retainer per contract	2,500.00
	01/01/2015	22241	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	5,918.75
	02/19/2015	22502	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	7,183.75
	07/01/2015	23413	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	1,929.99
	07/01/2015	23442	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	15,266.25
	09/01/2015	23829	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	14,035.80
	11/01/2015	24805	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	10,553.13
	01/01/2016	25006	RINCON CONSULTANTS INC	Environmental Support Services - Solor Project	9,939.09
Total RINCON CONSULTANTS INC					67,326.76

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SAGE RENEWABLE ENERGY CONSULTING, INC.					
	01/31/2017	552	SAGE RENEWABLE ENERGY CONSULTING, INC	modified accrual adjustment	5,840.00
Total SAGE RENEWABLE ENERGY CONSULTING, INC.					5,840.00
STION CORPORATION					
	11/05/2014	60689	STION CORPORATION	Contract Milestone 1	5,000.00
	11/07/2014	60712	STION CORPORATION	Site 2 - Contract Milestone 1	5,000.00
	01/27/2015	61454	STION CORPORATION	Contract Milestone 2	10,000.00
	01/27/2015	61453	STION CORPORATION	Site 2 Contract Milestone 2	10,000.00
	08/11/2015	63053	STION CORPORATION	Contract Milestone 3	10,000.00
Total STION CORPORATION					40,000.00
TROUTMAN SANDERS LLP					
	11/01/2014		TROUTMAN SANDERS LLP	Troutman Sanders invoice 1623756 - LRDF portion per Beth 12/4/14 email	4,437.00
	03/31/2016	C499	TROUTMAN SANDERS LLP	Reclass from legal to MCE Solar One - invoice 1751287: 1397.25; 1822.50; 745.20; 303.75	4,268.70
	03/31/2016	C499	TROUTMAN SANDERS LLP	Reclass from legal to MCE Solar One - invoice 1675834: \$911.25 2065.50; 607.5; 243	3,827.25
	03/31/2016	C499	TROUTMAN SANDERS LLP	Reclass from legal to MCE Solar One - invoice 1662868: \$121.50; 425.25	546.75
	03/31/2016	C499	TROUTMAN SANDERS LLP	Reclass from legal to MCE Solar One - invoice 1655746: \$607.50; 2490.50; 850.50	3,948.50
	03/31/2016	1754794	TROUTMAN SANDERS LLP	March Legal Services - Stion	3,402.00
	08/01/2016	1796037	TROUTMAN SANDERS LLP	Legal	2,551.00
	09/01/2016	1801270	TROUTMAN SANDERS LLP	Legal	1,038.83
	11/01/2016	1816702	TROUTMAN SANDERS LLP	Legal	1,385.11
Total TROUTMAN SANDERS LLP					25,405.14
WOOD RODGERS INC					
	11/01/2014	91194	WOOD RODGERS INC	Professional Service through 10/31/14	6,638.75
	11/30/2014	91604	WOOD RODGERS INC	Professional Service through 11/30/14	11,806.25
	12/31/2014	91763	WOOD RODGERS INC	Professional Service through 12/31/14	1,680.00
	02/28/2015	92585	WOOD RODGERS INC	Professional Service through 2/28/15	2,172.50
	03/31/2015	93046	WOOD RODGERS INC	Professional Service through 3/31/15	2,010.00
	07/31/2015	95003	WOOD RODGERS INC	Professional Service through 7/31/15	8,632.50
	08/31/2015	95532	WOOD RODGERS INC	Professional Service through 8/31/15	1,230.00
	08/01/2016	101757	WOOD RODGERS INC	Professional Service through 7/31/16	2,100.00
	09/01/2016	102939	WOOD RODGERS INC	Professional Service through 8/31/16	3,800.00
	11/01/2016	104565	WOOD RODGERS INC	Professional Service through 10/31/16	160.00
Total WOOD RODGERS INC					40,230.00
WELLS FARGO					
	09/01/2016	1358276	WELLS FARGO	Account #84322300 - PG&E and MCE Interconnection Escrow from 8/01/16-8/31/16	500.00
	09/08/2016	1358275	WELLS FARGO	Account #84312900 - PG&E and MCE Interconnection Escrow from 8/01/16-8/31/16	500.00
	11/10/2016	1379361	WELLS FARGO	Account #84312900 - PG&E and MCE Interconnection Escrow Fee from 9/01/16-8/31/17	5,000.00
	11/10/2016	1379351	WELLS FARGO	Account #84312900 - PG&E and MCE Interconnection Escrow Fee from 9/01/16-8/31/17	5,000.00
Total WELLS FARGO					11,000.00

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No name					
	11/01/2014	C499	Shute, Mihaly	5/1/2014	13,992.34
			Shute, Mihaly	6/1/2014	35.00
			Shute, Mihaly	7/16/2014	777.00
			Shute, Mihaly	8/21/2014	35.00
			Troutman Sanders	8/31/2014	1,581.75
			Troutman Sanders	9/30/2014	171.00
			Shute, Mihaly		5,204.11
	03/31/2016		Misc legal		16,220.25
Total no name					38,016.45
TOTAL					774,814.54

Schedule 5
to Purchase and Sale Agreement

Exceptions to Representations and Warranties

None.

Exhibit A
to Purchase and Sale Agreement

Form of Bill of Sale, Assignment and Assumption Agreement

BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This Bill of Sale, Assignment and Assumption Agreement (this “**Assignment**”), effective as of _____, 2017 (the “**Closing Date**”), is by and between Marin Clean Energy, a California joint powers authority (“**Assignor**”) and MCE Solar One, LLC, a Delaware limited liability company (“**Assignee**”).

WHEREAS, this Assignment is being delivered pursuant to the terms of that certain Purchase and Sale Agreement, dated as of March [], 2017, between Assignor and Assignee (the “**PSA**”); and

WHEREAS, Assignor desires to transfer all of its rights, title and interest in and to the property described on Part A of Schedule 1 (the “**Assigned Property**”) and the contracts listed on Part B of Schedule 1 (the “**Assigned Agreements**”) and, together with the Assigned Property, the “**Assigned Assets**”), and to be released from all of its duties, obligations and liability under the Assigned Agreements from and after the Closing Date, upon payment of the Purchase Price.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in the PSA.

2. Bill of Sale, Assignment and Assumption.

(a) Assignor hereby irrevocably sells, assigns, grants, bargains, delivers, conveys and transfers to Assignee all of Assignor’s right, title and interest in and to the Assigned Assets.

(b) Assignee hereby accepts such purchase and assignment and assumes all of Assignor’s duties, obligations and liability under the Assigned Agreements accruing from and after the Closing Date.

(c) The terms of the PSA, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Assigned Assets are incorporated herein by this reference. Assignor and Assignee acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the PSA shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the PSA and the terms hereof, the terms of the PSA shall govern.

3. Lien Waivers. To the extent any item of Assigned Property was constructed by a third party contractor for Assignor or its affiliate, Assignor has delivered to Assignee on or prior to the Closing Date an unconditional final lien waiver for the amount paid with respect to such item of Assigned Property, and each such lien waiver is listed on Schedule 2 hereto.
4. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Assignment by facsimile transmission or other electronic means shall be deemed to be effective as manual delivery thereof.
5. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the state of California without regard to the conflicts of law provisions thereof. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS ASSIGNMENT.
6. Amendments and Modifications. This Assignment may not be amended, supplemented or otherwise modified, nor may any obligations hereunder be deemed waived, except by a written instrument signed by each of the parties hereto.
7. Successors and Assigns. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.
8. Severability. If any provision of this Assignment is invalid or unenforceable, the balance of this Assignment shall remain in effect, and this Assignment shall be interpreted so as to give full effect to its terms and still be valid and enforceable.
9. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purposes of this Assignment and the transfer of the Assigned Assets to Assignee. Without limitation of the foregoing, Assignor agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered to Assignee all such other acts, deeds, assignments, transfers, conveyances, powers of attorney, assurances, additional instruments, notices, and other documents all to more fully and effectively grant, convey and assign to Assignee the Assigned Assets conveyed hereby and intended so to be.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Assignment to be effective as of the Closing Date.

ASSIGNOR:

MARIN CLEAN ENERGY,
a California joint powers authority

By: _____
MCE Chairperson

By: _____
MCE CEO

ASSIGNEE:

MCE SOLAR ONE, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

[Signature Page to Bill of Sale, Assignment and Assumption Agreement]

Schedule 1
to Bill of Sale, Assignment and Assumption Agreement

[To match Schedule 1 to Purchase and Sale Agreement, as supplemented by Assignee pursuant to Section 8(a)(i) of the PSA]

Assigned Assets

Part A - Assigned Property

1. Bio Mitigation Fencing
2. Security Fencing
3. Surveys, designs, solar resource studies, geotechnical reports, soils reports, and other reports and studies relating to the Project
4. All building permit design sets submitted in connection with applications for a building permit
5. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Stion Corporation, its officers, employees and agents in the course of implementing that certain First Agreement between MCE and Stion Corporation, dated October 27, 2014, as assigned and delivered to, or otherwise in the possession of, MCE pursuant to the Stion Assignment Agreement

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6. Small Generator Interconnection Request (Application Form), dated January 23, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
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Schedule 2
to Bill of Sale, Assignment and Assumption Agreement

Lien Waivers

[_____]

Exhibit B
to Purchase and Sale Agreement

Form of Power Purchase and Sale Agreement

[to be attached]

Overview of MCE Board Offices and Committees

(Updated 1.19.17)

Board Offices

Kate Sears, Chair

Tom Butt, Vice Chair

Denise Athas, Auditor/Treasurer

Dawn Weisz, Secretary

Executive Committee

1. Tom Butt, Chair
2. Denise Athas
3. Sloan Bailey
4. Ford Greene
5. Kevin Haroff
6. Bob McCaskill
7. Kate Sears
8. *Vacant Seat*

Technical Committee

1. Kate Sears, Chair
2. Kevin Haroff
3. Ford Greene
4. Emmett O'Donnell
5. Ray Withy
6. Greg Lyman
7. *Vacant Seat*

Ad Hoc Contracts Committee 2017

1. Sloan Bailey
2. Barbara Coler
3. Ford Greene
4. *Kevin Haroff – Stepping Off*
5. Emmett O'Donnell
6. Don Tatzin
7. *Greg Lyman – Interested*

Ad Hoc Audit Committee 2016

1. Bob McCaskill
2. Sashi McEntee
3. Ray Withy

Ad Hoc Ratesetting Committee 2017

1. Greg Lyman
2. Sashi McEntee
3. Sloan Bailey
4. Bob McCaskill
5. Barbara Coler



MCE Executive Committee Overview and Scope

Maximum Membership:	9
Current Members:	Tom Butt, City of Richmond (Chair) Denise Athas, City of Novato Sloan Bailey, Town of Corte Madera Ford Greene, Town of San Anselmo Kevin Haroff, City of Larkspur Bob McCaskill, City of Belvedere Kate Sears, County of Marin Vacant Seat
Membership Process:	MCE strives to assemble an Executive Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Executive Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when “New Committee Members” is on the Agenda.
Current Meeting Date:	First Friday of each month at 12:00pm

Scope

The scope of the MCE Executive Committee is to explore, discuss, and provide direction or approval on general issues related to MCE including legislation, regulatory compliance, strategic planning, outreach and marketing, contracts with vendors, human resources, finance and budgeting, and agenda setting for the regular MCE Board meetings and annual Board retreat.

Authority of Executive Committee

- Approval of legislative positions outside of the Board-approved legislative plan
- Approval of contracts with vendors
- Approval of new staff positions within the Board-approved budget
- Approval of Ad Hoc Committees that serve a temporary role and function such as the Ad Hoc Contracts Committee, Ad Hoc Audit Committee and Ad Hoc Inclusion Committee
- Approval of Recipient of McGlashan Advocacy Award
- Recommendations to the Board regarding the annual budget and any budget adjustments
- Recommendations to the Board regarding rate setting
- Recommendations to the Board to enter into debt
- Recommendations to the Board regarding adjustments to staff compensation ranges
- Recommendations to the Board regarding Policies (such as Policy 013: Reserve Policy and Policy 014: Investment Policy)



MCE Technical Committee Overview and Scope

Maximum Membership:	9
Current Members:	Kate Sears, County of Marin (Chair) Ford Greene, Town of San Anselmo Kevin Haroff, City of Larkspur Greg Lyman, City of El Cerrito Emmett O'Donnell, City of Tiburon Ray Withy, City of Sausalito Vacant Seat
Membership Process:	MCE strives to assemble a Technical Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Technical Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.
Current meeting date:	First Thursday of each month at 9:00 am

Scope

The scope of the MCE Technical Committee is to explore, discuss, and provide direction or approval on issues related to electricity supply, distributed generation, greenhouse gas emissions, energy efficiency, and other topics of a technical nature.

Frequent topics include: electricity generation technology and procurement; greenhouse gas (GHG) accounting and reporting; energy efficiency programs and technology; energy storage technology; Net Energy Metering (NEM) Tariff; local solar rebates; electric vehicle programs and technology; Feed-in Tariff (FIT) activity and other local development; Light Green, Deep Green and Local Sol power content planning; long term integrated resource planning; regulatory compliance; and other activity related to the energy sector.

Authority of Technical Committee

- Review and discuss new technologies and potential application within MCE
- Approval of and changes to MCE's Net Energy Metering (NEM) Tariff
- Approval of and changes to MCE's Feed-in Tariff (FIT)
- Approval of annual greenhouse gas (GHG) emissions level and related reporting
- Approval of contracts with vendors for technical programs or services, energy efficiency program or services, and procurement functions or services
- Approval of power purchase agreements (PPAs)
- Approval of adjustments to power supply product offerings
- Approval of the Integrated Resource Plan (IRP)



MCE Ad Hoc Audit Committee Overview and Scope

Typical Membership:	3
Current Members:	None
New Members:	MCE strives to assemble an Ad Hoc Audit Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Ad Hoc Audit Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member.
Proposed meeting dates:	Early May and late July, dates to be determined

Scope

Each year since 2010 MCE's accounts have been audited by the Certified Public Accountants, Vavrinek, Trine, Day & Company, LLP. In April 2016 your Board approved the creation of an Ad Hoc Audit Committee to oversee MCE's FY 2015/16 financial audit. Staff propose the creation of an Ad Hoc Audit Committee to oversee MCE's FY 2016/17 financial audit. Appointment of the auditor typically occurs in late April or early May. The audit process is typically conducted during May and June and the auditor's report and financial statements are typically ready for distribution in August.

The Ad Hoc Audit Committee will be responsible for appointing the independent auditor charged with auditing MCE's FY 2016/17 accounts, meeting with the auditor on at least one occasion without staff present, reviewing financial issues or judgments, and investigating other matters pertaining to the audit as it deems necessary. The mandate of the Ad Hoc Audit Committee will begin once the Board approves its creation, and will end with the presentation of the audited FY 2016/17 financial statements to your Board.

Authority of Ad Hoc Audit Committee

- Approve the selection of auditor recommended by MCE staff and execute the contract for services with MCE's auditor
- Receive the findings of the auditor and meet with the auditor privately as needed
- Investigate other matters pertaining to the audit as it deems necessary



March 16, 2017

TO: MCE Board of Directors
FROM: Jeremy Waen, Regulatory Analyst
RE: Regulatory Update (Non-agenda Item)
ATTACHMENT: CalCCA Letter to the CPUC Regarding SDG&E Independent Marketing Division

SUMMARY:

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for February and March 2017 impacting Community Choice Aggregation (CCA) and MCE. Highlights include:

1. PG&E proposes to strike the Clean Energy Charge proposal from its Diablo Canyon Application (A.16-08-006)
2. MCE and SVCE jointly Protest PG&E's proposed amendments to Ivanpah power purchase agreements (PG&E Advice Letter 5012-E)
3. CalCCA submits informal comments on the CPUC's CCA *en banc* hearing
4. CalCCA protests SDG&E's continued attempts to market against CCAs (SDG&E Advice Letter 3035-E); CalCCA requests Order to Show Cause

More detail is set forth below for each of these items.

1. PG&E Proposes to Strike the Clean Energy Charge Proposal from Its Diablo Canyon Application (A.16-08-006)

In August 2016, PG&E submitted an Application to the Commission for authorization to close the Diablo Canyon nuclear generating facility. In addition to closing the facility, PG&E also requested authorizations for certain procurement. This request was broken into three tranches:

- Tranche 1: Additional energy efficiency procurement
- Tranche 2: Renewables procurement
- Tranche 3: GHG-free procurement

PG&E proposed to allocate the costs of Tranches 2 and 3 to CCA customers through a new non-bypassable charge called the Clean Energy Charge. MCE opposed the procurement and

CCA fee proposal since they would be more appropriately addressed in the Energy Efficiency and Integrated Resources Plan (IRP) proceedings.

On February 27, PG&E announced that it is withdrawing its Tranches 2 and 3 replacement proposals, as well as the Clean Energy Charge proposal, stating that these are “better addressed in the Commission’s Integrated Resource Plan (“IRP”) proceeding (Rulemaking 16-02-007).”

While PG&E’s announcement addresses certain issues important to MCE in the proceeding, MCE still remains concerned with other elements of this Application (including Tranche 1).

Next steps include rebuttal testimony due on March 17 and evidentiary hearings in mid-April.

2. MCE and SVCE Jointly Protest PG&E’s Proposed Second Amendments to Ivanpah (PG&E Advice Letter 5012-E)

On February 22, MCE and Silicon Valley Clean Energy (SVCE) presented a Joint Protest to PG&E’s Advice Letter 5012-E, which seeks approval for a second round of amendments to two Power Purchase Agreements (PPAs) between PG&E and developers of the Ivanpah solar thermal generation facilities. The Ivanpah resources are high-cost and are underperforming. Their high cost increases the PCIA charge paid by CCA customers.

Due to Ivanpah’s underperformance, PG&E has the right to terminate the agreements, but instead PG&E is seeking contract amendments to keep these resources going.

MCE and SVCE’s Joint Protest argues that regardless of whether these contracts are terminated or amended, the costs associated with the Ivanpah resources should no longer be included within the PCIA rates for soon to depart and already departed CCA load. The City and County of San Francisco (CCSF) and the Office of Ratepayer Advocates (ORA) also protested the proposed Ivanpah contract amendments.

MCE is waiting for a draft Resolution to be issued by the Commission.

3. CalCCA Submits Informal Comments on CPUC’s CCA *En Banc* Hearing

On February 23, California Community Choice Association (CalCCA), the CCA trade association which includes MCE, presented informal comments on the CPUC *en banc* hearing on CCA held on February 1 of this year. The CalCCA comments addressed misunderstandings and concerns raised by the Commission during the *en banc* hearing.

4. CalCCA Protests SDG&E’s Continued Attempts to Market Against CCAs (SDG&E Advice Letter 3035-E); CalCCA Requests Order to Show Cause

On January 27, San Diego Gas and Electric (SDG&E) filed Advice Letter 3035-E submitting, for the third time,¹ a legally-required Compliance Plan that would allow it the ability to market against CCAs. On February 16, CalCCA submitted a protest to the Advice Letter arguing that

¹ SDG&E’s first request to market against CCA (SDG&E Advice Letter 2822-E) was denied by CPUC Resolution E-4874 as a result of MCE and Lancaster Choice Energy’s protests. SDG&E’s second request (SDG&E Advice Letter 3008-E) was denied by CPUC letter on December 27, 2016.

SDG&E continues to fail to demonstrate how its proposed Independent Marketing Division (IMD) would comply with Senate Bill 790 and the CCA Code of Conduct.

As has been discussed in recent press, affiliate officials of San Diego Gas and Electric Company (SDG&E) have been lobbying San Diego public officials to discourage further study of the formation of a CCA program in San Diego County. On March 1, CalCCA sent a letter to the CPUC Commissioners “urg[ing] the Commission to issue an Order to Show Cause (OSC) why SDG&E should not be sanctioned for violating the Code of Conduct. The CCA Code of Conduct prohibits lobbying and marketing except through a physically and functionally separate marketing division, funded by shareholders, and established through a Commission process.”

The Commission is expected to issue a Draft Resolution addressing SDG&E’s Advice Letter 3035-E. CalCCA is awaiting a response by the Commission on its Order to Show Cause letter.



March 1, 2017

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City of Corona
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City of San Jose
County of Los Angeles
County of Placer
Valley Clean Energy
(*City of Davis and Yolo County*)

**California Community
Choice Association**

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California Public Utilities Commission
505 Van Ness Ave, 5th floor
San Francisco, CA 94102

Dear President Picker,
Commissioner Peterman,
Commissioner Randolph,
Commissioner Guzman Aceves,
Commissioner Rechtschaffen,

You may be aware of recent press regarding Sempra Energy Services lobbying San Diego public officials to discourage further study of the formation of a Community Choice Aggregation (CCA) program in San Diego County. In those articles, San Diego Gas and Electric Company (SDG&E) affiliate officials acknowledge these activities, and imply the Commission hasn't been clear in its prior direction to the Company. On the contrary, the Commission has been clear twice that SDG&E's Compliance Plan is inadequate. Without an approved Compliance Plan, marketing against CCA is not allowed; any other interpretation would render meaningless the requirements of D.12-12-036 and the CCA Code of Conduct.

We write to urge the Commission to issue an Order to Show Cause (OSC) why SDG&E should not be sanctioned for violating the Code of Conduct. The CCA Code of Conduct prohibits lobbying and marketing except through a physically and functionally separate marketing division, funded by shareholders, and established through a Commission process.

Before you now, in Advice Letter 3035-E, is SDG&E's third attempt to get Commission approval for its marketing division, the prior two having been found deficient. SDG&E does not have authorization from the Commission.

On February 16th, CalCCA filed a Protest to this latest attempt (copy attached). It details the deficiencies which persist, describes the lobbying activities also noted in the press, and requests the Commission:

- i. Reject Advice Letter 3035-E on the grounds that the Advice Letter fails to comply with Senate Bill (SB) 790, the CCA Code of Conduct, and Resolution E-4874.
- ii. Clarify that Sempra Services Corporation, regardless of whether it is structured as an internal division of SDG&E or as an affiliate, is an Independent Marketing Division under SB 790 and the CCA Code of Conduct.
- iii. Order SDG&E to disclose all lobbying and marketing (as defined in the CCA Code of Conduct) that SDG&E and the Affiliate-IMD have engaged in without a Commission-approved Compliance Plan.
- iv. Order SDG&E and the Affiliate-IMD to immediately cease all lobbying and marketing activities until SDG&E's Compliance Plan is approved by the Commission.

The Commission should immediately dispose of that Advice Letter, clearly and unequivocally directing SDG&E and its affiliates to cease all marketing and lobbying activities effective immediately. The OSC can then proceed at a deliberative pace.

Sincerely,



Barbara Hale
President, CalCCA

Attachment: CalCCA February 16, 2017, Protest to SDG&E Advice Letter 3035-E

c: Timothy Sullivan, CPUC Executive Director
Arocles Aguilar, CPUC General Counsel
Edward Randolph, CPUC Energy Division Director
CPUC Energy Division Tariff Unit (EDTariffUnit@cpuc.ca.gov)
Megan Caulson, SDG&E (MCaulson@semprautilities.com)
Service List: R.12-02-009



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Affiliate Members

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(Santa Barbara, San Louis

Obispo, and Ventura County)

City of Corona

City of Davis

County of Los Angeles

County of Placer

Partner Members

Bayshore Consulting Group

**California Community
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February 16, 2017

Via Regular Mail and Electronic Mail

Mr. Edward Randolph

Director, Energy Division

California Public Utilities Commission

505 Van Ness Avenue 4th Floor

San Francisco, California 94102

Re: Protest to SDG&E Advice Letter 3035-E

Dear Mr. Randolph:

The California Community Choice Association ("CalCCA") hereby protests and urges the Commission to reject Advice Letter 3035-E ("Advice Letter"), submitted by San Diego Gas & Electric Company ("SDG&E") on January 27, 2017. The Advice Letter is SDG&E's third attempt to develop a compliance plan which, if approved, would allow Sempra Services Corporation ("Affiliate-IMD"), an SDG&E affiliate, to market and lobby against Community Choice Aggregation ("CCA") programs as an Independent Marketing Division ("IMD").

SDG&E had previously sought Commission approval for an IMD in its:

- Original Compliance Plan (Advice Letter 2822-E), which was rejected by the Commission in Resolution E-4874 (August 18, 2016); and
- A first revised Compliance Plan (Advice Letter 3008-E), which was rejected by the Energy Division in a letter dated December 27, 2016 ("Disposition Letter").

In its current filing, SDG&E continues to submit a Compliance Plan that significantly fails to meet the requirements of Senate Bill ("SB") 790, the CCA Code of Conduct ("COC") and Resolution E-4874. The second revised Compliance Plan also fails to remedy the flaws specifically identified by the Energy Division in the Disposition Letter. Moreover,

CalCCA Protest of SDG&E Advice Letter 3035-E

February 16, 2017

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CalCCA remains concerned that Sempra Services Corporation appears to have engaged in, and may still be engaging in lobbying and marketing activities without a Commission-approved Compliance Plan in place, in direct violation of COC Rule 22(b)(i).¹ These flaws constitute material errors or omissions under General Order 96-B, Rule 7.6.2(3).

CalCCA respectfully requests that the Commission:

- i.) Reject the Advice Letter for failing to remedy the flaws specifically identified in the Disposition Letter, as well as failing to comply with SB 790, the COC, and Resolution E-4874.
- ii.) Clarify that Sempra Services Corporation, regardless of whether it is structured as an internal division of SDG&E or as an affiliate, is an Independent Marketing Division under SB 790 and the COC.
- iii.) Order SDG&E to disclose all lobbying and marketing (as defined in the CCA Code of Conduct) that SDG&E and Sempra Services Corporation have engaged in without a Commission-approved Compliance Plan.
- iv.) Order SDG&E and Sempra Services Corporation to immediately cease all lobbying and marketing activities until SDG&E's Compliance Plan is approved by the Commission.

INTRODUCTION

CalCCA is a California nonprofit organization representing the interests of California's Community Choice Aggregators. CalCCA's voting members are the following CCA programs: CleanPower SF, Lancaster Choice Energy, Marin Clean Energy ("MCE"), Peninsula Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Apple Valley Choice Energy and Redwood Coast Energy Authority. CalCCA actively opposed SDG&E's first revised Compliance Plan by protesting Advice Letter 3008-E. MCE and the City of Lancaster participated extensively in the Commission's consideration of SDG&E's original proposed Compliance Plan in Advice Letter 2822-E.

¹ References to the COC are to the *Code of Conduct and Expedited Compliant Procedure* adopted by the Commission in Decision ("D.") 12-12-036.

CalCCA Protest of SDG&E Advice Letter 3035-E

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One of CalCCA's objectives is to ensure a fair playing field for existing and prospective Community Choice Aggregators. As the Legislature explicitly recognized in SB 790, one of the greatest threats to CCA programs is the Investor-Owned Utilities' ("IOUs") use of their "inherent market power," derived from their relationships with customers and access to ratepayer funds, to oppose CCA programs. CalCCA's membership is well aware of the tremendous resources at the IOUs' disposal, and the difficulty of forming a CCA program in the face of IOU lobbying and marketing efforts. SB 790 and the COC were adopted to prevent IOUs from abusing their inherent market power. SB 790 and the COC forbid the use of ratepayer funds and resources to market or lobby against CCA programs, and require that all lobbying or marketing be conducted by an IMD, either structured as an internal division of the company or as an affiliate, that is physically and functionally separate from the IOU.

As this is the first attempt by an IOU to form an IMD, the Commission's choices here will likely provide a template for the other IOUs. This makes it all the more important to ensure that SDG&E's Compliance Plan does not include loopholes and ambiguity that might allow SDG&E to subsidize its IMD with ratepayer funds or resources, or to otherwise lessen the protections provided in the COC.

PROTEST

SDG&E's Advice Letter should be rejected for the following reasons.

- 1. SDG&E's Third Attempt To Develop A Compliance Plan Continues To Fail To Demonstrate The Required "Holistic Review" Of "Shared Services"**

SDG&E's second revised Compliance Plan fails to provide the "holistic review" of shared services job functions required to identify and segregate individuals who engage in marketing and lobbying activities, or who support individuals who do, as required by Resolution E-4874. Rule 13 of the COC provides that an IOU may share with its IMD certain "governance," "oversight" and "support" functions and personnel (referred to by SDG&E as "shared services"). However, Rule 13 forbids the sharing of personnel "who are themselves involved in lobbying and marketing." Rule 13 further forbids the sharing of personnel when doing so would "allow or provide a means for the transfer of competitively sensitive information from the electrical corporation to the independent

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marketing division, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of the independent marketing division.”

Ordering Paragraph (“OP”) 7 of Resolution E-4874 (August 18, 2016) requires:

San Diego Gas and Electric Company shall not share with its Independent Marketing Division, employees or agents (including contractors or consultants) who are themselves involved in marketing or lobbying.²

OP 7 further requires that:

‘Marketing or lobbying’ shall be interpreted by review of the *job functions* of the personnel in question. This review shall focus on the duties and responsibilities of the personnel, not merely the title or department.³

Resolution E-4874 further elaborated on this requirement, stating:

...we are concerned that unless the job functions [of shared services personnel] are used in complying with [COC Rule 13], it would circumvent the purpose of the COC. If job functions are not used as the determinant, the electrical corporation could use certain titles such as communications, public affairs, or regulatory relations for personnel actually engaged in lobbying and marketing.

Consequently, the prohibition against sharing of personnel that ‘are themselves engaged in marketing or lobbying’ shall be interpreted by a *holistic review of the job functions of the personnel in question*.⁴

In its Disposition Letter, the Energy Division rejected SDG&E’s first revised Compliance Plan, in part, on the grounds that SDG&E had failed to demonstrate the required holistic review. The Disposition Letter states:

Although [the first revised Compliance Plan] expanded the term ‘personnel’ to include agents as well as employees, *it did not address how SDG&E would conduct a holistic review of the job functions*. SDG&E asserts that permissible shared services should include regulatory affairs and

² Resolution E-4874 at 23.

³ *Id.* *Emphasis added.*

⁴ *Id.* at 15. *Emphasis added.*

CalCCA Protest of SDG&E Advice Letter 3035-E

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legal, among other things, and provides no holistic review of their job functions. Thus, A.L. 3008-E is non-compliant.⁵

SDG&E's second revised Compliance Plan once again fails to demonstrate the required "holistic review" of shared services personnel job functions. The only relevant difference between SDG&E's first revised Compliance Plan (rejected by the Energy Division in its Disposition Letter) and SDG&E's second revised Compliance Plan is the addition of the following nearly verbatim restatement of OP 7:

SDG&E shall not share with its Division affiliate, employees or agents (including contractors or consultants) who are themselves engaged in marketing or lobbying, as determined by an examination of job functions.⁶

Importantly, SDG&E has provided an unsupported assertion, not a meaningful plan. SDG&E's addition merely restates an applicable requirement, and provides no further substantive information regarding compliance. There is nothing regarding which shared services individuals or job functions may be engaged in lobbying or marketing, *how* SDG&E plans to conduct the required holistic review, and what policies, plans, or procedures SDG&E has in place to ensure compliance. This is contrary to the basic purpose of the COC Compliance Plan requirement: ensuring the Commission has enough concrete information to assess whether SDG&E's compliance mechanisms are adequately robust to ensure compliance.⁷ SDG&E's lack of substantive information makes it impossible for the Commission to make any determination regarding its adequacy.

Tellingly, SDG&E's only attempt to address OP 7 is located in its response to COC Rule 2, the general rule requiring that the IMD be functionally and physically separate from SDG&E's ratepayer -funded divisions. The second revised Compliance Plan's response to COC Rule 13, the specific rule governing shared services, remains entirely unmodified. It still provides that "shared services" will include, among other corporate departments, "regulatory affairs," "legal," "communications," and "public affairs."⁸ It does nothing to address the concern expressed by the Commission in Resolution E-4874 that personnel in these "shared services" departments may be engaged, to a greater or lesser degree, in lobbying or marketing, or in support of the lobbying and marketing activities of others.

⁵ Disposition Letter at 2. *Emphasis added.*

⁶ Advice Letter, Attachment A, at 6.

⁷ COC Rule 22.

⁸ See Advice Letter, Attachment A, at 11-12.

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Again, OP 7 of Resolution E-4874 provides that “[i]nvolved in marketing or lobbying’ shall be interpreted by review of the job functions of the personnel in question.”⁹

As CalCCA noted in its last protest of SDG&E’s first compliance plan, and which SDG&E appears to ignore in its latest filing, in order to comply with Rule 13 of the COC and Resolution E-4874 SDG&E must satisfactorily demonstrate that it has performed the required “holistic review.” This process entails three principal steps, none of which has been satisfied by SDG&E’s showing in the Advice Letter. First, a holistic review is required. Second, based on this holistic review, SDG&E is required to specifically identify and exclude from “shared services,” any personnel who engage in advocacy, lobbying or marketing against the CCA program. Third, SDG&E must also demonstrate that it has identified and excluded individuals (and their associated costs) who provide support for persons engaged in these activities.

SDG&E’s second revised Compliance Plan should not be considered until it has satisfied these steps. Moreover, following SDG&E’s initial demonstration, public review and vetting is necessary.

2. SDG&E’s Second Revised Compliance Plan Continues To Fail To Demonstrate Adequate Accounting For “Shared Services”

SDG&E’s proposed accounting for the cost of permitted “shared services” is not adequately explained in the second revised Compliance Plan. SDG&E states that “[a]ll permitted corporate support services rendered to [an IMD] will be charged to SDG&E shareholders in accordance with the Community Choice Aggregation Transactions Procedures.”¹⁰ Rather than present it’s proposed “Transactions Procedures” for review and approval, however, SDG&E states: “The Procedures will be posted on the SDG&E Intranet prior to the start of marketing or lobbying.”¹¹ Thus SDG&E fails to propose any specific accounting protocols for the transfer of shared services costs to the IMD. These accounting and transfer protocols must be included as a part of SDG&E’s second revised Compliance Plan, and must be subject to the same public review and vetting as other elements of SDG&E’s proposal.

⁹ Resolution E-4874 at 23.

¹⁰ Advice Letter, Attachment A, at 3.

¹¹ *Id.*

CalCCA Protest of SDG&E Advice Letter 3035-E

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With respect to the public review and vetting process, CalCCA is concerned over Energy Division's reliance on responses to data requests in deciding whether to approve or reject an Advice Letter. While Energy Division's previous data requests regarding SDG&E's original Compliance Plan (Advice Letter 2822-E) produced important clarifications and commitments from SDG&E, CalCCA has a general concern regarding the fairness of a process in which the Commission relies upon an IOU's data request responses without allowing public review and comment on these responses. The Commission should not allow statements from SDG&E alone to be relied on in the Energy Division's review but instead should allow other parties to review and comment on these responses to ensure that the Commission can make an informed decision.

3. SDG&E's Second Revised Compliance Plan Fails To Demonstrate Any Mechanism For Complying With Logo/Disclaimer Requirements

OP 6 orders that: "The Independent Marketing Division, an affiliate, shall comply with the logo/disclaimer requirements of Affiliate Transactions Rule V.F."¹² In the Disposition Letter, the Energy Division rejected SDG&E's first revised Compliance Plan, in part, on the grounds that the plan did not comply with OP 6 stating that: "A.L. 3008-E does not address the logo/disclaimer requirements of Affiliate Transactions Rule V.F. anywhere in the compliance plan, and thus is non-compliant."¹³

SDG&E's second revised Compliance Plan *still* is not in compliance with OP 6. The second revised Compliance Plan contains only one modification addressing OP 6, the addition of a single declarative sentence: "The Division affiliate shall comply with the logo/disclaimer rules of Affiliate Transactions Rule V.F."¹⁴ without providing any further detail. Specifically, it neither states *how* SDG&E will ensure that the IMD complies with the logo/disclaimer rules, nor does it offer *any* description of plans, procedures, or mechanisms in place to ensure compliance.

This falls far short of the standard, set by Rule 22 of the COC, which requires that the Compliance Plans *demonstrate* to the Commission that there are adequate procedures in place to ensure compliance with the COC rules. Merely restating a requirement, or

¹² Resolution E-4874 at 22.

¹³ Disposition Letter at 1.

¹⁴ Advice Letter at 6.

CalCCA Protest of SDG&E Advice Letter 3035-E

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providing an otherwise unsupported assertion of compliance falls far short of the required “demonstration.” In this regard, SDG&E has provided no useable, substantive information that would allow the Commission to assess the adequacy SDG&E’s compliance mechanisms.

4. SDG&E’s Second Revised Compliance Plan Fails To Demonstrate Required Training For The Affiliate-IMD’s Employees And Agents

SDG&E’s second revised Compliance Plan does not include any discussion of required COC compliance training for the *Affiliate-IMD’s* employees and agents, and as such fails to comply with OP 8 of Resolution E-4874. In the Disposition Letter, the Energy Division rejected SDG&E’s first revised Compliance Plan (Advice Letter 3008-E), in part, on the grounds that the plan did not comply with OP 8. The Energy Division stated:

While A.L. 3008-E does state that CCA COC training will be provided for employees, it does not address whether CCA COC training will be provided to agents, including contractors and consultants. Thus, A.L. 3008-E is non-compliant.¹⁵

While SDG&E’s second revised Compliance Plan has been modified to include training for SDG&E “employees or agents”¹⁶ it includes no provision of the necessary training for employees and agents of the Affiliate IMD. OP 8 of Resolution E-4874 clearly requires that both SDG&E *and the Affiliate-IMD* conduct COC and Affiliate Transaction Rules compliance training for all employees and agents. OP 8 states, in relevant part:

San Diego Gas and Electric Company *and its Independent Marketing Division, Sempra Services Corporation*, shall conduct training for all employees and agents, including contractors and consultants, to ensure that they are in compliance with the Community Choice Aggregation Code of Conduct and with the Affiliate Transaction Rules. [*Emphasis added*].¹⁷

¹⁵ Disposition Letter at 2.

¹⁶ Advice Letter, Attachment A, at 6.

¹⁷ Resolution E-4874 at 23.

CalCCA Protest of SDG&E Advice Letter 3035-E

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Despite the fact that the OP 8 training requirement clearly applies to both SDG&E and the Affiliate-IMD, the Compliance Plan's discussion of the requirement makes no mention of the Affiliate-IMD, only stating that SDG&E will provide training "to all employees or agents" hired to lobby or market "on behalf of SDG&E."¹⁸ Nowhere does the Compliance Plan acknowledge the Affiliate-IMD's obligation to conduct similar compliance training for its employees and agents. SDG&E's Compliance Plan thus falls short of providing the required "demonstration" that the Affiliate-IMD will provide the training required under OP 8.

5. The Commission Should Clarify That Sempra Services Corporation Is An IMD

CalCCA remains deeply concerned by SDG&E's claim that it "has not established an independent marketing division," and instead is filing its Compliance Plan on behalf of Sempra Services Corporation, an existing affiliate that "may engage in speech that could trigger the application of the CCA [Code of Conduct]."¹⁹ SDG&E's attempt to distinguish Sempra Services Corporation as an affiliate and not an IMD is unavailing, and more importantly raises the very real specter of confusion and potential mischief, unless specifically addressed by the Commission.

Nothing in SB 790 indicates that the legislature intended to limit its definition of "Independent Marketing Divisions" based on the entity's location within an IOU's (or holding company's) overall corporate structure. Interpreting SB 790 otherwise would render many of the most important provisions of SB 790 meaningless, as IOUs would be able to circumvent SB 790's essential protections for CCA programs merely by structuring their IMDs as affiliates rather than internal divisions, even when there is no functional distinction between an internal division and an "on paper" affiliate.

SDG&E itself has admitted that Sempra Services Corporation is an IMD, regardless of the fact that it happens to be structured as an affiliate. In its original Compliance Plan, SDG&E stated that the Compliance Plan's purpose was to "[appraise] the CPUC of [SDG&E's] intent to establish an independent marketing division... responsible for all

¹⁸ Advice Letter, Attachment A, at 6.

¹⁹ *Id.* at 1.

CalCCA Protest of SDG&E Advice Letter 3035-E

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marketing and lobbying... concerning community choice aggregation.”²⁰ Similarly, SDG&E’s Application for Rehearing of Resolution E-4874 specifically identifies SSC as “the entity performing the IMD function”²¹ and repeatedly refers to Sempra Services Corporation as “the IMD.”²² In addition, one of the Application for Rehearing’s primary objections to Resolution E-4874 was that requiring that Sempra Services Corporation comply with the full set of Affiliate Transaction Rules would be unnecessary and unreasonable because Sempra Services Corporation, as an IMD, is already subject to the COC.²³

Given the clear intent of SB 790 and SDG&E’s own admission otherwise, the Commission should correct SDG&E’s assertion that Sempra Services Corporation is not an IMD.

6. The Commission Should Order An Immediate Halt To All Lobbying And Marketing

Under Rule 22(b) of the COC, SDG&E and its Affiliate-IMD are prohibited from lobbying and marketing against CCA programs until SDG&E’s compliance plan has been approved by the Commission. Rule 22(b)(i) states:

If [an electrical corporation that previously filed an advice letter stating that it does not intend to lobby or market against CCA] thereafter decides that it wishes to lobby or market against any community choice aggregation program, it shall not do so until it has filed *and received approval of* a compliance plan as described above, with its compliance plan filed as a Tier 2 advice letter with the Energy Division.²⁴

In its protest to AL 3008-E (SDG&E’s first revised Compliance Plan), CalCCA provided evidence that Sempra Services Corporation was lobbying and marketing against CCA programs without a Commission-approved Compliance Plan.²⁵ Specifically, CalCCA

²⁰ SDG&E Advice Letter 2822-E, Attachment A, at p. 2.

²¹ SDG&E Application for Rehearing of Resolution E-4874 at 10.

²² *Id.* at 12-13.

²³ *Id.* at 9, 12-14.

²⁴ COC Rule 22(b)(i). *Emphasis Added.*

²⁵ CalCCA Protest to SDG&E Advice Letter 3008-E, Appendix A.

CalCCA Protest of SDG&E Advice Letter 3035-E

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noted that Sempra Services Corporation had formed an entity called Clean Energy Advisors, which was “engaged in marketing against CCAs by encouraging local government leaders to rely on SDG&E to develop alternatives to a CCA program for their communities.”²⁶

CalCCA believes that Sempra Services Corporation has continued to engage in lobbying without a Commission-approved Compliance Plan, in violation of Rule 22(b). For example, Sempra Services Corporation sent a letter to Dianne Jacob, chair of the San Diego County Board of Supervisors, dated February 7, 2017 (attached hereto as Attachment A). The letter constitutes “lobbying” insofar as it appears to have as one of its purposes the intent of convincing San Diego County not to participate in a CCA program, specifically noting the less risky alternative that is available from SDG&E:

[O]ne potential alternative to CCA would be implementation by the host utility of a default utility portfolio at the same level of renewables as would be offered by a CCA, developed on the basis of local public input. The benefits of such an option would be essentially the same as the benefits available under CCA, but a utility procurement option would impose no financial risk on the County. An ROI analysis that considered benefits and risk and also considered all available options would likely find such a utility procurement option to have a higher ROI than CCA.

Subsequent to the letter from Sempra Services Corporation, CalCCA understands that, at the February 15, 2017 regular meeting of the San Diego County Board of Supervisors (“Board”), the Board voted to postpone conducting a proposed CCA feasibility study, with alternative direction for staff to report back in twelve months on statewide growth of CCA programs.²⁷ Sempra Services Corporation is attributed with making the following statement in urging the Board’s action: “‘Today, we’re told that if government is in control of procurement, we’re going to have more renewables and lower emissions. But actual experience makes this conclusion highly questionable,’ said Frank Urtasun, regional vice president of external relations for Sempra Energy Services.”²⁸ The letter from Sempra

²⁶ CalCCA Protest to SDG&E Advice Letter 3008-E at 2

²⁷ A news article on the decision may be found at the following website (“SD Union Tribune Article”): <http://www.sandiegouniontribune.com/news/environment/sd-me-county-renewables-20170215-story.html>

²⁸ See SD Union Tribune Article.

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Services Corporation and subsequent action by Sempra Services Corporation constitute “lobbying” under the COC.

In light of this, CalCCA asks that the Commission order SDG&E to disclose all lobbying and marketing activity that SDG&E and/or the Affiliate-IMD have engaged in without a Commission-approved compliance plan. Such disclosure is necessary for the Commission and affected parties to assess the extent of the harm caused by SDG&E’s violations and to determine what steps are appropriate to address the violations. In addition, CalCCA renews its request that the Commission immediately order SDG&E and the Affiliate-IMD to cease and desist from lobbying and marketing until such date that a Commission-approved Compliance Plan goes into effect.

CONCLUSION

If approved, SDG&E’s revised Compliance Plan will be the first of its kind. As shown above, SDG&E continues to fail to meet the requirements of SB 790, the COC, Resolution E-4874 and the Energy Division’s Disposition Letter. As such, the Advice Letter must be denied. In addition, in light of evidence that the Affiliate-IMD has continued to engage in lobbying without a Commission-approved Compliance Plan, the Commission should order SDG&E to disclose all unapproved lobbying and marketing activities by SDG&E and the Affiliate-IMD, and should order SDG&E and the Affiliate-IMD to cease all further lobbying and marketing until the Compliance Plan is approved.

CONTACT INFORMATION

CalCCA requests that it be added to the service list for the Advice Letter. Please direct all correspondence and communication regarding this matter to:

Barbara Hale
President, CalCCA
1125 Tamalpais Ave.
San Rafael, CA 94901
(415) 464-6689
info@CalCCA.org

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Thank you for your consideration of this protest.

Sincerely,

/s/ Barbara Hale

Barbara Hale

President

Attachment A: Sempra Services Corporation letter to San Diego County

Copy (via e-mail): CPUC Energy Division Tariff Unit (EDTariffUnit@cpuc.ca.gov)
Megan Caulson, SDG&E (MCaulson@semprautilities.com)
Service List: R.12-02-009

Attachment A

ATTACHMENT

For Item

#1

Wednesday,
February 15, 2017

**PUBLIC COMMUNICATION RECEIVED BY THE
CLERK OF THE BOARD**

Distributed: 2/10/17



Francisco J. Urtasun
Reg. Vice President of External Affairs
Sempra Services Corporation
488 8th Avenue, HQ 13S3
San Diego, CA 92101

619-696-2233
furtasun@SempraServices.com

February 7, 2017

Honorable Dianne Jacob
Chair, San Diego County Board of Supervisors
1600 Pacific Highway
San Diego, CA 92101

Re: San Diego County Renewable Energy Plan

Dear Chair Jacob:

Sempra Services supports efforts by the County of San Diego, as well as by all cities within our region to reduce Greenhouse Gas Emissions ("GHGs" or "GHG"). We believe that a well-designed emissions reduction effort will identify strategies to reduce GHG emissions that are designed to maximize benefits and minimize costs, while helping reduce other local pollutants. As such, we applaud the County's Technical Advisory Committee (TAC) for its commitment to use of a Return on Investment (ROI) analysis in order to adopt GHG emission reduction Best Management Practices ("BMPs") for the County. It should be noted that the TAC met several times to discuss how best to proceed with the CREP and decided that the energy sector didn't merit further consideration as a prioritized BMP.

Unfortunately, the San Diego County Renewable Energy Plan ("CREP") has adopted a BMP under which it would pursue a Community Choice Aggregation ("CCA") feasibility study, without studying the feasibility of any other available alternative for achieving the same level of emission reductions (BMP #3). The CREP states that it has found this BMP to have a higher ROI than other available alternatives. Unfortunately, it is apparent that the CREP has neither considered all of the available alternatives nor conducted an actual ROI analysis of this BMP or any other option. In order to achieve the County's emission reduction goals with maximum benefits and minimum cost, Sempra Services respectfully recommends that the CREP refrain from adopting a BMP on renewable energy procurement until it has considered the ROI of all available alternatives, and done so on the basis of quantifiable metrics.

For example, one potential alternative to CCA would be implementation by the host utility of a default utility portfolio at the same level of renewables as would be offered by a CCA, developed on the basis of local public input. The benefits of such an option would be essentially the same as the benefits available under CCA, but a utility procurement option would impose no financial risk on the County. An ROI analysis that considered benefits and risk and also considered all available options would likely find such a utility procurement option to have a higher ROI than CCA. However, BMP #3 was adopted without any consideration of risk, and without consideration of all available alternatives for achieving these emission reductions.

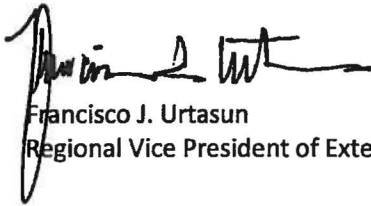
Sempra Services Corporation is not the same company as the California utilities, San Diego Gas & Electric Company (SDG&E) or Southern California Gas Company (SoCalGas), and Sempra Services Corporation is not regulated by the California Public Utilities Commission.

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Similarly, because it did not look across industry sectors to identify BMPs with the highest overall ROI, the CREP did not consider the ROI of achieving an equivalent level of GHG emission reductions in the transportation sector. However, it is likely that the overall environmental benefits from such actions would be far greater by achieving GHG emission reductions in the transportation sector that would result from reductions in local pollutants. A properly structured ROI would consider these benefits.

The CREP points out that, ". . . it is important for the County to focus on the BMPs that will provide the highest return on investment, or the most benefit for the money spent." Sempra Services agrees. However, in order to fulfill this mission, the CREP should not adopt a BMP in the energy sector until it has conducted an actual ROI analysis on all available alternatives for achieving the goals associated with this BMP.

Sincerely,



Francisco J. Urtasun
Regional Vice President of External Relations

cc:

Greg Cox, District 1 Supervisor
Kristin Gaspar, District 3 Supervisor
Ron Roberts, District 4 Supervisor
Bill Horn, District 5 Supervisor
Mark Wardlaw, Director, Planning & Development Services



March 16, 2017

TO: MCE Board of Directors

FROM: Shalini Swaroop, Regulatory and Legislative Counsel

RE: Legislative Executive Staff Report (Non-agenda Item)

SUMMARY:

The California state legislature reconvened on January 4, 2017 to consider bills for the 2016-2017 session. MCE has not supported or opposed any bills at this time. Through the California Community Choice Association (CalCCA), MCE has attended joint meetings with legislators, assigned staff, and policymakers in Sacramento and in district offices. CalCCA and MCE held additional meetings with stakeholders throughout February, including several meetings with representatives of MCE's service area. Depending on geographic area, certain board members may be asked to attend those meetings with MCE in order to better represent their constituents.