

Regulatory Filings Packet

May 06 – July 06 2021

Regulatory Packet

Part 1

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Concerning
Energy Efficiency Rolling Portfolios,
Policies, Programs, Evaluation, and Related
Issues.

Rulemaking 13-11-005
(Filed November 14, 2013)

**MARIN CLEAN ENERGY'S COMMENTS ON PROPOSED DECISION
REGARDING ASSESSMENT OF ENERGY EFFICIENCY POTENTIAL
AND GOALS AND MODIFICATION OF PORTFOLIO APPROVAL AND
OVERSIGHT PROCESS**

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I. Introduction

In accordance with the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Marin Clean Energy (“MCE”) submits these comments on the Proposed Decision entitled Assessment of Energy Efficiency Potential and Goals and Modification of Portfolio Approval and Oversight Process (“Proposed Decision” or “PD”).¹ The PD addresses potential and goals policy issues, largely approves the California Energy Efficiency Coordinating Committee’s (“CAEECC”) proposal (“CAEECC Proposal”),² sets forth a process for mid-cycle energy efficiency (“EE”) program changes, and implements Assembly Bill (“AB”) 841. MCE supports the Proposed Decision, which reflects extensive and thoughtful consideration of the issues. There are a few foundational elements of the PD that MCE believes will set the stage for significant modernization and advancement of EE programming in California.

First, MCE wholeheartedly agrees with the Commission’s sound legal analysis and its conclusion that Code § 381 (b)(1) does not require that all ratepayer-funded EE be cost-effective. The Commission correctly finds that Code § 381 (b)(1) is a budget “floor” and not a limitation on the Commission requiring additional EE expenditures where warranted. This statutory interpretation is strongly supported by the overall context of California’s EE statutory provisions.

MCE strongly supports the notion clearly expressed through the PD that EE and conservation investments that go beyond the budget “floor” should be funded under Program Administrators’ (“PAs”) EE programs if they provide value to ratepayers and advance important public policy goals, even if the costs may sometimes exceed the benefits captured under the current cost-effectiveness tests. This interpretation is in alignment with MCE’s stated mission “to address climate change by reducing energy-related greenhouse gas emissions with renewable energy and energy efficiency at cost-competitive rates while offering economic and workforce benefits, and

¹ Rulemaking (“R”) 13-11-005, Proposed Decision addressing Assessment of Energy Efficiency Potential and Goals and Modification of Portfolio Approval and Oversight Process, issued April 16, 2021 (“Proposed Decision” or “PD”).

² The Natural Resource Defense Council’s Motion Seeking Commission Ruling and Comment Period on the California Energy Efficiency Coordinating Committee Proposal for Improvements to the Energy Efficiency Portfolio and Budget Approval Process Working Group Report in R.13-11-005, filed April 24, 2020 (hereinafter “NRDC Motion”), Attachment A, Proposal for Improvements to the EE Portfolio and Budget Approval and Implementation Process (“CAEECC Proposal”).

creating more equitable communities.”³ Furthermore, it is a strong signal that ratepayer-funded EE remains a top priority in California’s energy landscape, which MCE wholly endorses.

Second, MCE strongly supports the segmentation of the EE portfolio into resource acquisition (“RA”), market support and equity programs. As the PD highlights, the multiple policy objectives of the EE portfolios cannot be appropriately supported by a single cost-effectiveness (“CE”) metric.⁴ MCE supports the PD’s establishment of a budget cap of 30% of the total budget of each PA to be spent on market support and equity programs. This is a reasonable level of funding to support important market support and equity initiatives while limiting spending on programs that may not meet the CE threshold.

MCE offers the remainder of these comments to seek clarification and to recommend certain modifications aimed at further refining and clarifying EE programming and approval procedures. In sum, these comments recommend the following clarifications or modifications:

- Clarify that Non-IOU PAs do not set their goals based on the potential and goals (“P&G”) study;
- Apply parallel cost-effectiveness standards to IOUs and Community Choice Aggregator (“CCA”) PAs;
- Consider using the Program Administrator Cost (“PAC”) test rather than the Total Resource Cost (“TRC”) test to evaluate EE portfolio cost-effectiveness;
- Ensure the development of reporting metrics for all portfolio segments that better align with the new portfolio directives;
- Avoid a hybrid approach and instead adopt the CAEECC proposal of a four-year portfolio application only;
- Require biennial updates to the EE portfolios be primarily provided via an informal CAEECC process rather than an advice letter;
- Continue Implementation Plan (“IP”) review processes as described in D.15-10-028;
- Joint Cooperation Memoranda (“JCMs”) should be included with PAs’ Annual Reports;
- Applicable templates for the PAs’ application must be finalized by July 30 2021;
- Allow PAs to use the 2020 Avoided Cost Calculator (“ACC”) for the program year (“PY”) 2022 and 2023 Annual Budget Advice Letter (“ABAL”) filing;
- Clarify that the PY 2022/23 ABAL submissions may be provided to the CAEECC after submittal rather than before;
- Permit MCE to present updated savings goals and new total system benefits (“TSB”) goals in its PY 2022/23 ABAL; and

³ “Our Mission,” available at <http://mcecleanenergy.org/about-us/>.

⁴ PD at pp. 13-14.

- Savings from the School Energy Efficiency Stimulus Program established by AB 841 can count towards the IOUs' savings goals but these savings cannot be considered in the IOUs' cost-effectiveness calculations.

II. PD Section (2) – Potential and Goals Metrics

MCE strongly supports the PD's shift to a TSB metric to set EE goals. This change will better tie PA goals directly to the avoided cost value of EE savings and will allow PAs to focus efforts on longer duration and more effective measures and programs.⁵ For all of the reasons listed in the PD, MCE agrees that moving to a TSB metric in goal setting will provide PAs more flexibility to deliver more benefits and to ensure that all values of EE are properly accounted for. However, MCE urges the Commission to clarify this portion of the PD in two important ways.

a. The PD Should be Clarified to Recognize that Non-IOU PAs Do Not Set Their Goals Based on the Potential and Goals Study.

The PD states that “program administrators will be required to submit their new portfolio applications designed to meet a TSB goal that will be adopted in this proceeding later this year.”⁶ Those goals have now been provided for comment via the Draft 2021 Energy Efficiency Potential and Goals Study (“P&G Study”), released on Friday April 23, 2021 in this proceeding. However, not *all* PAs will use this study to set their goals – only IOUs have their goals set by the P&G Study. The PD should clarify this point in several places.

Regional Energy Networks (“RENs”) and CCAs do not have explicit energy efficiency savings goals set by the CPUC every two years through a P&G Study. Instead, non-IOU PA budgets and goals are developed through an iterative, bottom-up approach. This process is data-driven and involves MCE's implementers, technical consultants and staff. MCE's proposed goals are then reviewed by stakeholders in the respective proceedings and adopted by a vote of the Commission, or staff where the Commission has delegated that authority. This process provides a venue and appropriate public process for independent review and stakeholder input.

Furthermore, the P&G Study “produces results at the IOU level of geographic granularity.”⁷ It explicitly “does not provide further granularity at the climate zone or county level or for the service territories of regional energy networks (RENs) or community choice aggregators

⁵ *Id.* at p. 9.

⁶ *Id.* at p. 10.

⁷ Administrative Law Judge's Ruling Inviting Comments on Draft Potential and Goals Study, Appendix A 2021 Energy Efficiency Potential and Goals Study – DRAFT, issued on April 23, 2021, at p. 7.

(CCAs).”⁸ Thus, the P&G Study is not the appropriate vehicle to set non-IOU PA goals as it does not provide sufficiently granular locational details on potential and goals (e.g., on a county level). It is just not possible for non-IOUs to utilize these studies.

Because non-IOU PAs are not subject to the P&G Study process, there is currently no venue determined for MCE to propose to update its goals outside of a new application filing with a business plan. This is problematic as MCE’s current goals were approved in 2018 and are already outdated, due to the impacts of the COVID-19 pandemic and other market changes. The PD therefore should also clarify that non-IOU PAs shall be allowed to update their goals on a regular basis.

Specifically, MCE proposes the following opportunities for non-IOUs to update their portfolio goals in the future. First, MCE recommends that non-IOU PAs be able to update their portfolio goals for the transition years (i.e., PYs 2022 and 2023) via the ABAL filing due on September 1, 2021. Second, MCE proposes that non-IOU PAs be allowed to propose their own goals every four years through the portfolio filing process. Third, if major changes to the portfolio goals are identified half-way through the four-year portfolio cycle due to changes in technical inputs, a non-IOU PA can submit a “trigger-based” advice letter (“AL”) to update its goals. MCE describes the proposed process for this “trigger-based” AL further in Section IV(b).

III. PD Section (4) – Cost-Effectiveness Requirements and Budget Limitations

MCE also provides comments to ensure that utility and CCA CE standards are applied fairly and do not cause competitive harm. Finally, MCE continues to encourage the use of the PAC test because it is a superior metric for measuring CE.

a. The Commission Should Clarify that Both IOUs and CCAs Must Meet or Exceed the 1.0 TRC for Resource Acquisition Programs Without Considering Codes & Standards (“C&S”) Programs.

MCE supports the PD’s directive that requires the PAs “to show the TRC and PAC ratios for all segments of the portfolio, separately and combined, including separately showing the portfolio cost- effectiveness with and without the C&S segment of the portfolio.”⁹ MCE also supports the PD’s directive that a PA’s RA segment must meet or exceed a TRC of 1.0.¹⁰ However,

⁸ *Id.*

⁹ PD at p. 21.

¹⁰ *Id.*

it is not clear from the PD whether an IOU's RA portfolio must meet or exceed a TRC of 1.0 with or without the C&S programs included.

C&S programs are implemented as statewide programs. CCAs are excluded from any savings attribution achieved through statewide program, which are some of the most cost-effective programs under the IOU portfolios.¹¹ As an example, PG&E's 2020 claimed portfolio TRC without C&S programs was 0.49; with C&S programs the TRC increased to 2.30.¹² In contrast, all CCA claimed TRC savings exclude C&S programming. The Commission should clarify that both IOUs and CCAs must meet or exceed the 1.0 TRC for the RA segment without considering C&S programs to ensure parity between IOU and CCA CE requirements.

Without clarification, this ambiguity creates a significant divide in the evaluation of IOU and CCA portfolios. Previous Commission directives require that the same cost-effectiveness standards be applied to CCAs and IOU PAs.¹³ This can be easily remedied if the Commission ensures that IOUs meet or exceed the 1.0 TRC for the RA sub-portfolio without considering C&S programs. Without this direction, IOUs could achieve CE thresholds by utilizing their ability to offer C&S advocacy programming that other PAs are not able to provide. This sets up a potentially anti-competitive advantage for IOU PAs and eliminates the incentives for the IOUs to administer cost-effective programs on equal footing to CCAs, both of which should be avoided. MCE therefore respectfully requests that the final Decision explicitly order that IOUs must meet or exceed the 1.0 TRC for the RA sub-portfolio without considering C&S programs.

b. The Commission Should Continue to Consider Use of the PAC Test Instead of the TRC Test to Evaluate EE Portfolios' Cost-Effectiveness.

The PD strikes a reasonable balance by requiring IOU and CCA RA portfolios to be cost-effective on an ex-ante basis. In order to demonstrate cost effectiveness, PAs must show that the RA segment of their portfolio "with all resource acquisition programs' costs and benefits combined together" has a TRC ratio of at least 1.0 or greater.¹⁴ While MCE conceptually agrees that for the RA program portfolio, benefits should be equal to or greater than costs, the TRC has policy

¹¹ D.18-05-041 at pp. 114-115.

¹² See PG&E's 2020 portfolio performance per the California Energy Data and Reporting System ("CEDARS") website dashboard.

¹³ See D.14-01-033, OP 3 at p. 50 (Applying IOU cost effectiveness standards to CCAs); D.14-10-046 at pp. 109-110 (Setting a TRC ratio of 1.25 for IOUs and CCAs).

¹⁴ PD at p. 21.

implications that should be avoided. The TRC reduces cost effectiveness, and thus viability of projects, based on participant contributions. These individual contributions do not impair the ratepayer or the Program Administrator and should not inhibit projects. In fact, the opposite is true; removing the participant costs from cost-effectiveness creates an incentive for PAs to accomplish projects with the lowest possible program rebates. While such an approach may drive more projects to wealthier participants, the new equity category of programs can provide higher rebates when needed. The incentive to tailor rebates is significantly muted when utilizing the TRC because both programmatic and participant costs are equally weighted. Instead, the Commission should adopt the PAC test to evaluate cost-effectiveness on an ex-ante basis.

Along with the TRC test, the PAC test is one of the most commonly used tests for EE program planning purposes and is frequently used in a resource planning context to evaluate EE investments against supply-side alternatives.¹⁵ This means the PAC test is also better suited for evaluating EE against supply side resources and therefore better effectuates Commission's stated intent "to have the resource acquisition programs further optimized within the Commission's IRP process in the future."¹⁶

Furthermore, the RA program portfolio would be systematically disadvantaged by the asymmetrical inclusion of participant *costs* in the TRC while failing to include participant *benefits* such as non-energy benefits ("NEBs"). MCE understands that more work needs to be done to determine which NEBs drive consumer decisions and to estimate the value of those NEBs. Therefore, given the options before us, MCE believes switching from the TRC to the PAC is an appropriate way to address the problem efficiently in the interim. The PAC test only considers costs and benefits incurred by the PA, not those incurred by the customer, and consequently provides a much better "apples to apples" comparison of the benefits and costs of EE programs.

MCE acknowledges that the PD does not address this issue. However, this issue has been raised by multiple stakeholders in the past. If the Commission does not consider this issue to be within the scope of this Decision, it should indicate through which procedural avenues this issue can be addressed prior to the filing of business plans in February 2022.

¹⁵ Energy Efficiency Guidebook for Public Power Communities at p. 1, available at <http://ceeep.rutgers.edu/wp-content/uploads/2013/11/EEGuidebook2009.pdf>.

¹⁶ PD at p. 16.

c. New Reporting Metrics Should be Developed for All Portfolio Segments to Better Align with the New EE Portfolio Directives.

The PD directs all PAs to develop metrics and criteria for evaluating progress of market support and equity programs in the absence of strict CE limitations.¹⁷ MCE agrees that new metrics should be developed but adds that new metrics should be developed for *all* portfolio segments, not just equity and market support, as current metrics are not aligned with the new direction of the EE portfolio.

MCE proposes that new reporting metrics for all three segments should be developed through a CAEECC Working Group. This will ensure uniform metrics between PAs and that stakeholder input is considered in the development of the metrics. The new metrics should be based upon the metrics that are currently being reported on but they must be updated to accurately reflect segmentation, updated Commission priorities, valuation of load shifting, and use of TSB for goal setting and evaluation.

After stakeholder input is provided via CAEECC, the Commission should require the PAs to propose updated reporting metrics to be approved through a Tier 2 AL. In previous portfolio cycles, metrics were approved and included as an attachment to the Commission's Decision approving Business Plans.¹⁸ This means however, that if any mistakes are subsequently discovered, or improvements subsequently identified, the only way to change the metrics is to file a petition for modification of the prior decision. By explicitly allowing for updates to metrics in an advice letter, the Energy Division ("ED") and PAs can more easily update metrics over time as they gain experience with the new EE construct. This will allow for more flexibility and improvement over time through iteration and applying lessons learned.

IV. PD Section (5) – Portfolio Processes

MCE generally supports the updated portfolio process but encourages the Commission to adhere more closely to the CAEECC Proposal, which eliminates the separate business plan application and incorporates most updates via informal stakeholder processes.

a. The Commission Should Avoid the Hybrid Approach in the PD and Instead Adopt the CAEECC's Proposal of a Four-Year Portfolio Application Only.

MCE appreciates the Commission's recognition that the current ten-year rolling portfolio cycle with annual cost recovery authorization has not provided the expected efficiency benefits

¹⁷ *Id.* at p. 22.

¹⁸ D.18-05-041, Attachment A – Adopted Common Metrics for Energy Efficiency Business Plans.

because ABALs have become contested every year and are not the ministerial filings once envisioned.¹⁹ The CAEECC Proposal sought to eliminate annual ABALs and the high-level business plan filing every eight years in favor of a more detailed four-year portfolio filing. Through the portfolio application, EE PAs would articulate their overarching strategy to support the state's EE goals and objectives, describe programmatic plans for each sector, provide CE forecasts, and seek formal EE funding approval through detailed testimony.²⁰ However, the PD instead adopts a “hybrid approach” that keeps both “a high-level rolling portfolio with a business plan, while also adopting many elements from the CAEECC Proposal for a four-year portfolio filing.”²¹ MCE respectfully urges the Commission to eliminate the separate eight-year business plan filing requirements and instead require PAs to include an eight-year strategic plan in each four-year EE portfolio application filing.

The PD explains that the Commission is interested in continuing to receive and provide input on the PAs’ high-level strategic plans, to better guide energy efficiency portfolio and program focus over the coming near-decade.²² However, PAs can and should provide this same information every four years in each EE portfolio application cycle. Further, allowing PAs to update their eight-year plan every four years provides more flexibility to adapt to changing market conditions and to incorporate lessons learned in the first four years of the long-term plan. In addition, MCE is concerned that the filing of two concurrent applications every eight years would be confusing to stakeholders, the Commission, implementers and interested customers. Consolidating these applications should greatly streamline the proceeding activity that must be managed by the Commission.

To be clear, MCE strongly supports the Commission’s adoption of CAEECC’s recommendation that PA budgets, CE requirements, and goals be set and evaluated over a four-year timeframe instead of the current annual process. MCE also supports the PD’s stated intent to provide market certainty for EE by setting an eight-year budget cap. However, MCE has doubts that the eight-year business plan approval will actually result in budget certainty. Current practice approves a 10-year budget cap in a Business Plan filing, but actual budgets still have to be approved

¹⁹ PD at p. 26.

²⁰ CAEECC Proposal at p. 6.

²¹ PD at p. 27.

²² *Id.* at p. 28.

via the ABAL process. Given that actual budgets under the PD's new approach will also need to be explicitly approved every four years and, absent Commission action, existing funding levels will continue, MCE believes that the additional value of the eight-year business plan filing is very limited.

For these reasons, the Commission should remove the PD's requirement that PAs file an eight-year business plan and should clarify that each EE portfolio application must include the eight-year strategic plan and an eight-year budget similar to what is currently approved in a business plan application.

b. The Commission Should Require Biennial Updates to the EE Portfolios Be Primarily Provided Via an Informal CAEECC Stakeholder Process Rather than an Advice Letter.

The PD adopts the CAEECC Proposal, consistent with the various California Energy Commission ("CEC") and Commission planning processes, to require that EE potential and goals be updated every two years, in the odd years.²³ However, the PD significantly departs from the CAEECC Proposal by requiring that PAs file a Tier 2 AL once every two years in the odd years, in September, "to either true-up the portfolio and budgets to the new goals if a portfolio has just been approved, or modify the portfolio in the middle of a cycle to take into account updated goals."²⁴

First, MCE would like to point out that at this point in time, there exists no Commission directive for non-IOU PAs to update their EE goals halfway through the portfolio cycle, hence rendering the mid-cycle AL filing less relevant for non-IOU PAs. Second, the PD's biennial AL process appears to be inconsistent with the overarching goal to provide flexibility in budgets, goals, and CE requirements over a four-year timeframe under the portfolio filing. Having to re-forecast and seek re-approval every two years in an AL filing seems counterintuitive to this process.

Instead, the CAEECC Proposal outlined a process whereby PAs would provide any changes to its portfolio through annual reporting so long as such changes could be absorbed within approved budgets and existing timelines.²⁵ An AL filing would only be triggered under the CAEECC Proposal if the change caused an enumerated trigger, including (1) program closure, (2) additional budget requests, or (3) when a portfolio is not "on target" to meet its four year savings

²³ *Id.* at p. 39.

²⁴ *Id.* at p. 40.

²⁵ CAEECC Proposal at p. 10.

goals²⁶ or CE thresholds.²⁷ ‘On target’ is defined as a PA is reasonably able to demonstrate its ability to meet savings goals (i.e., +/- 20%) and cost-effectiveness (i.e., +/-10%) targets by the end of the four-year cycle. Note that if the PA is off-target in a given year, they can reasonably "make it up" in the following year(s).”²⁸

MCE agrees that PAs should report on actual progress towards goals in the enhanced annual reports and that re-forecasting through an AL may not be needed. Instead, the re-forecasting should occur through the CAEECC process and informal reporting as suggested in the CAEECC Proposal. Under that framework, a PA’s portfolio that is significantly diverging from its four-year portfolio forecast would still submit an AL to make necessary changes based on clearly identified triggers.

c. Implementation Plan (“IP”) Review Processes Should Continue to Follow the Process Described in D.15-10-028.

The CAEECC Proposal recommended that detailed IPs should not be included as part of the formal EE portfolio application process but that PAs should instead continue to follow the IP review process described in D.15-10-028.²⁹ However, the PD would reject this recommendation and instead would require the IPs to be included in the four-year portfolio application itself.³⁰ MCE strongly recommends that the Commission not change the existing rules and requirements regarding IPs. The Commission should amend the PD and order that PAs will continue the IP process described in D.15-10-028, consistent with the CAEECC Proposal.

Requiring that all IPs be approved in the portfolio application would bind PAs to the program rules outlined in the IPs for four-years and eliminate a significant amount of the flexibility that is at the very heart of the rolling portfolio and the CAEECC Proposal. The CAEECC Proposal is explicitly intended to afford PAs “the flexibility to meet goals and spend authorized budgets over multiple years, recognizing natural market fluctuations and program on/off ramps.”³¹ If IPs must be approved in a four-year application, then PAs are effectively locked into program design for a four-year period and cannot adjust program design based on market changes or new portfolio and/or program needs. Such flexibility is vital to the success of this framework, otherwise PAs

²⁶ Note that “savings” goals would now be updated to reference “TSB” goals.

²⁷ *Id.* at pp. 7, 10.

²⁸ *Id.* at p. 7.

²⁹ *Id.* at pp. 7-8.

³⁰ PD at p. 29.

³¹ CAEECC Proposal at p. 6.

may be foreclosed from making interim changes to IPs upon discovering programs must be adjusted to reach portfolio goals.

Furthermore, from a policy perspective, it is not clear what procedural or policy benefit would be achieved by requiring IP approval through the four-year portfolio filing. That is because most IOU programs are now being reviewed through the third-party implementation process, which includes a solicitation and AL approval process. MCE's program proposals and IPs are currently undergoing both MCE-specific Board approvals and review via the IP process as directed by D.15-10-028. The Commission has also been clear in the past that it does not expect or require PAs to seek stakeholder input on implementation plans for pre-existing programs that are not being modified.³² For new implementation plans, the current CAEECC stakeholder process is working well.

MCE therefore suggests that the Commission either remove the PD's requirement that IPs be included in portfolio applications, or alternatively, require that only current IPs be included for informational purposes and to assist the Commission in deciding on issues of proper portfolio segmentation. If the Commission takes this alternative, it should clarify that it will allow IPs to be modified throughout the portfolio cycle following the current processes set forth in D.15-10-028.

d. Joint Cooperation Memoranda Should Be Included with PAs' Annual Reports.

The PD wisely orders that PAs with overlapping offerings continue to work on and file Joint Cooperation Memoranda ("JCMs") pursuant to the requirements of D.18-05-041.³³ MCE supports maintaining this requirement, but in an effort to streamline filings and promote administrative efficiency, suggests that the JCM filing requirement henceforth should be incorporated into the PA's Annual Report to be filed in May of each year.³⁴ According to D.18-05-041, "PAs with overlapping service areas must submit updated joint cooperation memos via a Tier 2 advice letter no later than June 15, *prior to submitting their ABALs*."³⁵ As noted in the quoted text, the foundational purpose of requiring the JCM filing in June was to ensure approval prior to PAs filing their ABALs. Since ABALs will not be required moving forward, the

³² D.18-05-041 at p. 16.

³³ PD at p. 30.

³⁴ *Id.* at OP 12.

³⁵ D.18-05-041 at p. 123 (emphasis added).

Commission should order in its final Decision that the JCM process be moved to coincide, and be integrated into, the Annual Report process in May.

e. The Commission Should Direct that Applicable Templates Be Finalized by July 30, 2021 in Order to Provide PAs Adequate Time to Prepare Complex Applications.

MCE appreciates that the Commission has included draft templates for both the business plan and the portfolio filing as Attachments A and B to the PD. However, MCE recommends the Commission direct Staff to work with stakeholders prior to filing any revised templates and to publish final templates by July 30, 2021. This timeframe is necessary to give PAs adequate time to iterate upon and prepare robust application filings.

V. PD Section (6) – Interim/Transition Process

MCE appreciates the Commission’s recognition that there is not enough time for new PA applications to be completed by September 1, 2021 and its decision to move the deadlines to February 15, 2022 for programs to start in PY 2024.³⁶ MCE also agrees with the PD’s directive that both PYs 2022 and 2023 can be combined into one ABAL and that CE ratios demonstrating a TRC of 1.0 must only be met for the RA segment of the portfolio on a forecast basis.³⁷ However, MCE makes the following recommendations to clarify and slightly modify the PD’s proposal.

a. The Final Decision Should Clarify that PAs May Use the 2020 Avoided Cost Calculator for the PY 2022/23 ABAL.

MCE recommends that the final Decision clarify that PAs may use the 2020 version of the avoided cost calculator (“ACC”) adopted in Resolution E-5077, not the upcoming 2021 minor ACC update, to develop the 2022/2023 ABAL filing. Last year, the ACC was not adopted and fully incorporated into the cost-effectiveness tool (“CET”) until mid-July.³⁸ Such a timeframe makes it very challenging for PAs to appropriately adjust their portfolios for a September 1, 2021 filing deadline (and a potential presentation to CAEECC by early August). Furthermore, Table 3 of the PD specifies that the 2020 ACC should be used to develop the applications due in February 2022.³⁹ If PAs are able to use the 2020 (major) ACC instead of the 2021 (minor) ACC for the

³⁶ PD at pp. 48-49. (Note MCE continues to support the elimination of a separate Business Plan filing, *see* Section IV(a), above.)

³⁷ *Id.* at pp. 50-51.

³⁸ Resolution E-5077 at p.1 adopted the ACC on June 25, 2020. The CET was updated with the ACC and became available for use on July 16, 2020.

³⁹ PD at p. 39.

business plan and portfolio applications, the same ACC version should be used for the earlier ABAL filing.

b. The Final Decision Should Clarify that ABAL Submissions May Be Provided to the CAEECC After Submittal Rather than Immediately Before.

While the PD is silent on the subject, MCE also recommends that the final Decision clarify that the PY 2022/23 ABAL submission is not required to go through the typical CAEECC stakeholder review process. CAEECC members have noted in the past that presenting the ABAL to CAEECC a few weeks before the ABAL submission is not effective. It is already too late in the process to incorporate meaningful feedback into the ABAL submissions and an earlier CAEECC presentation is not possible due to condensed timelines. Instead, MCE proposes that PAs present their ABAL submissions to CAEECC shortly after the submission deadline to provide stakeholders additional details on the submission.⁴⁰

c. MCE Should Be Allowed to Establish Updated Savings Goals and New TSB Goals in its PY 2022/23 ABAL.

As mentioned above, MCE's goals are currently set per the 2019 "true-up" ABAL. These energy savings goals do not accurately reflect changed market conditions, especially considering the Covid-19 pandemic. Furthermore, MCE does not have a TSB goal determined for its EE portfolio. The Commission should thus clarify in the final Decision that MCE may present updated energy savings goals and new TSB goals for PYs 2022 and 2023 in its ABAL submission due on September 1, 2021.

VI. PD Section (7) – AB 841 Interface with Portfolio Process

a. Savings from the School EE Program Can Count Towards the IOUs' Savings Goals but These Savings Cannot Be Considered in the IOUs' CE Calculations.

The PD finds, regarding savings from the School Energy Efficiency Stimulus Program established by AB 841 ("School EE Program"), "that the IOUs should track and report expenditures (costs) and energy savings (benefits) from the Stimulus Program separately from their portfolio cost-effectiveness calculations."⁴¹ MCE agrees with this statement. However, the PD also states that "the IOUs should not include these expenditures as costs in their portfolio cost-effectiveness calculations" although "[s]avings from the Stimulus Program, so long as they are tracked and reported, can always be incorporated **into portfolio cost-effectiveness calculations**

⁴⁰ CAEECC Proposal at p. 15.

⁴¹ PD at p. 54.

[emphasis added], if and as deemed necessary in the future.”⁴² Because the latter statements appear to be in tension with the prior finding by treating savings differently from costs, MCE requests that the Commission clarify that IOUs must track and report both costs and benefits from the School EE Program separately from their portfolio cost-effectiveness calculations. It is MCE’s understanding that savings from the School EE Program can count towards the IOU’s *savings goals* but that these savings cannot be considered in the IOU’s *CE calculations*.

If not clarified, MCE is concerned that this inconsistency would lead to skewed outcomes. Allowing the IOUs to incorporate savings benefits from the School EE Program without requiring them to also incorporate the costs associated with that program into the CE calculations would produce misleading CE ratios, falsely inflating IOU CE values under the TRC test. Asymmetric calculations that apply to IOUs but not to CCAs in turn would disadvantage the CCAs. Because the CCAs are required to account for all costs in their portfolio CE calculation, CCA programs would have lower TRC test results in comparison to inflated IOU results.

For these reasons, the Commission should clarify that savings from the School EE Program can count towards the IOU’s *savings goals* but that these savings cannot be considered in the IOU’s *CE calculations*.

⁴² *Id.* (emphasis added).

VII. Conclusion

MCE thanks Commissioner Randolph, Administrative Law Judge Fitch, and Administrative Law Judge Kao for their thoughtful consideration of these important issues.

Respectfully submitted,

/s/ Jana Kopyciok-Lande

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Dated: May 6, 2021

APPENDIX A

Pursuant to Rule 14.3(b) of the Commission's Rules of Practice and Procedure, MCE offers the following index of recommended changes to the Proposed Decision, including any proposed changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs. MCE's proposed additions appear in underline and deletions appear in strikethrough.

Ordering Paragraphs

3. Beginning in program year 2022, energy efficiency program administrators who are investor-owned utilities or community choice aggregators shall ensure that the forecasted benefits exceed the costs of the resource acquisition segments of their portfolios, as measured by the Total Resource Cost test, without considering Codes & Standards programs.

5. ~~All current energy efficiency program administrators shall file energy efficiency business plan applications no February 15, 2022, to cover an eight year period beginning with program year 2024. The business plans shall serve as a strategic plan for the energy efficiency efforts of the program administrator, and shall contain sector level strategies, metrics, and an eight year budget.~~

6. All current energy efficiency program administrations shall file four-year energy efficiency portfolio applications, ~~which shall be combined with the business plan applications in Ordering Paragraph 5,~~ on February 15, 2022, to cover a four-year period beginning with program year 2024. The portfolio applications shall contain a high-level, strategic plan and budget that covers an eight-year period. It should also contain detailed sector and program strategies, budgets, and cost-effectiveness showings over the four-year period, and implementation plans for all programs that are currently operating or planned to operate during the portfolio period, with the exception of third-party programs where the contract has not yet been awarded. The portfolio applications shall utilize the technical inputs included in Table 2 of this decision. The Commission will continue to approve implementation plans through the current processes set forth in D.15-10-028.

8. All program administrators shall continue to prepare and submit Joint Cooperation Memoranda, according to the existing requirements contained in Decision 18-05-041. However, the process for submitting Joint Cooperation Memoranda shall be moved to coincide with, and be integrated into, the Annual Report process that takes place each May.

18. Non-IOU program administrators shall update their portfolio goals for the transition years (e.g. program years 2022 and 2023) via the ABAL filing due September 1, 2021. They shall also update their goals every four years through the portfolio filing process. To the extent program changes are necessary during interim periods, non-IOU PAs may submit trigger-based advice letters to update their goals. Triggers will include program closure, additional budget requests, or a portfolio that is not on target, as described in the CAEECC Proposal attached to the April 24, 2020 NRDC Motion.

19. The CAEECC shall form a working group to develop new reporting metrics for all three portfolio segments that will be filed at the Commission via a Tier 2 advice letter before September 1, 2023.

20. Program administrators may use the 2020 version of the avoided cost calculator (“ACC”) adopted in Resolution E-5077 to develop their PY 2020/2023 ABAL filing.

21. Due to timing constraints, the program administrators’ PY 2022/23 ABAL filing need not be subject to the standard CAEECC review process. Instead, the ABAL filings can be provided to the CAEECC for additional feedback shortly after submission to the Commission.



FILED

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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill 520 and Address Other Matters
Related to Provider of Last Resort.

R.21-03-011

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
REPLY COMMENTS ON ORDER INSTITUTING RULEMAKING TO
IMPLEMENT SENATE BILL 520 AND ADDRESS OTHER MATTERS
RELATED TO PROVIDER OF LAST RESORT**

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May 10, 2021

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SUMMARY OF RECOMMENDATIONS

- A POLR of short duration with reliance on LSEs to meet long-term policy and reliability goals is the most effective mechanism avoiding complicated and potentially conflicting procurement and cost allocation.
 - Concerns over the potential need for a POLR does not justify anti-competitive practices as suggested by some stakeholders and should be rejected by the Commission.
 - The Commission does not have jurisdiction to mandate specific hedging practices by some LSEs nor has such a practice proven to be necessary.
 - The scope of this OIR must remain with those elements necessary to implement Senate Bill 520 and make the POLR effective. Any changes to policy from other proceedings should be raised within those other proceedings.
-

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REPLY COMMENTS ON ORDER INSTITUTING RULEMAKING TO
IMPLEMENT SENATE BILL 520 AND ADDRESS OTHER MATTERS
RELATED TO PROVIDER OF LAST RESORT**

The California Community Choice Association¹ (CalCCA) submits these Reply Comments in response to the *Order Instituting Rulemaking To Implement Senate Bill 520 and Address Other Matters Related To Provider Of Last Resort* (OIR), issued March 25, 2021, pursuant to Rule 6.2 of the California Public Utilities Commission's (Commission's) Rules of Practice and Procedure and the directives provided by the OIR.

I. INTRODUCTION

CalCCA limits its Reply Comments to issues not addressed in its opening comments. CalCCA continues to support the positions taken in its opening comments and clarifies how those comments should be viewed in light of other stakeholder comments. In addition, these comments discuss elements raised in opening comments that the Commission should reject.

¹ California Community Choice Association represents the interests of 23 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, Valley Clean Energy, and Western Community Energy.

II. THE MOST EFFECTIVE WAY TO MEET POLICY AND RELIABILITY GOALS IS THROUGH LSES THAT STAND READY TO SERVE CUSTOMER NEEDS

A number of parties comment on the duration of service that a customer should be a customer of the Provider of Last Resort (POLR).² Indeed, the Commission can most effectively ensure achievement of reliability and environmental goals (*e.g.*, Resource Adequacy (RA), Integrated Resource Planning (IRP), Renewable Portfolio Standard (RPS), etc.) by relying on load-serving entities (LSEs) who can forecast and procure for the customer needs while meeting such requirements. Those not mentioning duration find that there is much to be debated about how the POLR procures, including term length, and how costs are allocated in such events.³ This inevitably leads to forward procurement of the POLR, who may not ever serve any load, compete directly with those LSEs that do have a service obligation. To avoid long-term procurement by the POLR after a customer is placed in their service, the best strategy is to have that customer returned expeditiously to an active LSE, or to allow the customer to be served by another LSE before being placed in the service of a POLR.

Given the short duration nature of such a service, some waivers for compliance obligations may be necessary for the POLR. For example, Southern California Edison Company (SCE) recommends that the POLR be allowed to allocate costs for year-ahead RA compliance

² *San Diego Gas & Electric Company (U 902 E) Comments on Order Instituting Rulemaking*, Apr. 26, 2021, at 3-4; *Opening Comments of Pacific Gas and Electric Company (U 39 E) on Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort* (PG&E Comments), Apr. 26, 2021, at 8-9; *Opening Comments of Southern California Edison Company (U 338-E) on the Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort* (SCE Comments), Apr. 26, 2021, at A-1 (with regard to involuntary return); and *Comments of the Direct Access Customer Coalition, The Regents of the University of California and Alliance for Retail Energy Markets on Rulemaking to Implement Senate Bill 520*, Apr. 26, 2021, at 10 (addressing customers' desire to make a choice to leave POLR within 6 months).

³ *See, e.g., Comments of the Public Advocates Office on the Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort* (Cal Advocates Comments), Apr. 26, 2021, at 4-24.

costs.⁴ If the duration of service is kept to a short duration, then it is possible that a customer for which the POLR procured RA to meet a year-ahead obligation may well be served by an active LSE prior to the January monthly showing. In this case, the new LSE would be obligated to procure sufficient RA to meet that customer's load plus planning reserve margin in addition to whatever RA was already procured by the POLR. This type of costly over-procurement should be avoided. Instead, the POLR should limit its procurement to spot energy purchases from the California Independent System Operator (CAISO) markets and short-term monthly RA procured bilaterally. The POLR should be eligible for a waiver of RA and RPS requirements in such circumstances in order to recognize the aim of this structure.

III. THE COMMISSION SHOULD NOT ADOPT ANTI-COMPETITIVE PRACTICES IN THE PURSUIT OF ADDRESSING THE POLR STRUCTURE

In its comments, Southern California Edison Company (SCE) recommends:

Another mitigation measure is caps on departing load. Today, ESP service remains capped because of the 2000-01 energy crisis, during which load migration caused significant service continuity and cost shifting risks. However, CCA service is wholly uncapped. Capping CCA service similar to ESP service today and/or allowing only so much load to migrate to CCA service year over year, is another means of mitigating – to some extent – the risk of unplanned migrations to POLR service.⁵

While it is self-evident that without any competitive LSEs, there is no need to address the return of customers unplanned or otherwise. However, the ability of customers and their communities to choose their supplier was established by statute and cannot be limited by this Commission. Moreover, the number of community choice aggregators (CCAs) today speaks to the importance of this alternative to cities seeking to conform their energy procurement to meet local goals. SCE's comments should be rejected.

⁴ SCE Comments, at 2-3.

⁵ *Id.* at A-3, fn. 5.

Similarly, Pacific Gas and Electric Company (PG&E) asks that the scope include:

Equitable allocation of the costs borne by the POLR, both to mitigate risks of a migration and following an actual migration of customers. This may include a requirement that departed load customers contribute in advance to an “insurance pool” to cover the short-term incremental costs associated with a possible migration to the POLR.⁶

PG&E’s proposal to charge the cost of this “insurance” to departing load would erect yet another barrier to customers and communities wishing to choose an energy provider other than the investor-owned utility. In addition, this approach departs from long-standing principles of cost causation and shifts costs among customers.

Finally, the Public Advocates Office (Cal Advocates) recommends:

The Commission should require CCA Joint Powers Authorities (JPAs) to hold bonds against risks of nonperformance of existing contractual obligations, Commission-issued citation penalties, and other regulatory obligations.⁷

As a preliminary matter, CCAs are already responsible to hold financial security for certain costs. Moreover, there is no evidence to suggest that it is significantly different in the risk of non-performance when compared to any other entity in the market. Requiring bonding without evidence of a need would erect barriers to the provision of services to customers and should not be pre-supposed as necessary.

The Commission must reject the anti-competitive practices and counterproductive measures suggested by SCE, PG&E, and Cal Advocates. The allocation of costs to those that cause a cost to be incurred can be implemented such that limitations on customers taking CCA service or imparting costs on the assumption that those customers may causes costs is not necessary.

⁶ PG&E Comments, at 5.

⁷ Cal Advocates Comments, at 2.

IV. HEDGING RECOMMENDATIONS ARE MISPLACED AND PRACTICES MISUNDERSTOOD

PG&E and the Utility Consumers Action Network (UCAN) recommend that the Commission have additional oversight of the hedging practices of Electric Service Providers (ESPs) and CCAs.⁸ Both parties point to an Energy Division Staff (Staff) report in the Resource Adequacy proceeding (R.19-11-009) noting a decline in tolling agreements in favor of RA-only contracts. The Commission must recognize that tolling agreements are but one form of hedging. Indeed, Staff's noted trend is true of all LSEs including the IOUs. At the same time, each IOU has a bundled procurement plan that addresses hedging and to CalCCA's knowledge, none of the IOUs have been found to be in violation of their hedging requirements despite their own reductions in tolling agreements.

CCA likewise have elected officials that oversee their procurement practices. The decisions of the type and extent of hedging that should be performed lies squarely within their purview. In addition, customers of the CCA are not franchise customers as is the case of the IOU. A customer may choose to leave a CCA that over or under hedges its risk and may take service from another provider.

V. THE PUBLIC ADVOCATES OFFICE VEERS OUTSIDE THE SCOPE OF THIS PROCEEDING AND PROPOSES TO RELITIGATE SETTLED MATTERS

Cal Advocates has a number of recommendations for this proceeding that are either unclear or are more appropriately addressed in a different proceeding. The following is a brief discussion of those issues.

⁸ See PG&E Comments, at 13-14; and *Comments of the Utility Consumers' Action Network on The Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort*, Apr. 26, 2021, at 3-4.

- *The POLRs should be subject to substantial obligations including terms of service, connection, reconnection, resource procurement, and rate design parameters, met in a fair and reasonable manner.*⁹

Connection and disconnection are a responsibility of the utility distribution company. This role is separable from the role of any LSE whether an IOU, POLR, ESP, or CCA. The Commission should reject this proposal.

- *The Commission should adopt permanent backstop procurement mechanisms in the integrated resource planning (IRP) proceeding, such as procurement by a central buyer, with clear cost allocation requirements.*¹⁰

While the Commission does ask which proceedings should inform or coordinate with this OIR,¹¹ the Commission should not make decisions here that are more appropriately debated and developed in their own proceeding. The Commission should consider how the IRP processes inform this proceeding but should find this recommendation from the Public Advocates Office out of scope.

Cal Advocates also seeks to relitigate the Financial Security Requirement (FSR) proceeding, with several out-of-scope proposals:

- *If a POLR needs to procure additional RA capacity due to an LSE failure, those procurement costs should be recovered through the Financial Security Requirement (FSR) structure. This list of obligations is not exhaustive, but is included to demonstrate the breadth of obligations for which a POLR would need to submit to direct regulation by the Commission.*
- *The Commission should not allow negative procurement cost estimates to offset incremental administrative cost estimates in the calculation of the FSR amount.*
- *If the Commission allows negative procurement offsetting to remain in place, the Commission should substantially raise the minimum FSR.*¹²

⁹ Cal Advocates Comments, at 1 (footnote omitted).

¹⁰ *Id.* at 1.

¹¹ *Order Instituting Rulemaking to Implement Senate Bill 520 and Address Other Matters Related to Provider of Last Resort*, March 25, 2021, questions 18-20.

¹² Cal Advocates Comments, at 1-2.

Similar to the preceding recommendation from Cal Advocates, the FSR and the proceeding establishing the FSR are informative in this proceeding. However, any re-litigation of the level of the FSR should occur within the appropriate proceeding and not within this OIR.

VI. CONCLUSION

For all the foregoing reasons, CalCCA requests that the Assigned Commissioner and Administrative Law Judge allow LSEs to effectively serve customer needs without taking actions that will erect barriers unnecessarily to retail access or that make the provision of energy services to customers unnecessarily expensive.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl
General Counsel to the
California Community Choice Association

May 10, 2021

Braun Blaising Smith Wynne, P.C.

Attorneys at Law

May 17, 2021

VIA ELECTRONIC MAIL

Mr. Ed Randolph
Deputy Executive Director for Energy and Climate Policy
Energy Division
California Public Utilities Commission
505 Van Ness Avenues
San Francisco, CA 94102

Re: Draft Resolution E-5143 – Comments of the Joint CCA Parties on Updates to Citation Program for Non-Compliance with Mandatory Filing Deadlines and Reporting Requirements of the Renewables Portfolio Standard

Dear Mr. Ed Randolph:

In accordance with Rule 14.5 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure and the timeline set forth in the cover letter accompanying Draft Resolution E-5143, published on April 23, 2021 ("Draft Resolution"), the City of Lancaster, City of Pico Rivera, City of San Jacinto, City of Rancho Mirage, Apple Valley Choice Energy, City of Baldwin Park, City of Commerce, City of Pomona, City of Santa Barbara, Marin Clean Energy, Silicon Valley Clean Energy Authority, San Diego Community Power, Central Coast Community Energy, and Sonoma Clean Power Authority (collectively "Joint CCA Parties") provide these comments on Draft Resolution E-5143. The Draft Resolution proposes to update the Renewables Portfolio Standard ("RPS") citation program initiated by Resolution E-4257, and updated by Resolution E4720, to add a schedule of penalties for the failure to submit either a Draft or Final RPS Procurement Plan with the required elements. The Draft Resolution also modifies the description of a Specified Violation for the failure of a retail seller to comply with a request for information or documentation from Commission staff related to the implementation of the RPS program.

I. Introduction

The Joint CCA Parties support the state's RPS program and agree that ensuring broad compliance with the Commission's RPS requirements helps support this effort. The RPS Procurement Plans provide useful information to the Commission and the public on the progress of California's retail sellers in achieving the RPS targets. Reasonable penalties for any retail seller that fails to submit an RPS Procurement Plan may serve to increase the likelihood of compliance. Accordingly, the Joint CCA Parties do not object to the expansion of the existing RPS Citation Program as proposed in the Draft Resolution, subject to the modifications below.

The following modifications would both improve the clarity of the citation program requirements, as well as avoid overly harsh or punitive results:

- The Draft Resolution should clearly differentiate between a deficiency in a Draft RPS Procurement Plan that can be resolved in the retail seller's Final RPS Procurement Plan and a Draft or Final RPS Procurement Plan that is missing a required element such that the retail seller must immediately submit a revised version of its plan.
- Commission Staff should be directed to first utilize an informal process to request that a retail seller submit a revised Draft or Final RPS Procurement Plan to include any missing element prior to initiating a formal citation process.
- The Draft Resolution should specify a reasonable minimum amount of time that Commission staff must provide to a retail seller to respond to a request for information or documentation related to the RPS program before a Scheduled Penalty will apply.
- The Draft Resolution should restore Finding 12 from Resolution E4720, directing Commission Staff to appropriately label a data request to a retail seller.

These recommendations are described in more detail below.

II. Comments on the Draft Resolution

1. Clarify What Constitutes a Required Missing Element of a Draft or Final RPS Procurement Plan.

The Draft Resolution states that the following would qualify as a Specified Violation: the “[f]ailure to submit an annual Draft RPS Procurement Plan (RPS Plan) or the annual Final RPS Plan at the time required *with the required elements*.”¹ This language clarifies that it is not only the failure to submit a Draft or Final RPS Procurement Plan on time that can result in a citation, but that a citation can also be issued to a retail seller that submits a plan on time, but where that plan is missing some required element. It is, therefore, necessary for the Commission to clarify when a retail seller's response to a required element in an RPS Procurement Plan is so incomplete that it is deemed to be missing.

Under the Commission's current RPS Procurement Plan process, retail sellers file Draft RPS Procurement Plans based on the direction provided in the annual ruling specifying the content requirements for that year's Plans. The Commission then issues a decision on the draft Plans, and for Community Choice Aggregators (“CCAs”) and Electric Service Providers (“ESPs”), the decision either accepts their individual Plan and deems it as final or the decision identifies additional information that must be provided and directs the CCA or ESP to file a final RPS Procurement Plan that includes this missing information.

Clearly there is a difference between the normal process for updating Draft RPS Procurement Plans based on the direction provided in the Commission's decision and a failure to

¹ Draft Resolution at 15-16 (emphasis added).

include a required element, such that a Procurement Plan is functionally submitted late. The Draft Resolution provides some additional clarification on this point, stating:

While CPUC Staff expects to require a certain amount of information or corrections from some retail sellers between draft RPS Plans and final RPS Plans, far too many retail sellers failed to provide the most basic information. ***It is in these cases, where retail sellers fail to provide information in either its draft or final RPS Plan, that CPUC Staff may rely on this RPS Citation process to ensure compliance.*** That a retail seller submits a document purporting to be its draft or final RPS Plan is not, on its own, sufficient to meet RPS Plans filing requirements. CPUC Staff needs the discretion to find a retail seller's draft or final RPS Plans filing lacking statutorily-required elements and to cite that retail seller for failing to submit its RPS Plan.²

While this clarification is helpful in providing useful context, the Draft Resolution gives Commission staff broad discretion to determine what constitutes a normal amount of corrections and what constitutes a failure to provide "the most basic information." The Draft Resolution should be amended to add a footnote to the table of Specified Violations and Scheduled Penalties clarifying that for there to be a citation for a missing element, the information must be expressly required by Public Utilities Code section 399.13 and the retail seller's response must be so fundamentally incomplete as to be functionally nonresponsive.

An element should not be considered missing simply because Commission staff disagrees with the findings or determinations made by the retail seller, such as the anticipated solicitation and contract negotiation schedule, the type of risk assessment performed, the specific technologies and resources selected, the level of margin of over-procurement, or other similar elements within the retail seller's Plan. The Commission's adopted penalties for non-compliance with the RPS procurement requirements are the appropriate mechanism to ensure that a retail seller is taking the necessary planning, analysis, and procurement steps to ensure that it will be in compliance.

2. Informal Process for Curing a Missing Element in a Draft or Final RPS Procurement Plan.

The primary process for the Commission to identify additional information or other corrections in a retail seller's RPS Procurement Plan should be through the existing process of submitting Draft and Final RPS Procurement Plans. Citations should only be issued in extraordinary cases where a retail seller is so fundamentally unresponsive to a statutorily required element that the entire plan should be considered incomplete. Given the highly complex and changing nature of the RPS Procurement Plan requirements, all retail sellers should be afforded a reasonable opportunity to cure a "missing element" prior to a scheduled penalty being issued. Such a process would also save Commission time and resources by avoiding triggering the citation process too often.

The Joint CCA Parties recommend the Draft Resolution include a footnote directing Commission Staff to normally utilize an informal process to provide the retail seller with an

² *Id.* at 5 (emphasis added).

opportunity to submit a revised Draft or Final RPS Procurement Plan that cures the deficiency by including the missing element of the plan. Any such informal notice should clearly identify what the missing element is and provide a reasonable amount of time for the revised plan to be submitted. The footnote could clarify that this informal cure process does not extend the time during which penalties are calculated. This would give any retail seller a very strong incentive to be responsive, while also providing a reasonable cure opportunity for the retail sellers.

3. Reasonable Minimum Timeframe for Responding to a Request for Information.

Current Resolution E-4720 provides a fixed 10-day deadline for retail sellers to respond to a Commission staff request for information or documentation related to the implementation of the RPS before a Scheduled Penalty applies. The Draft Resolution simply eliminates the fixed 10-day time period, leaving the deadline to Commission staff's discretion. The Joint CCA Parties support this in part because the deadline for submitting this information should vary based on the complexity and scale of the information requested. However, because citation penalties apply to a failure to submit this information by the deadline, the Commission should provide some reasonable minimum time period for a response.

Specifically, the Joint CCA Parties recommend that the Draft Resolution be modified to add a footnote clarifying that Commission staff should set a reasonable deadline for a response that takes into consideration the scale and complexity of the information requested, but in no case may the deadline be less than five business days from when the request was issued. Additionally, the Commission should direct staff to normally initiate a request for information with an informal communication seeking the retail seller's input on the feasibility of the proposed deadline for the information. Finally, the Draft Resolution should be modified to add a footnote clarifying that a retail seller may request additional time to respond to an information request, the granting of which is at the discretion of Energy Division staff.

4. Specify Labeling Requirement for Requests for Information.

Finding 12 in Resolution E-4720 provides:

Due to the number of informal and formal data requests, some without strict deadlines and some related to other proceedings, it may be difficult to determine if a retail seller has responded to a data request related to RPS compliance reports in the time or manner required. Therefore, when making data requests directly related to RPS compliance reports, Commission staff shall include the following header: "This data request is directly related to Renewables Portfolio Standard compliance reports and is subject to the fine schedule outlined in Resolution E-4257."

However, the Draft Resolution appears to eliminate this requirement for Commission staff. The Joint CCA Parties agree with the reasoning in this original Finding 12. Due to the large number of proceedings involving data requests and due to the frequent informal communications with Commission staff, it may be not clear to a retail seller that a specific request is one that is subject to penalties. Given the significant consequence of a failure to timely respond, Commission staff should ensure that any such request is appropriately labeled.

The Joint CCA Parties recommend that Finding 12 be included in the Draft Resolution with the wording of the required heading modified as follows: “This data request is directly related to the implementation of the Renewables Portfolio Standard program and is subject to the fine schedule outlined in Resolution E-5143.”

III. CONCLUSION

The Joint CCA Parties appreciate the opportunity to provide these comments on the Draft Resolution.

May 17, 2021

Respectfully submitted,

/s/ Justin Wynne

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cc: edtariffunit@cpuc.ca.gov
Brent Tarnow, Public Utilities Regulatory Analyst, CPUC Energy Division
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Service List in R.18-07-003

Energy Storage Enhancements (Issue Paper)
Market & Infrastructure Policy

California Community Choice Association (CalCCA) Comments

CalCCA thanks the California Independent System Operator (CAISO) for taking on this initiative. As the capacity from storage continues to increase, it will be important to ensure that the energy markets function as efficiently as possible in light of the technological differences presented by storage resources. CalCCA generally believes that the CAISO has appropriately scoped this initiative and provides the following comments for consideration as the CAISO continues its policy development.

Real Time Market Enhancements

Marginal Cost

The accurate reflection of marginal cost is critical to enabling efficient market operation. The evolution of storage is continuing, and more is now known about costs, including cycling costs, as the market expands. CalCCA supports the CAISO recommendation to continue investigating cycling costs, including the relative cycling cost dependent on the state of charge as outlined in the Issue Paper at pages 6-7, in the discussion of bid submission timelines. In addition, if the CAISO cannot extend the real-time market optimization horizon sufficiently forward to fully capture a charge/discharge cycle, the CAISO should consider an end of horizon opportunity cost as suggested by the Market Surveillance Committee. There is merit in such an approach; however, further evaluation is necessary to determine if such a mechanism is appropriate and if it can sufficiently address the need to constrain resources to ensure their state of charge.

The discussion of marginal cost would benefit from a minor expansion: the inclusion of physical resource characteristics within the system optimization. While some storage technologies can rapidly change from charging to discharging, this is not the case for all storage technologies and therefore should not be the universal expectation (e.g., some storage resources must “rest” for a period of time after fully charging or discharging). Modeling of such resources with inappropriate operational assumptions will place risk on the bidder that can and should be avoided. The CAISO should thus ensure through this process not only that the marginal cost of the resource is accurately reflected, but that the system algorithms and the master file data accurately represent the resource’s capability.

Advisory Intervals and Spread Bidding

It is important that the CAISO recognize the shortcomings of using real-time market advisory intervals when the time horizon of the real-time market is too short to be able to optimize storage charging and discharging. There is general consensus that storage will play an important role in energy arbitrage in the future. In a 65-minute real-time environment, the forward look is simply not long enough to enable meaningful energy arbitrage. If given only these short optimization horizons and associated price differentials within them, the dispatch of such resources may come to look like that of regulating and spinning resources, rather than efficient optimization of storage resource charging and discharging. Similarly, spread bidding may make little sense in a real-time environment where the spread may not be realized in any 65-minute look, but with an expanded look may be a viable method such as in the day-ahead market.

Ensuring State of Charge

The CAISO must examine closely the pros and cons of a long-term constraint on storage resources that is based upon elements other than price. Significant concern has been expressed about the potential for the day-ahead market to optimize resources and schedule storage to meet net load peaks only to have the real-time market change this optimization and result in reliability concerns. This problem is a theoretical concern that tends to ignore the realities of prices and profit maximization by storage resources. It also ignores the potential for not being able to address another reliability event if constraints are put in place that limit the flexibility and availability of storage resources.

Storage is not so dissimilar to a use-limited resource that must make choices between honoring its day-ahead award or deviating when real-time prices do not reflect the day-ahead expectations.

Economically, a storage resource will be faced with the following decisions when the real-time price is trending significantly higher than the day-ahead prices and awards when considering deviating from their day-ahead award:

- 1) Is there enough time and an expectation of prices becoming low enough to deviate now (assuming a discharging real-time event) while still enabling a sufficient state of charge to honor their day-ahead award?
- 2) Is the real-time price that is presently higher than the day-ahead price going to be sustained or is it a temporary spike that can be expected to subside later?

Clearly if the answer to #1 is yes, then the resource should follow the real-time price signal as doing so would make incremental profit and not prevent the resource from honoring their day-ahead award. If the answer to #1 is no, then the resource must address the second question. It is possible that the elevated prices are systematic and will remain higher than the day-ahead prices in all hours. If that is the case, then it may not be profit maximizing to discharge now and deviate from the day-ahead awards as the buyback of the day-ahead award in the real-time may result in less total profit for the resource. On the other hand, if the price spike is due to a local issue resulting in momentary high prices, signifying a reliability need in that area, it may not only be profitable to follow the real-time price but may also be the best option for reliability.

It is easy to conceive of a case in which a storage device is located in an area where prices are high due to an outage that is temporary in nature but is driving high prices. It is further possible that aside from the storage device, the next available resource has a lengthy start-up time. In such a situation, the storage device could address the immediate reliability need while the CAISO starts the other resource that can then provide for the later evening peak. Choosing which reliability event the CAISO should protect for is not an easy decision to make and should be investigated closely.

This investigation should consider that market participants are savvy or will become so quickly in the energy market and are likely very capable of making decisions to the two questions above that are in their best interest. As long as market prices depict the reliability needs on the grid, then the resource providers can make the best decisions on how to address such issues. If resource providers make the wrong choices about their offer prices, they will face financial consequences depending on the level of the future interval prices in comparison to the short-term interval prices.

Policy Direction

The CAISO listed in the Issue Paper three potential policy issues for consideration. The expansion of the real-time market to include a further look ahead, while it could avoid the need for workarounds to address the shortcomings of a limited real-time market optimization, appears to have been dismissed as not viable with current optimization tools. The CAISO should provide further information within this initiative of the nature of the issues that make a longer look ahead infeasible as well as what would need to be done to make such a look ahead feasible. Such a mechanism would not only make market optimization easier (e.g., limit exceptional dispatch, ensure sufficient state of charge, etc.) but would also provide information to resources to better enable them to offer their resources in the real-time market. The other two elements involve the potential for a new product and the potential for constraining resources in the real-time market to preserve their day-ahead award.

If the CAISO pursues a new product, the first question that must be asked is what entity(ies) creates the demand for the product? This is not a causation question but one of bidding. Will it be those serving load that submit demand bids or will the demand be created by the CAISO based upon its own criteria? The former is necessary for a properly functioning market while the latter may by chance reflect the willing interaction of buyers and sellers but is equally likely not to. This issue is raised in a number of environments (e.g., Residual Unit Commitment, Flexible Ramping, corrective capacity, etc.). In each of these cases, there is always a concern over the ability of the CAISO to accurately reflect the true needs of the system rather than having buyers reflect their own needs such as is done in the energy market.

With regard to constraints on resources based upon day-ahead expectations, as noted above, such a mechanism (i) may work in some cases, (ii) may not be constraining to what the resource owner would have done based on their own decision, or (iii) could stand in the way of the CAISO using a resource for reliability purposes due to an artificial constraint preventing such an action. Consideration of a constraint should therefore be an element that is used sparingly to protect against events that have a high probability of reliability impacts if not enacted.

The CAISO does note in the Issue Paper that the CAISO can exceptionally dispatch resources including an instruction for a storage device not to discharge. In such an event, there will be foregone profit by the resource that cannot be ignored as well as the fact that the exceptional dispatch is not reflected in the market prices.

The Issue Paper also discusses the potential for different charging rates depending upon the state of charge of the resource. This is an element that also deserves further examination.

Finally, the CAISO should consider whether there is additional information that could be made available to the market to allow resources to make better decisions without providing information that would present the potential for the exercise of market power. For example, if the CAISO is concerned that the fleet of storage resources will not be available for the net load peak, then perhaps examining the potential to publish the aggregate state of charge will help storage resources to make decisions about how likely the current real-time price is to continue to remain high. This of course should be tempered by consideration of the ability of any individual entity or small group of entities to use the information to manipulate the market.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Concerning Energy)
Efficiency Rolling Portfolios, Policies, Programs,)
Evaluation, and Related Issues.)
_____)

Rulemaking 13-11-005

**COMMENTS OF MARIN CLEAN ENERGY
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING INVITING
COMMENTS ON DRAFT POTENTIAL AND GOALS STUDY**

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May 21, 2021

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Concerning Energy)	
Efficiency Rolling Portfolios, Policies, Programs,)	
Evaluation, and Related Issues.)	Rulemaking 13-11-005
_____)	

**COMMENTS OF MARIN CLEAN ENERGY
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE’S RULING INVITING
COMMENTS ON DRAFT POTENTIAL AND GOALS STUDY**

Marin Clean Energy (“MCE”) submits the following comments in response to the *Administrative Law Judge’s Ruling Inviting Comments on Draft Potential and Goals Study* (“Ruling”), filed on April 23, 2021. MCE does not respond to all of the questions posed in the Ruling but instead submits limited comments that are narrowly focused on the issue of how energy efficiency (“EE”) goals are set for non- investor-owned utility (“non-IOU”) program administrators (“PAs”).

MCE was the first Community Choice Aggregator (“CCA”) to be a PA of ratepayer-funded EE programs. MCE has been administering EE funds under California Public Utilities Code (“Code”) Section 381.1(a)-(d) since 2013.¹ The Commission originally restricted MCE’s EE programs to serving gaps in Investor Owned Utility (“IOU”) programs and hard-to-reach markets.² On January 17, 2017, MCE filed a Business Plan with the Commission that requested authorization to expand MCE’s EE portfolio to include additional sectors and programmatic offerings, including Residential; Commercial; Industrial; Agricultural; and Workforce Education and Training

¹ To date, MCE is the only community choice aggregator (“CCA”) to have requested energy efficiency funding under Code § 381.1(a)-(d).

² See D.12-11-015 at pp. 45-46 in Application (“A”).12-07-001, issued Nov. 15, 2012.

(“WE&T”) programs.³ On June 5, 2018, the Commission approved MCE’s Business Plan in D.18-05-041.⁴

I. COMMENTS

A. The Ruling Should be Clarified to Recognize that Non-IOU PAs Do Not Set Their Goals Based on the Potential and Goals Study

The biennial Energy Efficiency Potential and Goals Study (“P&G Study”) provides the basis for the California Public Utilities Commission (“Commission” or “CPUC”) to establish the energy efficiency goals for the IOU PAs. It is important to note that the P&G Study does not establish the EE goals for CCA and Regional Energy Network (“REN”) PAs. At this point in time, the P&G Study “produces results at the IOU level of geographic granularity.”⁵ It explicitly “does not provide further granularity at the climate zone or county level or for the service territories of regional energy networks (RENs) or community choice aggregators (CCAs).”⁶ Thus, the P&G Study is not the appropriate vehicle to set non-IOU PA goals as it does not provide sufficiently granular geographical details on potential and goals (e.g., on a county level).

The Draft 2021 P&G Study correctly asserts that one of the study objectives is to “Inform(s) the CPUC as it proceeds to adopt updated EE goals **for the IOUs** [emphasis added].”⁷ The Ruling itself, however, does not specify that the P&G Study only provides guidance for the IOU goal setting process. It states that “This Ruling invites comments on a consultant report for energy savings and total system benefit goals for energy efficiency program administrators (PAs) from 2022 to 2032” and “The consultant report would revise fuel-specific energy savings goals

³ See Application of Marin Clean Energy for Approval of its Energy Efficiency Business Plan in A.17-01-017, filed January 17, 2017.

⁴ See D.18-05-041, Ordering Paragraph (“OP”) 33 at p. 189 in A.17-01-013, issued June 5, 2018.

⁵ Ruling at p. 7.

⁶ *Id.*

⁷ Appendix A to the Ruling, 2021 Energy Efficiency Potential and Goals Study - Draft, at p. XV

adopted by the Commission in Decision (D.) 19-08-034, and estimate new goals related to total system benefit, which will guide PAs' future portfolio filings.”⁸

The Ruling should be clarified regarding this point.

A. Non-IOU PAs Should be Allowed to Propose Their Goals Via Portfolio

Applications and to Update Them Via Tier 2 Advice Letters

RENs and CCAs need a process to update their goals via new applications and Tier 2 Advice Letters. Non-IOU PAs do not have explicit energy efficiency savings goals set by the CPUC every two years through the P&G Study. Instead, non-IOU PA goals are developed through an iterative, bottom-up approach, with stakeholder review and Commission approval. For MCE, this process is data-driven and involves MCE's implementers, technical consultants and staff. MCE's proposed goals are then reviewed by stakeholders in the respective proceedings and adopted by a vote of the Commission, or staff where the Commission has delegated that authority. This process provides a venue and appropriate public process for independent review and stakeholder input.

Because MCE and RENs do not have goals set through the P&G Study process, there is currently no venue determined for MCE to propose or update its goals outside of a new application filing. At this point in time, RENs and CCAs must meet the annual savings forecasts from their “2019 ABAL true-up tables”. D.19-08-034 determined that “Because RENs and CCAs do not have explicit energy efficiency savings goals as the IOUs do (through this decision), for each year that non-IOU program administrators request energy efficiency funding authorization via an ABAL, they shall meet or exceed the annual savings forecasts presented in their true-up tables as submitted

⁸ Administrative Law Judge's Ruling Inviting Comments on Draft Potential and Goals Study, Appendix A 2021 Energy Efficiency Potential and Goals Study – DRAFT, (“Ruling”) issued on April 23, 2021, at p. 1.

in their program year (“PY”) 2019 ABALs (and subsequently approved in Energy Division’s advice letter dispositions).⁹ This is problematic as this means that MCE’s current goals were determined in 2018 and are outdated.

It is critical that non-IOU PAs have the flexibility to update their goals as the market evolves. Significant changes to avoided costs inputs, new Commission-approved metrics for the evaluation of EE programs, impacts of the COVID-19 pandemic, and availability of new technologies are just a few of the changes that could have a material impact on a PA’s goals. Non-IOU PAs need to be able to adapt, on reasonable timelines, to accommodate their portfolio goals due to changes in the market. Completing an application process at the Commission takes months if not years. Non-IOU PAs and ratepayers cannot afford to wait that long to make changes to goals and need a more flexible process. The Ruling therefore should also clarify that non-IOU PAs shall be allowed to update their goals on a regular basis.

Specifically, MCE proposes the following process for non-IOUs to establish and update their portfolio goals in the future:

1. Non-IOU PAs should be able to update their portfolio goals for the transition years (i.e., PYs 2022 and 2023) via the Annual Budget Advice Letter (“ABAL”) filing due on September 1, 2021;
2. Non-IOU PAs should be allowed to propose their own goals every four years through the portfolio Application process;
3. If major changes to the portfolio goals are identified in the biennial engineering and avoided cost updates, a non-IOU PA can revise its goals and savings forecast in the

⁹ D.19-08-034, Decision Adopting Energy Efficiency Goals for 2020-2030 at p.28

true-up or mid-cycle advice letter filings as proposed in the recent Proposed Decision on portfolio goals and portfolio approval processes.¹⁰

MCE respectfully request that the Commission clarify in the Ruling that non-IOU PAs may establish and update their goals per the process outlined above.

II. CONCLUSION

MCE thanks Commissioner Shiroma, Administrative Law Judge Fitch, and Administrative Law Judge Kao for their thoughtful consideration of these important issues.

May 21, 2021

Respectfully Submitted,

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¹⁰ See Proposed Decision of ALJs Fitch and Kao, Assessment of Energy Efficiency Potential and Goals and Modification of Portfolio Approval and Oversight Process, issued on April 16, 2021 at p. 39ff.

MIC Comments Template:

1. Provide a summary of your organization's comments on the Maximum Import Capability (MIC) Enhancements straw proposal:

The California Community Choice Association (CalCCA) appreciates the opportunity to comment on the MIC Enhancements initiative. The current MIC allocation process generally works well and is preferable to an auction mechanism. However, there is significant room for improvement in the facilitation of trading opportunities. The largest obstacle hindering MIC trades is the incentive to retain MIC that is not shown for resource adequacy (RA) so that it can be used for substitution to avoid Resource Adequacy Availability Incentive Mechanism (RAAIM) charges. CalCCA encourages the California Independent System Operator (the "CAISO") to continue efforts in the RA Enhancements initiative that would remove substitution requirements for both planned and forced outages. Specifically, it is important to remove the application of RAAIM for forced outages in favor of the unforced capacity (UCAP) proposal and to provide opportunities for addressing planned outage substitution in phase 2. For example, the CAISO should continue to pursue the proposal CalCCA previously supported that would develop a planned outage reserve margin that would obviate the need for planned outage substitution.¹ Secondarily, increased transparency and a transaction mechanism where buyers and sellers voluntarily post their offers to transact MIC would better facilitate trading.

The CAISO decided to separate out the wheeling priorities item into a separate initiative. CalCCA urges the CAISO to maintain coordination between this MIC Enhancements initiative and the new wheel through initiative given the interdependencies between the two.

2. Provide your organization's comments on the improve transparency topic, as described in section 3.1:

CalCCA supports the CAISO's proposal to improve transparency, including the ownership of MIC allocations, their use, and how they are traded. These changes will help facilitate transfers of MIC among load-serving entities (LSEs) and increase the usage of available MIC. As noted above, the ongoing efforts to remove substitution obligations are needed in addition to increased transparency in order to achieve full utilization of MIC.

During the stakeholder call, the CAISO asked three questions regarding specific data needed to improve transparency. CalCCA provides the following recommendations in response to those questions:

- *What additional data should be made available to stakeholders in order to achieve this goal?*
 - *CalCCA suggests the CAISO provide aggregated annual and monthly trades and megawatt (MW) amounts of actual usage of MIC at each intertie point after*

¹ CalCCA Comments to the RA Enhancements Fifth Revised Straw Proposal:

<http://www.caiso.com/InitiativeDocuments/CalCCAComments-ResourceAdequacyEnhancements-FifthRevisedStrawProposal.pdf>, and;

CalCCA Comments on the September 2020 RA Enhancements Working Group:

<https://stakeholdercenter.caiso.com/Comments/AllComments/e0efc91f-6c4e-44be-a701-85039cefc61a>

showings are validated. The CAISO should aggregate this data by intertie and not provide the data by specific entities. This data will provide entities with needed information about potential opportunities to increase the usage of MIC.

- *Should the data be presented only on an aggregated level or should the data be presented on a LSE by LSE level?*
 - *CalCCA recommends the CAISO provide aggregated MW amounts of available MIC at each intertie point, rather than LSE by LSE specific information. LSEs can then voluntarily choose to disclose amounts of MIC they have available to buy/sell on a bulletin board or some other trading mechanism set up by the CAISO.*
- *What level of data transparency would be required in order to improve trading? Can both transparency and trading be improved at the same time?*
 - *Transparency and trading can be improved simultaneously, to an extent. By providing aggregated data, LSEs will understand how much MIC is available for potential trades and where it is available. LSEs should then be able to post their requests to buy or sell MIC on a voluntary trading platform like a bulletin board so that buyers and sellers can connect and trade more easily. Even without such platform, knowing where MIC is available would allow for better communication of specific needs by location when conducting bilateral transactions.*

3. Provide your organization's comments on the education regarding deliverability of imports and internal resources topic, as described in section 3.2:

CalCCA has no comments at this time.

4. Provide your organization's comments on other issues that require further exploration, as described in section 3.3:

The largest MIC-related issue is the existing incentive to hold onto MIC that is not shown for RA in order to use it for substitution and avoid RAAIM penalties. As long as the CAISO maintains substitution requirements for forced or planned outages, there will be an incentive for LSEs to retain MIC beyond what is required to meet their RA obligation. CalCCA encourages the CAISO to continue to develop the UCAP and planned outage process enhancements in Phase 2 of RA Enhancements so that substitution requirements and RAAIM for both planned and forced outages can be eliminated. This, along with the transparency improvements discussed above, will go a long way to improve MIC tradability and utilization rate.

In the straw proposal, the CAISO outlines several topics for consideration based on stakeholder feedback. First, some stakeholders suggested an auction mechanism could take the place of the current allocation mechanism. The current allocation process generally works well and is preferable to an auction mechanism. A method that continues to allocate MIC to LSEs responsible for paying for the costs of the transmission system and meeting RA obligations, coupled with improvements to transparency and the removal of substitution requirements and RAAIM, should result in efficient allocation and use of MIC.

Other stakeholders suggested the CAISO conduct deliverability studies at the end of the RA showings process after contracts are signed and RA imports are shown. CalCCA agrees with the CAISO that this would not result in an overall improvement to the MIC or RA process given the uncertainty it would introduce for LSEs signing RA contracts with resources they are not yet certain are deliverable. The CAISO should remove this idea from the proposal given it could leave LSEs with stranded assets. Today's process of conducting deliverability studies prior to the RA showings process is appropriate and provides certainty around how much import RA can be contracted for and relied upon to meet resource adequacy needs.

5. Provide your organization's comments on the proposed initiative schedule and EIM Governing Body role, as described in section 4:

CalCCA supports the Energy Imbalance Market (EIM) governing body classification, as the allocation of MIC applies strictly to LSEs within the CAISO Balancing Authority Area (BAA).

6. Additional comments on the Maximum Import Capability Enhancements straw proposal:

CalCCA has no additional comments at this time.



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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill 237 Related to Direct Access.

Rulemaking 19-03-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
COMMENTS ON THE PROPOSED DECISION RECOMMENDING
AGAINST FURTHER DIRECT ACCESS EXPANSION**

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June 3, 2021

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Implement
Senate Bill 237 Related to Direct Access.

Rulemaking 19-03-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION’S
COMMENTS ON THE PROPOSED DECISION RECOMMENDING
AGAINST FURTHER DIRECT ACCESS EXPANSION**

California Community Choice Association¹ (CalCCA) submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission’s (Commission’s) Rules of Practice and Procedure on the proposed *Decision Recommending Against Further Direct Access Expansion* (Proposed Decision), filed May 14, 2021.

I. THE PROPOSED DECISION DRAWS AN APPROPRIATE CONCLUSION

CalCCA supports the Commission’s recommendation against further Direct Access (DA) expansion. The Commission appropriately concludes that:

“...based on the current procurement practices of Direct Access providers, we are unable to ensure that expansion of Direct Access would not result in increased greenhouse gas emissions, criteria air pollutants, and toxic contaminants when compared to maintaining the current cap on Direct Access. Therefore, we cannot recommend expanding Direct Access at this time.”²

¹ California Community Choice Association represents the interests of 22 community choice aggregators (CCAs): Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy Authority, Sonoma Clean Power, and Valley Clean Energy.

² Proposed Decision, at 2.

Greenhouse gas (GHG) emission reductions are a key criteria by which to assess DA expansion and the September 2020 Staff Report (Staff Report) provides sufficient justification on which to base its conclusion.

The Power Content Label (PCL) provides a snapshot of load-serving entities (LSEs') committed procurement. Based on the review of the PCLs, the Staff Report demonstrates that most Electric Service Providers (ESPs) meet their minimum Renewables Portfolio Standard (RPS) requirements and "...most ESPs rely on unspecified generation sources to meet their energy needs."³ This is problematic for two reasons.

First, as a result of using unspecified generation resources as their main source for power, ESPs can offer lower prices to their customers. This puts ESPs at a competitive price advantage relative to other LSEs who generally exceed the RPS targets.

Second, the Commission goes on to state that:

"Even if the ESPs do meet their RPS compliance requirement for long-term contracts, past procurement indicates that their portfolios will have a higher emissions profile than the portfolios of other LSEs."⁴

The procurement practices of most ESPs, as noted by the Commission, do not align with the state's GHG goals and do not guarantee that greenhouse gas emissions, criteria air pollutants, and toxic contaminants will not increase.

For these reasons, the Commission is justified in recommending that Direct Access not be expanded.

³ Proposed Decision, at 16.

⁴ *Id.*

II. CONCLUSION

CalCCA commends Energy Division staff for their efforts in developing a well-reasoned and thoughtful Staff Report. CalCCA appreciates the opportunity to submit these comments and encourages the Commission to adopt the PD.

Respectfully submitted,

A handwritten signature in blue ink that reads "Evelyn Kahl". The signature is written in a cursive, flowing style.

Evelyn Kahl
General Counsel to the
California Community Choice Association

June 3, 2021

1. Please provide your organization's overall position on the EIM Governance Review Straw Proposal – Delegation of Authority Issues:

The California Community Choice Association (CalCCA) appreciates the opportunity to comment on the Energy Imbalance Market (EIM) Governance Review straw proposal. While the current EIM governance structure generally works well, CalCCA welcomes the collaborative discussion aimed at improving the operability of the EIM Governing Body. This straw proposal offers significant improvements to the previous version of the proposal by removing the proposed “dual” FERC filings by the CAISO Board of Governors and the EIM Governing Body if a mutual decision could not be reached on a proposal. However, the revised dispute resolution proposal requires a process to timely move forward proposals when the two bodies are at an impasse on urgently needed changes to maintain reliability.

The straw proposal outlines a dispute resolution process in which CAISO staff would be required to conduct subsequent rounds of the stakeholder process to develop a revised proposal both the CAISO Board of Governors and the EIM Governing Body could approve. If the two bodies still do not agree after multiple rounds of revisions, they could jointly decide how to move forward, either by abandoning the proposal all together or through some other means. Following this process, if the two bodies cannot agree on a next step and the CAISO Board of Governors determines exigent circumstances exist, the board could move forward with a FERC filing when the change is needed for reliability or market integrity purposes.

This process will significantly draw out the stakeholder process when consensus cannot be reached and is too lengthy to effectuate policies needed urgently to maintain reliability. After the events of summer 2020, the CAISO commenced the Market Enhancements for Summer 2021 initiative, an expedited process that proposed important changes need to maintain reliability in California this summer. Had that initiative been under joint authority and resulted in a dispute, there would not have been time to follow the process outlined in the straw proposal to either reach consensus or determine the CAISO Board of Governors can move forward with a FERC filing on their own.

The ability for the CAISO Board of Governors to authorize FERC filings without joint approval from the EIM Governing Body is crucial when changes are urgently needed for reliability, and the process for determining if a FERC filing can be made without joint approval should not be too long such that it jeopardizes the implementation of these important changes. For these emergency situations, CalCCA recommends the proposal be updated to allow the CAISO Board of Governors to authorize a FERC filing without joint approval from the EIM Governing Body without reinitiating the stakeholder process.

CalCCA understands the governance review committee is waiting for the extended day-ahead market proposal to develop before proposing a governance structure for the extended day-ahead market. CalCCA highlights that the question of governance over a voluntary day-ahead market is an important consideration that will require extensive discussion, given the scope of tariff applicability under an extended day-ahead market is much larger than that of the real-time only energy imbalance market.

2. Provide a summary of your organization's comments on this proposal and how it meets your interests related to delegation of authority for the EIM:

See response to #1

3. Provide detailed comments on the scope of joint authority proposal:

See response to #1

4. Provide detailed comments on the dispute resolution and deadlocks proposal:

See response to #1

5. Provide additional comments on the Straw Proposal or what the GRC should consider in the delegation of authority for the EIM:

See response to #1



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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

R.20-05-003

**COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION
REQUIRING PROCUREMENT TO ADDRESS MID-TERM RELIABILITY (2023-2026)**

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June 10, 2021

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SUMMARY OF RECOMMENDATIONS

California Community Choice Association recommends the following modifications to the Proposed Decision/Alternate Proposed Decision (collectively, the PD):

- ✕ Adopt the mid-need, rather than the high-need, scenario to determine procurement needs given the lack of rigorous analysis justifying the high-need scenario procurement requirements.
 - ✕ Expedite a Loss of Load Expectation (LOLE) study, with stakeholder participation, while adopting the mid-need scenario. If the expedited LOLE study confirms the need for additional procurement, such procurement can be implemented at that time with the only delay being the length of time to perform and allow for review and comments on the study.
 - ✕ If the PD's high-need scenario is adopted, provide an analysis for the increase in procurement for the high need scenario from the ALJ Ruling.
 - ✕ Confirm and clarify the PD's definitions of firm and dispatchable resources.
 - ✕ Reevaluate the qualifying capacity in this procurement decision for wind, solar, and storage upon a final decision in R.19-11-009 if necessary.
 - ✕ Provide a penalty waiver process for non-compliance given the barriers that exist to meet the accelerated procurement order.
 - ✕ Allow demand-side resources shown to be incremental to the baseline to be eligible to count towards a Load Serving Entity's (LSE's) procurement obligations under this order.
 - ✕ Provide clarification that LSEs can choose which procurement obligation a particular resource satisfies.
 - ✕ Provide clarification that a variety of storage solutions can meet the requirement of the ability to discharge continuously for eight hours if the capacity counted toward meeting this requirement is consistent with an eight-hour discharge.
 - ✕ Provide clarification that new incremental out of state resources can qualify as long lead-time and/or firm resources.
-

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Continue
Electric Integrated Resource Planning and
Related Procurement Processes.

R.20-05-003

**COMMENTS OF CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE PROPOSED DECISION AND ALTERNATE PROPOSED DECISION
REQUIRING PROCUREMENT TO ADDRESS MID-TERM RELIABILITY (2023-2026)**

The California Community Choice Association¹ (CalCCA) submits these Comments pursuant to Rule 14.3 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure on Administrative Law Judge Fitch's proposed *Decision Requiring Procurement To Address Mid-Term Reliability (2023-2026)* (PD), filed May 21, 2021; and Commissioner Rechtschaffen's alternate proposed *Decision Requiring Procurement To Address Mid-Term Reliability (2023-2026)* (APD), filed May 21, 2021.²

I. INTRODUCTION

CalCCA appreciates the opportunity to provide these comments on the Commission's PD³ requiring 11,500 megawatts (MW)⁴ of net qualifying capacity (NQC) to be procured by all load serving entities (LSEs) subject to the Commission's integrated resource planning (IRP)

¹ California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² CalCCA has no comments on the changes set forth in the APD of Commissioner Rechtschaffen, which differs from the PD only in the area of eligibility and authorization for resources utilizing fossil fuels. It should be noted, however, that both the PD and APD would require that the IOUs perform procurement of fossil-fuel resources and recover the costs through the Cost Allocation Mechanism (CAM). Both the PD and APD should be clarified that consistent with historical CAM application, not only are net costs allocated, but the benefits (in this case Resource Adequacy capacity) are also allocated to the Load Serving Entities for all load consistent with the cost allocation.

³ For purposes of these Comments, CalCCA's reference to the PD means both the PD and the APD, unless otherwise noted.

⁴ As converted to round numbers from the 11,597 MW determined to be required in the high-need scenario. PD, Table 3, at 24.

authority. The NQC ordered in this mid-term reliability procurement is in addition to the 3,300 MW the Commission ordered to come online in three tranches between 2021-2023⁵ and the requirement that Investor Owned Utilities (IOUs) seek additional capacity to address near-term reliability needs.⁶ These accelerated, “emergency” procurement orders reflect the Commission’s stated goals of increasing reliability and reducing emissions, all in light of the rapidly changing electricity market in California, climate-change driven uncertainty, and the retirement of the Diablo Canyon Power Plant (DCPP) and several thermal power plants.

The PD adopts many of CalCCA’s recommendations in both its Comments and Reply Comments to Administrative Law Judge Julie Fitch’s *Ruling Seeking Feedback on Mid-Term Reliability Analysis and Proposed Procurement Requirements* (ALJ Ruling), dated February 22, 2021.⁷ Specifically, CalCCA supports the following provisions of the PD:

- ✓ Assigning procurement allocations to LSEs based on load share (utilizing both year-ahead peak load and energy load forecasts of individual LSEs), implemented in a similar manner to the procurement obligations assigned in Decision (D.) 19-11-016.
- ✓ Automatically opting out LSEs that were not yet serving load as of January 1, 2021, from self-providing their required capacity by not allocating any required procurement to such LSEs.
- ✓ Imposing no penalty or backstop procurement for failure of an LSE to procure its share of the 2,000 MW long-lead-time (LLT) resources by 2026, if the LSE submits evidence of a good faith effort to effect such procurement by February 1, 2023.⁸

CalCCA recommends the following modifications to the PD, as well as to the IRP process in general, to ensure that the procurement requirements are based on rigorous analysis and modeling of need, and that the significant cost increases that will likely accrue to ratepayers from the accelerated procurement are justified:

⁵ D.19-11-016, Conclusions of Law 9, 11 at 74 (“[i]t is reasonable for the Commission to require 3,300 MW of incremental system resource adequacy resources to be procured [by all LSEs on behalf of the customers they serve within the CAISO balancing authority area], with at least 50 percent online by August 1, 2021, 75 percent by August 1, 2022, and 100 percent by August 1, 2023”).

⁶ D.21-02-028, Finding of Fact 12 at 16 (ordering procurement to “meet the emergency reliability capacity need for the summer of 2021”).

⁷ *California Community Choice Association’s Comments on Administrative Law Judge’s Ruling Seeking Feedback on Mid-Term Reliability Analysis and Proposed Procurement Requirements*, Mar. 26, 2021 (CalCCA Comments); *California Community Choice Association’s Reply Comments on Administrative Law Judge’s Ruling Seeking Feedback on Mid-Term Reliability Analysis and Proposed Procurement Requirements*, Apr. 9, 2021 (CalCCA Reply Comments).

⁸ PD at 73-74.

- ✖ Adopt the mid-need, rather than the high-need, scenario to determine procurement needs given the lack of rigorous analysis justifying the high-need scenario procurement requirements.
- ✖ Expedite a Loss of Load Expectation (LOLE) study, with stakeholder participation, while adopting the mid-need scenario. If the expedited LOLE study confirms the need for additional procurement, such procurement can be implemented at that time with the only delay being the length of time to perform and allow for review and comments on the study.
- ✖ If the PD's high-need scenario is adopted, provide an analysis for the increase in procurement for the high-need scenario from the ALJ Ruling.
- ✖ Reevaluate the qualifying capacity in this procurement decision for wind, solar, and storage upon a final decision in R.19-11-009 if necessary.
- ✖ Confirm and clarify the PD's definitions of firm and dispatchable resources.
- ✖ Provide a penalty waiver process for non-compliance given the barriers that exist to meet the accelerated procurement order.
- ✖ Allow demand-side resources shown to be incremental to the baseline to be eligible to count towards an LSE's procurement obligations under this order.

In addition to the requested modifications set forth above, CalCCA requests confirmation regarding the following requirements in the PD to provide clarity and certainty to LSEs regarding their procurement obligations:

- ✓ That LSEs can choose which procurement obligation a particular resource satisfies.
- ✓ That a variety of storage solutions can meet the requirement of the ability to discharge continuously for eight hours if the capacity counted toward meeting this requirement is consistent with an eight-hour discharge.
- ✓ That new incremental out of state resources can qualify as long-lead-time and/or firm resources.

II. THE COMMISSION SHOULD ADOPT THE MID-NEED, INSTEAD OF HIGH-NEED, SCENARIO AS THE ANALYSIS SET FORTH IN THE PD DOES NOT JUSTIFY THE SIGNIFICANT INCREASE IN PROCUREMENT

The dramatic increase in the mid-term reliability procurement requirements from a recommendation of 7,500 MW⁹ in the ALJ ruling to 11,500 MW in the PD is concerning. The PD's significant increase in procurement requirements is problematic, especially since the increased procurement may lock in high costs for ratepayers even while technology costs are declining. As set forth below, CalCCA encourages the Commission to maintain the mid-need

⁹ As converted to round numbers from the 7,410 MW need determination from the mid-need scenario. *Id.*, Table 2, at 21.

scenario of 7,500 MW, given the lack of rigorous analysis or modeling associated with the jump to the high-need scenario. While adopting the mid-need scenario, the Commission should also expedite a LOLE study. If the expedited LOLE study, with stakeholder input, confirms the need for additional procurement, such procurement can be implemented at that time with the only delay being the length of time to perform and allow for review and comments on the study.

Finally, CalCCA requests that the Commission develop a more comprehensive long-term view of IRP grounded in rigorous analysis and modeling to better pinpoint long-term IRP requirements. Such a long-term view would avoid the PD's inclination to intentionally overshoot system needs as a means of preventing any further "emergency" obligations. Such analysis should use clear planning standards (e.g., is the Commission assuming that one LOLE event in ten years is the target level of reliability?), along with clear justifications for why each standard is desirable and in the interest of ratepayers. This analysis should also consider the cost to ratepayers of ordering excess procurement.

A. The PD Lacks Thorough Analysis to Demonstrate the Need for the Dramatic Jump from 7,500 MW to 11,500 MW

The PD requires procurement of at least 11,500 MW of additional NQC in three incremental tranches: online dates starting on August 1, 2023 (3,000 MW), June 1, 2024 (4,500 MW), June 1, 2025 (2,000 MW), and June 1, 2026 (2,000 MW).¹⁰ The ALJ Ruling had previously recommended capacity additions of 7,500 MW by 2026, based on the mid-need scenario resulting from the stack analysis performed by Energy Division Staff.¹¹ In the ALJ Ruling, the high-need scenario would have required 10,432 MW of NQC.

In its Comments in response to the ALJ Ruling, CalCCA generally supported the proposed magnitude of the order, while expressing reservations regarding the lack of rigorous analysis to assess new procurement requirements, despite the foreseeable circumstance of the retirement of DCP. Specifically, CalCCA's Comments questioned the use of a simple stack analysis, rather than a more rigorous LOLE study, to justify the significant cost increases resulting from 7,500 MW of accelerated procurement.¹²

While relying on the same basic analysis as the ALJ Ruling, the PD now significantly increases the procurement requirement by a staggering 4,000 MW. The PD states that the

¹⁰ *Id.*, Ordering Paragraph 1, at 85.

¹¹ ALJ Ruling, Table 1, at 14.

¹² CalCCA Comments, at 3-4.

change to the high-need scenario, utilizing a planning reserve margin (PRM) of 22.5 percent,¹³ is based on: (1) the rotating outages of August 2020 and the fact that “we are not in a business-as-usual situation on the electric grid in California”; (2) the changing nature of the electricity market, including new LSEs, recent shifts in the resource mix, weather and climate change driven uncertainty, and the increasing acceleration of electrification and building/transportation uses; (3) the need to procure larger amounts of resources to achieve the 38 MMT greenhouse gas target by 2030; and (4) the urgency of California’s climate and emissions goals.¹⁴ While all of the stated reasons highlight the need for additional procurement as supported by CalCCA in its Comments on the ALJ Ruling recommending 7,500 MW, the change to the high-need scenario based on such broad-brushed, high level conclusions, without the rigorous analysis and reliable modeling necessary to pinpoint the requisite procurement amount, runs the risk of significant over-procurement at customers’ expense.

As stated in its Comments to the ALJ Ruling, CalCCA supports the adoption of resources at the ALJ Ruling’s mid-need level (adjusted in the amount of 327 MW for errors related to the omitted small hydroelectric resources and erroneous counting of imports). Further procurement requirements and any acceleration of the requirements, however, as required by the PD, can only be justified through rigorous analysis that the PD lacks.

B. Any Future Procurement in Excess of the Requirements of the Mid-Term Scenario Must Be Based on a Robust LOLE Study

CalCCA understands the urgency faced by the Commission to rapidly order sufficient procurement given the reliability and emission reduction needed in the short term. However, through appropriate long-term planning, with robust stakeholder participation as well as rigorous modeling to inform the process, as well as timely planning for foreseeable circumstances such as the retirement of DCP, the orders of procurement can, and should have been, issued not on an “emergency” basis, but rather on an incremental, planned, and reasonable basis. The PD recognizes that any long-term assumptions to be used for IRP planning purposes need to be further developed.¹⁵ CalCCA does not support the use of the stack analysis as a robust

¹³ The PD concludes that 20.7 percent PRM is a reasonable assumption for the purposes of this mid-term interim procurement but fails to acknowledge that a 22.5 percent PRM is actually the assumption used in the high-need scenario. See PD at 12, Table 1, at 14, and Conclusion of Law 3, at 81.

¹⁴ *Id.* at 19.

¹⁵ *Id.* at 11.

methodology for need determination, because previous IRP modeling has shown that such crude modeling is highly inaccurate in estimates of actual system need. Any planning standard should instead be set based on a robust LOLE study and be vetted by the Commission, the California Independent System Operator Corporation (CAISO), and stakeholders.

At this time, CalCCA recommends that the Commission expedite a LOLE process while adopting the mid-case scenario for procurement. If the expedited LOLE study, informed by stakeholder input, confirms the need for additional procurement, such procurement can be implemented at that time with the only delay being the length of time to perform and allow for review and comments on the study.

C. If the PD’s High-Need Scenario Is Adopted, the Commission Must at a Minimum Provide the Analysis Underlying the Increase in Procurement

While CalCCA supports the adoption of the mid-need scenario as stated above, if the high-need scenario is adopted, an analysis of the increase in procurement for the high-need scenario from the ALJ Ruling to the PD must be provided. The high-need scenario as set forth in the Staff analysis, as well as the ALJ Ruling, required 10,432 MW of NQC by 2026.¹⁶ The PD corrects for errors in accounting for small hydroelectric resources, as well as erroneous counting of a specified import as thermal instead of solar, resulting in a net reduction under any scenario of 327 MW.¹⁷ The PD also, however, adjusts the high-need scenario “to account for higher demand in the CEC’s [Integrated Energy Policy Report (IEPR)] forecast adopted in February 2021,” which resulted in an increased need of 11,597 MW of NQC,¹⁸ which was then rounded down to a need of 11,500 MW of NQC. The Commission must provide further analysis of the impact of the IEPR forecast on the high-need NQC, especially given the significant jump in need from 10,432 MW to 11,500 MW.

To allow for stakeholders to adequately understand the impact of these changes, CalCCA has prepared an example table below, and requests that the Commission fill in the blank cells with the appropriate positive and negative NQC figures that would lead to the final result on the last line of the table.

¹⁶ *Id.*, Table 1, at 14.

¹⁷ *Id.* at 18.

¹⁸ *Id.* at 20.

Table 1: Breakdown of differences between Stack Analysis and PD’s Proposed Procurement Level (NQC MW)

	2024	2025	2026	Source
High-need shortfall according to Stack Analysis model	6,571	9,892	10,432	Stack Analysis Model, Results Tab, Row 9
Omitted 410 MW of small hydroelectric				PD at 17
Counting specified import as thermal instead of solar				PD at 18
Navajo coal plant retired in 2019				PD at 17
Updating IEPR Forecast vintage from 2020 to 2021				PD at 17
Proposed System Resource Adequacy Need (cumulative)	7,361	10,816	11,597	PD at 24

III. THE COMMISSION SHOULD CLARIFY THE DEFINITIONS OF CLEAN FIRM AND DISPATCHABLE RESOURCES

The PD is mostly consistent with respect to the two sub-categories that encompass the long-lead time “clean firm” resources as: “firm (at least 85 percent capacity factor) and/or dispatchable (between at least hours 17 and 22 daily) zero-emissions resources. . . .”¹⁹ However, the PD also states, in one discussion regarding LLT resources, that:

[b]oth the long-duration storage category of 1,000 MW and the clean firm (*and/or* high-capacity factor *and* dispatchable) category of 1,000 MW will be required for compliance in 2026 and not earlier in the procurement period of this order, to acknowledge the comments of many parties that noted the need for longer lead times for these resources.²⁰

The Commission should revise this sentence to be consistent with the rest of the PD as follows:

Both the long-duration storage category of 1,000 MW and the clean firm (~~and/or~~ high-capacity factor and/or dispatchable) category of 1,000 MW will be required for compliance in 2026 and not earlier in the procurement period of this order, to acknowledge the comments of many parties that noted the need for longer lead times for these resources.

Further, the Commission should clarify what qualifies as a “zero-emitting” resource and a “dispatchable” resource between the hours of 17 and 22 daily. For example, the Commission

¹⁹ *Id.*, Ordering Paragraph 2, at 85.

²⁰ *Id.* at 35 (emphasis added).

must clarify whether storage qualifies for this category. Where the resource is a hybrid or co-located with investment tax credit restrictions that increase the likelihood that the resource is charging from the host renewable facility, it appears evident that such a resource should be considered as a zero-emitting resource. However, it is not as clear that an independent storage device will always or likely be charging directly from renewable resources. Without the ability to guarantee that the charging of energy storage will be completely from renewable resources, the Commission should clarify that energy storage for this purpose of compliance with this procurement obligation is a zero-emitting resource.

In addition, the Commission should clarify the 17–22 hour requirement, both with respect to the LLT dispatchable resources (required by 2026),²¹ and the Diablo Canyon replacement tranche of firm, zero-emissions resources “available every day during hours 17 through 22, and for every 1 MW of incremental capacity, able to deliver at least 5 megawatt hours (MWh) of energy during these time periods.”²² First, the Commission should clarify that the 17-22 hour requirement is a reference to Hour Ending (HE), which is the nomenclature used in the CAISO and CPUC Availability Assessment Hour criteria. Second, the span of 17 through 22 is a 6-hour dispatch window and not a 5-hour window as appears to be envisioned in Conclusion of Law 17 which requires 5 MWh of energy for every MW of capacity. The Availability Assessment Hours are presently set as hour ending 17 through 21. The Commission should modify the decision to reflect HE 17 through 21 rather than the current 17 through 22 language throughout the document.

Finally, the Commission must clarify what types of resources will qualify as dispatchable during the hours of 17 through 21 daily. In particular, the Commission should clarify that it intends to allow hybrid and collocated resources with a renewable and storage of four-hour duration to qualify. Since most hybrid and collocated resources are likely to come from a combination of solar and storage, the probability of energy output in hour 17 from the solar facility is very high during the peak load summer months under consideration in this proceeding, and the four-hour battery can then cover hours 18 through 21. Such clarity is necessary to enable LSEs to procure with confidence that their solicitations are meeting their compliance obligations.

²¹ *Id.* at 35.

²² *Id.* at 46.

IV. THE COMMISSION SHOULD REVIEW THE MEASUREMENT OF WIND, SOLAR, AND STORAGE IN THIS PROCEEDING BASED UPON THE FINAL DECISION IN RA TRACK 3B.2

Any decision of how to value wind, solar and storage should be reviewed based on the Commission's upcoming decision in the Resource Adequacy (RA) proceeding, R.19-11-009, in Track 3B.2. The PD currently groups energy storage with solar, wind, and hybrid resources in terms of utilizing Effective Load Carrying Capability (ELCC) to measure each resources' compliance with an LSE's procurement obligation. The PD states:

Commission staff may provide indicative ELCCs for energy storage, solar, solar plus storage, and wind for online years beyond 2024, and then may update those values to final compliance ELCCs for those years as updated data on LSEs' resource additions becomes available.²³

The PD appropriately values compliance with the procurement obligation as the NQC value of the resources that are procured. That value, however, has two exceptions: (1) wind and solar, and (2) energy storage.

The Commission must be mindful of the potential differences in an IRP setting for planning purposes and the RA setting where those resources developed within the plan must be made available to ensure reliable grid operation. R.19-11-009 is currently due to issue a Proposed Decision on Track 3B.2 which is contemplating structural reform for the RA program. Among the proposals being evaluated is a joint proposal by CalCCA and Southern California Edison Company in which the value of wind and solar are experienced by netting their anticipated output from the managed load. There is then a requirement to meet net peak load and energy with a test to ensure that if an energy storage device is used for RA compliance that the LSE has sufficient energy not only to meet their energy needs but also to charge the storage device including losses. Since it is not clear that a marginal ELCC will accurately depict the reliability value under this model, the Commission should evaluate further the counting capacity from wind, solar, and storage in meeting this procurement objective once the RA decision on Track 3B.2 is final.

²³ *Id.* at 70. The Commission also states that “[t]his first set of marginal ELCCs will be provided for energy storage at various durations, solar, solar plus storage or various durations and configurations, and wind in various regions,” *Ibid.*

V. THE COMMISSION SHOULD PROVIDE A PENALTY WAIVER PROCESS FOR NON-COMPLIANCE GIVEN THE BARRIERS THAT EXIST TO MEET THE ACCELERATED PROCUREMENT ORDER

CalCCA supports the PD's approach of allowing LSEs to request an extension up to 2028 for their share of the LLT resources to be procured by 2026. Such a request would need to be accompanied by evidence of a good faith effort to effect such procurement.²⁴ In that case, no penalty will be imposed and no backstop procurement will be required.²⁵

The PD, however, imposes penalties for failure to comply with all other required procurement obligations at a "net CONE" level, which equates to the cost of new entry, net of estimated energy market and ancillary services revenue.²⁶ The net CONE value is based on the cost of a new battery storage facility.²⁷ These penalties would be in addition to backstop procurement (with its associated costs).²⁸

With the significant increase in procurement requirements required in the PD, and the acceleration of those requirements by 40 percent for each year between 2023 and 2026, the penalty provisions in the PD should consider a waiver process to avoid customers being subjected to potential market power. Similar to local RA, the Commission should allow LSEs to demonstrate that they have taken commercially reasonable efforts to procure the necessary resources. However, if for unforeseen circumstances beyond their control, the LSE is unable to procure, the Commission should allow a waiver of the penalty and instead, allocate the backstop costs to the deficient LSE.²⁹

For self-procuring LSEs such as CCAs, resource procurement in the magnitude and timeframe required by the PD can be complicated by factors that may be within or outside of their control. Elements including supply chain, IOU transmission interconnection processes, CAISO interconnection processes, and the timing of RA counting processes for newly developed

²⁴ Table 8 of the PD contains an error on the date that an LSE would request an extension for LLT resources, that should be corrected. *Id.*, Table 8, at 62. Row 3 of Table 8 lists February 1, 2022, as the date an extension must be requested. *Id.* However, both Section 10 and Ordering Paragraph 4 require the request for extension to be submitted by February 1, 2023. *Id.* at 73-74, Ordering Paragraph 4, at 85.

²⁵ *Id.* at 73-74.

²⁶ *Id.* at 72.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ CalCCA has advocated for such a penalty waiver process not only for local RA, but also for system and flexible RA. *See California Community Choice Association's Late-Filed Track 2 Proposal, Rulemaking (R.) 19-11-009*, Mar. 18, 2020.

and operational resources can all play a role. With the accelerated timeframe of this procurement, LSEs may already be facing significant costs to accelerate development of projects. In addition, given the limited supply of resources in the short term,³⁰ many LSEs are vying for those same resources. At the same time, the CAISO recently announced that due to the volume of projects within the interconnection queue, the analysis will take one year longer than normal and the next queue will therefore not open until April 2023.³¹ While there may be a number of resources in the current queue, the effective limit on competition to those currently in that queue for compliance with this mid-term procurement is problematic and grants a degree of market power to those already in the queue.

As set forth above, CalCCA encourages the Commission to improve the IRP process through more rigorous analysis of the needs, as well as updating the planning process to afford more forward notice of needs to procure, to prevent goals from being undermined by limited supply. Advanced foresight will also enable LSEs to address project challenges that could undermine new development timelines. Given the difficulties in procurement presented by the current PD's magnitude of need and the accelerated timeline, CalCCA requests that a penalty waiver process be included in the PD to address circumstances beyond the control of LSEs that may prevent compliance. In such circumstances, the Commission should allocate backstop costs to the deficient LSE even if the penalty has been waived.

VI. THE COMMISSION SHOULD ALLOW DEMAND-SIDE RESOURCES TO COUNT TOWARDS MEETING THE PROCUREMENT REQUIREMENTS

The PD makes no mention of demand-side resources' eligibility to count towards meeting the proposed requirements, despite the critical role these resources play in addressing reliability needs. Excluding demand-side resources runs counter to long-standing state policy that prioritizes their development, and explicitly ignores the statutory requirements of the IRP process to "enhance distribution systems and demand-side energy management"³² and the emphasis on all-source procurement fundamental to the IRP framework. Given the importance of

³⁰ While the CAISO interconnection process has listed over 100 GW of installed capacity in the queue process, the information provided does not reflect the number of different owners nor the viability of any of the projects. Given this, it is not assured that even this apparently large amount of installed capacity within the queue will provide for sufficient competition to ensure that a waiver process is unnecessary, particularly when coupled with the accelerated implementation schedule of this PD.

³¹ <http://www.caiso.com/Documents/IssuePaper-DraftFinalProposal-SuperclusterInterconnectionProcedures.pdf>, at 3.

³² Cal. Pub. Util. Code §454.52(a)(1)(G).

and commitment to resource diversity referenced throughout the PD, it is paradoxical and illogical to remove an entire category of clean resources from eligibility. CalCCA requests clarification that, consistent with the initial procurement order under D.19-11-016, demand-side resources that can be shown to be incremental to the baseline should be permitted for the purposes of this order.

VII. THE COMMISSION MUST CLARIFY THE PD TO PROVIDE CERTAINTY TO LSES REGARDING THEIR PROCUREMENT OBLIGATIONS

CalCCA requests clarification and/or confirmation on the following issues to ensure the certainty necessary for LSEs regarding their procurement obligations.

A. Clarify That LSEs Can Choose Which Procurement Obligation a Particular Resource Satisfies

CalCCA requests clarification as to how to allocate resources to comply with the multiple procurement orders and obligations. The PD states that the capacity required in the order will be incremental to the baseline, which consists of “existing resources online or in-development and contracted and approved by the Commission and/or the LSE’s highest decision making authority as of June 30, 2020.”³³ In addition, the PD allows “any long-duration storage, firm, or dispatchable resource that was developed for compliance with D.19-11-016 to count early for the 2026 LLT requirements” in this order, “so long as the LSE can show that other resources were also developed to meet the total capacity requirements of D.19-11-016 and/or this order. . . .”³⁴ What remains unclear, however, is how modifications to resources that are already in the baseline count towards compliance with the new obligation (e.g., adding storage to a solar project). The Commission should allow additional capacity at an existing site to count for the incremental capacity brought online in NQC terms. The likely case is the addition of storage to a renewable resource. In such a case, the Commission has Qualifying Capacity processes for renewables as a stand-alone and for hybrid resources. The Commission should clarify that in the case of adding storage to an existing renewable resource, the incremental capacity counted to meeting this proceedings’ procurement requirement is the difference between the capacity of the existing renewable facility (i.e., the ELCC value of the renewable resource) and the final NQC of the hybrid resource using the already established Commission counting rules for such.

³³ PD at 68.

³⁴ *Id.* at 36.

B. Clarify That a Variety of Storage Solutions, Regardless of Size, Can Meet the Requirement of Being Able to Be Discharged Continuously for 8 Hours

The PD specifies that “long-duration storage must be able to discharge over at least an eight-hour period. . . .”³⁵ Consistent with CalCCA’s request that the procurement needs be categorized by their characteristics, rather than a specific technology, the PD should be clarified to allow any sized storage solution to meet this requirement.

Specifically, the Commission should define the capacity meeting long duration storage as the maximum capacity output that can be sustained continuously for eight consecutive hours. For example, if an LSE is assigned 20 MW of storage capacity, that requirement should be able to be met through a four-hour, 40 MW storage device, which is able to discharge 20 MW continuously over an eight-hour period. This clarification would be consistent with the recent RA Proposed Decision, in which the Commission states that a four-hour storage device qualifies in the maximum cumulative capacity bucket 1 (which is designed for resources that can output for four consecutive hours), or the four-hour storage device can qualify at half of its capacity in maximum cumulative capacity bucket 2 (which is designed for resources that can output for eight consecutive hours).³⁶

Through this clarification and by allowing such flexibility, the market will decide which option is more cost-effective or provides greater grid reliability. Indeed, a storage device that can either provide eight consecutive hours or provide a higher capacity instantaneously is capable of meeting more reliability needs than one that is constrained in its maximum instantaneous output.

C. Clarify Whether New Out of State Resources Can Qualify for Long Lead Time or Firm Resource Requirements

The PD allows the counting of imports toward the compliance requirements of this order, as long as the imports are associated with a new resource with a commercial online date after the date of the order and are under a long-term contract of at least ten years. CalCCA seeks clarification as to whether such incremental imports can qualify as LLT or firm resources under the PD assuming they otherwise meet the requirements for LLT or firm resources.

³⁵ *Id.* at 34.

³⁶ Proposed Decision Adopting Local Capacity Obligations For 2022-2024, Flexible Capacity Obligations For 2022, and Refinements To The Resource Adequacy Program, R.19-11-009, May 21, 2021 (RA Proposed Decision), at 26.

VIII. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Attachment A.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl
General Counsel to the
California Community Choice Association

June 10, 2021

ATTACHMENT A

Proposed Changes to Findings of Fact, Conclusions of Law and Ordering Paragraphs

FINDINGS OF FACT

5. The electric grid within the California Independent System Operator's balancing authority requires at least ~~11,500~~7,500 of incremental net qualifying capacity compared to resources online, or contracted and approved to come online, as of June 30, 2020, in order to maintain grid reliability.

CONCLUSIONS OF LAW

5. The Commission should use the ~~high-need scenario~~mid-need scenario analyzed by Commission staff to form the procurement need required in this order. The Commission should require Commission staff to perform a robust LOLE analysis with stakeholder participation, of the procurement need, and recommend whether any additional procurement is necessary based on that LOLE analysis.

7. The Commission should require all LSEs, in aggregate, to procure a total amount of 7,500 MW of incremental ~~the resources. amounts in the timeframe given in Table 3 of this decision.~~

9. The Commission should require the procurement, in aggregate, of at least 1,000 MW of firm (at least 85 percent capacity factor) and/or dispatchable (between hours of 17 ~~and~~ 22 through 21 daily) resources that have zero or de minimis emissions by 2026, with the option of an extension to 2028 for compliance, if good cause and a good faith effort to procure are shown.

16. The Commission should require the incremental natural gas resources required in this order to be procured by the IOUs only, with the costs allocated via the CAM. Consistent with historical CAM application, both net costs and benefits (including RA capacity) will be allocated to all LSEs for all load consistent with the cost allocation.

17. To ensure no ambiguity about the emissions profile of replacement capacity for Diablo Canyon, the Commission should require that a minimum of 2,500 MW of incremental NQC be from firm, zero-emitting resources, that are available every day between hours 17 ~~and 22~~through 21, and can deliver 5 MWh of energy during each of those periods for every MW of incremental capacity used to comply with the requirements of this order.

24. The Commission should use marginal ELCC values provided by Commission staff to estimate the reliability contributions of various resources to be procured in response to this order. With respect to wind, solar, and storage, however, Commission staff should evaluate further the counting capacity of these resources based on any decision in the Resource Adequacy (RA) proceeding, R.19-11-009, in Track 3.B.2.

25. It is reasonable to set the penalty for non-compliance with the procurement required in this order at the level of net CONE included in the Avoided Cost Calculator, after assessing compliance after the June 1, 2025 compliance filing date. It is also reasonable for the Commission to waive such penalty for non-compliance if an LSE can demonstrate that they have taken commercially reasonable efforts to procure the necessary resources and have been unable to procure for unforeseen circumstances beyond their control. In that case, the Commission will waive the penalty and allocate the backstop costs to the deficient LSE.

26. Demand-side resources shown to be incremental to the baseline are eligible to count towards an LSE's procurement obligations under this order.

ORDERING PARAGRAPHS

1. Procurement of ~~11,500~~7,500 megawatts (MW) of incremental net qualifying capacity shall be conducted over the course of four years, with ~~3,000~~1,800 MW online by August 1, 2023, an additional ~~4,500~~3,700 MW online by June 1, 2024, and an additional 2,000 MW online by June 1, 2025, ~~and an additional 2,000 MW online by June 1, 2026.~~

2. Long lead-time resources required by this order shall be defined as at least 1,000 megawatts (MW) of long-duration storage (able to deliver for at least eight hours) and at least 1,000 MW of firm (at least 85 capacity factor) and/or dispatchable (between at least hours 17 and 22 through 21 daily) zero-emissions resources by June 1, 2026.

3. All load-serving entities named in Table 7 of this order shall procure the net qualifying capacity amounts given in Table 7, as modified to incorporate the mid-need scenario total NQC MW of 7,500 set forth in Table 4, and shall file and serve on the service list of this proceeding or any successor proceeding compliance filings according to the schedule given in the modified Table 8 of this order.

6. Collectively, to ensure that the capacity retiring at the Diablo Canyon Power Plant is replaced entirely with firm, zero-emitting resources, the load-serving entities shall collectively procure a minimum of 2,500 megawatts (MW) of incremental firm, zero-emitting capacity out of the total of ~~11,500~~7,500 MW required in this decision. This firm, zero-emitting capacity shall have the following characteristics:

- (a) Be available every day from hours 17 through ~~22~~21, at a minimum; and
- (b) Be able to deliver at least 5 megawatt-hours of energy during each of these periods for every megawatt of incremental capacity claimed.

NEW Ordering Paragraph. Commission staff shall expedite a robust LOLE analysis, with stakeholder participation, to confirm and recommend whether any additional procurement is necessary.

NEW Ordering Paragraph. Commission staff shall establish a penalty waiver process for non-compliance with this order, patterned after the local RA waiver mechanism already in place, to be utilized in the event an LSE can demonstrate that they have taken commercially reasonable

efforts to procure the required resources but have been unable to do so for unforeseen circumstances beyond their control.

NEW Ordering Paragraph. Demand-side resources shown to be incremental to the baseline are eligible to count towards an LSE's procurement obligations under this order.

June 10, 2021

California Public Utilities Commission
Energy Division
Attention: Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298



MCE Advice Letter 50-E

Subject: Request for Approval of Solicitation Documents for the Disadvantaged Communities Green Tariff and the Community Solar Green Tariff Programs

Pursuant to Ordering Paragraph (“OP”) 17 of California Public Utilities Commission’s (“Commission” or “CPUC”) Decision (“D.”) 18-06-027¹ and OP 7 of Resolution E-5124,² Marin Clean Energy (“MCE”) hereby submits this Tier 2 Advice Letter (“AL”) for approval of its solicitation materials for the Disadvantaged Communities Green Tariff (“DAC-GT”) and Community Solar Green Tariff (“CS-GT”) programs.

TIER DESIGNATION

This AL has a Tier 2 designation pursuant to OP 7 of Resolution E-5124.³

EFFECTIVE DATE

Pursuant to G.O. 96-B, MCE requests that this Tier 2 AL become effective on July 10, 2021, which is 30 calendar days from the date of this filing.

BACKGROUND

On June 21, 2018, the California Public Utilities Commission (“Commission” or “CPUC”) approved D.18-06-027, adopting two new community solar programs to promote the use of renewable generation among residential customers in disadvantaged communities (“DACs”),⁴ as directed by the California Legislature in Assembly Bill (“AB”) 327 (Perea), Stats. 2013, ch 611. The DAC-GT and the CS-GT programs offer 100% solar energy to eligible customers and provide a 20% discount on the electric portion of the bill.

Pursuant to OP 17 of D.18-06-027, Community Choice Aggregators (“CCAs”) may develop their own DAC-GT and CS-GT programs and must file a Tier 3 AL to propose implementation details

¹ See D.18-06-027, OP 17 at p.104.

² Resolution E-5124, OP 7 at p.33.

³ Id.

⁴ DACs are defined under D.18-06-027 as communities that are identified in the CalEnviroScreen 3.0 as among the top 25 percent of census tracts statewide, plus the census tracts in the highest five percent of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

(“Implementation AL”).⁵ On May 7, 2020, MCE filed its Implementation AL for the DAC-GT and CS-GT programs with the Commission in MCE AL 42-E. On April 15, 2021, the Commission issued Resolution E-5124 which approved MCE’s DAC-GT and CS-GT Implementation AL with modifications.⁶

OP 7 of that Resolution directs MCE to submit a Tier 2 AL with the solicitation documents for the first DAC-GT and CS-GT request for offer (“RFO”) within 60 days of issuance of the Resolution.⁷ Upon approval of these solicitation documents, MCE must issue its first RFO within 60 days. Following notification of selected bidders, MCE must submit a Tier 2 AL with the executed Power Purchase Agreements (“PPAs”) within 180 days. CCAs are required to hold solicitations for the DAC-GT and CS-GT program once a year or as needed (i.e., until the full program capacity is procured).⁸

PURPOSE

MCE provides as attachments to this AL the following solicitation documents for the first DAC-GT and CS-GT RFO:

1. Attachment 1: DAC-GT / CS-GT RFO Protocol
2. Attachment 2: Pro-forma PPA DAC-GT
3. Attachment 3: Pro-forma PPA CS-GT
4. Attachment 4: Pro-forma PPA term sheet

I. Summary of Solicitation Documents

DAC-GT / CS-GT RFO Instructions

The DAC-GT and CS-GT RFO Instructions detail the DAC-GT and CS-GT program requirements to which MCE and its suppliers must adhere, including project siting. For the CS-GT program, the protocol also outlines Community Sponsor requirements. Additionally, the RFO Protocol details the quantitative and qualitative evaluation and selection criteria utilized by MCE, which include project performance and economics, environmental stewardship, workforce development, project development risk, project location, and impact on DACs.

Pro-forma PPA

MCE provides its standard pro-forma PPA for both the DAC-GT and CS-GT programs.

Pro-forma PPA Term Sheet

The MCE Pro-Forma term sheet is provided for both the DAC-GT and CS-GT solicitations. They are intended to be used for bidders to provide redlines for proposed changes to the Pro-Forma DAC-GT and CS-GT PPAs.

⁵ D.18-06-027, OP 17 at p.104.

⁶ Resolution E-5124, OP 1 at 32.

⁷ Id. at 33.

⁸ Id. at p.22.

II. DAC-GT and CS-GT RFO Schedule

Pursuant to Resolution E-5124, MCE will adhere to the following schedule for the first DAC-GT and CS-GT RFO:

Deadline	Action
With 60 days of Resolution E-5124 (by June 14, 2021)	MCE submits solicitation documents to the CPUC
Within 60 days of Commission approval of the solicitation documents	MCE issues its first RFO
Within 180 days after noticing selected bidders	MCE submits executed PPAs to the CPUC

CONCLUSION

MCE respectfully requests the Commission approve the solicitation materials for MCE's first DAC-GT and CS-GT RFO proposed herein.

NOTICE

A copy of this AL is being served on the official Commission service lists for Rulemaking R.14-07-002.

For changes to this service lists, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.

PROTESTS

*****Due to the COVID-19 pandemic and the shelter-at-home orders, MCE requests that protests or responses to this advice letter be sent electronically, in addition to via U.S. Mail or fax. Please submit protests or responses to this advice letter to EDTariffUnit@cpuc.ca.gov and jkopyciok-lande@mcecleanenergy.org*****

Anyone wishing to protest this advice letter filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests must be submitted to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Copies should also be mailed to the attention of the Deputy Executive Director, Energy Division, Room 4004 (same address above).

In addition, protests and all other correspondence regarding this advice letter shall be sent by letter or transmitted electronically to the attention of:

Jana Kopyciok-Lande
Strategic Policy Manager
Marin Clean Energy
1125 Tamalpais Ave
San Rafael, CA 94901
Email: jkopyciok-lande@mcecleanenergy.org

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

CORRESPONDENCE

For questions, please contact Jana Kopyciok-Lande at (415) 464-6044 or by electronic mail at jkopyciok-lande@mceCleanEnergy.org.

/s/ Jana Kopyciok-Lande

Jana Kopyciok-Lande
Strategic Policy Manager
MARIN CLEAN ENERGY

cc: Service List: R.14-07-002



ADVICE LETTER SUMMARY

ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.:

Utility type:

☐ ELC ☐ GAS ☐ WATER
☐ PLC ☐ HEAT

Contact Person:

Phone #:

E-mail:

E-mail Disposition Notice to:

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #:

Tier Designation:

Subject of AL:

Keywords (choose from CPUC listing):

AL Type: ☐ Monthly ☐ Quarterly ☐ Annual ☐ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? ☐ Yes ☐ No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? ☐ Yes ☐ No

Requested effective date:

No. of tariff sheets:

Estimated system annual revenue effect (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Service affected and changes proposed¹:

Pending advice letters that revise the same tariff sheets:

¹Discuss in AL if more space is needed.

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name:
Title:
Utility Name:
Address:
City:
State: Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

Name:
Title:
Utility Name:
Address:
City:
State: Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtailable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

ATTACHMENT 1

DAC-GT / CS-GT RFO Protocol



Request for Offers

MCE 2021 Disadvantaged Communities Green Tariff and Community Solar Green Tariff XX, 2021

Procedural Overview & Instructions

MCE, a California joint powers authority, seeks qualified suppliers of various renewable energy products to participate in MCE's 2021 Disadvantaged Community Green Tariff ("DAC-GT") and Community Solar Green Tariff ("CS-GT") procurement process ("2021 Green Tariff"). The purpose of MCE's 2021 Green Tariff is to fulfill the requirements of Assembly Bill ("AB") 327, California Public Utilities Commission ("CPUC") Decision ("D.") 18-06-027¹, D.18-10-007², Resolution E-4999³, Resolution E-5102⁴, and Resolution E-5124⁵ (collectively the "Green Tariff policy"). The Green Tariff policy is intended to promote the installation of renewable generation among residential customers in disadvantaged communities ("DACs"). This document outlines the parameters governing this solicitation and provides the procedural overview and instructions for interested parties ("bidders") to submit an offer into MCE's 2021 DAC-GT and CS-GT Request for Offers ("RFO").

Offers pursuant to this RFO must be received by MCE not later than 5:00 P.M. Pacific Prevailing Time on the dates outlined in Section VI.

I. About MCE

With offices in San Rafael and Concord, MCE is a public, not-for-profit agency which operates California's first community choice aggregation ("CCA") program as well as various complementary energy-related programs. MCE's primary focus is reducing energy-related greenhouse gas emissions by providing electricity customers with a supply portfolio that utilizes a minimum 60% renewable energy, a 100% renewable energy service option (available to all customers on a voluntary basis), and groundbreaking energy efficiency, demand response, and energy storage programs. Consistent with the CCA service model, MCE determines the sources and suppliers of the energy it procures, and PG&E continues to manage the transmission and distribution of such energy to MCE customers. MCE maintains investment grade credit ratings of A from S&P, BBB+ from Fitch and Baa2 from Moody's. MCE currently serves 36 member communities across four Bay Area counties including all communities in Marin and Napa counties as well as unincorporated Contra Costa County, the Cities of Concord, El Cerrito, Lafayette, Martinez, Oakley, Pinole, Pittsburg, Pleasant Hill, Richmond, San Pablo, San Ramon, and Walnut Creek, the Towns of Danville, and Moraga, unincorporated Solano

¹ D.18-06-027, Alternate Decision Adopting Alternatives to Promote Solar Distributed Generation in Disadvantaged Communities, from June 22, 2018

² D.18-10-007, Decision Correcting And Clarifying Decision 18-06-027, from October 18, 2018

³ Resolution E-4999, Approving, With Modification, Tariffs to Implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs (for the IOUs), from May 30, 2019

⁴ Resolution E-5102, Approving, With Modification, Clean Power Alliance's Tariffs to Implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs, from November 5, 2020

⁵ Resolution E-5124, Approving, With Modification, Community Choice Aggregator Tariffs to Implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff Programs, from April 15, 2021

County, and the Cities of Benicia and Vallejo. MCE will be enrolling customers in the City of Fairfield in 2022.

II. RFO Objective

In order to comply with the Green Tariff policy, MCE will procure under two programs: DAC-GT and CS-GT. MCE will plan to hold one solicitation annually until each program's capacity obligation is met. Any unmet and remaining capacity from this solicitation will be rolled into the following year's solicitation until the capacity obligations are met. MCE's 2021 program and project capacity limits can be seen below.

2021 Program Capacity Allocation and Remaining Capacity

	DAC-GT	CS-GT
2021 Program Capacity Allocation (MW)	4.64	1.28
Remaining Capacity (MW)	4.64	1.28

III. Eligibility and Bid Requirements

MCE will only consider complete offers that conform to the product-specific requirements outlined in Appendix A. Offers must include all of the following components with sufficient detail to support MCE's evaluative process (using the criteria in Section V):

To be deemed a complete, conforming offer, each offer shall:

- a. Be submitted electronically (uploaded using the "Proposal Submission" link located on the website: <http://mcecleanenergy.org/energy-procurement/>) by 5:00 P.M. Pacific Prevailing Time on the due date as shown in Section VI;
- b. Include a completed 2021 Green Tariff Offer Form, which is available on MCE's website via the following link: <http://mcecleanenergy.org/energy-procurement/>. The Offer Form has been prepared uniquely for the DAC-GT and CS-GT programs, and respondents should carefully review the Offer Form and associated instructions to ensure submittal of conforming responses.
- c. Indicate acceptance of MCE's Term Sheet(s) in the Instructions & Acknowledgments section of the Offer Form or include a redlined markup, in tracked changes format within a MS Word document, reflecting all requested changes to the applicable Term Sheet(s) as Attachment I to the offer submittal. Please include sufficient detail so that MCE can understand the nature of the requested changes. Redlined comments that simply state "discuss" or "to be discussed" or similarly non-specific edits that lack further detail will be disregarded and may be rejected as insufficiently complete to be evaluated. Notwithstanding anything to the contrary, MCE shall be under no obligation to accept PPA revisions beyond what bidders submit with their term sheet redlines.
- d. Final selection(s) will be contingent upon negotiation and execution of a power purchase agreement ("PPA"). MCE's DAC-GT and CS-GT PPAs are available on its website via the following link: <http://mcecleanenergy.org/energy-procurement/>.
- e. A complete offer package must include the following Attachments:
 - Completed Offer Form
 - Attachment A – Financing Plan
 - Attachment B – Financial Statements

- Attachment C – Organizational Chart
- Attachment D – Interconnection Study or Interconnection Application
- Attachment E – Project Development Timeline
- Attachment F – Permitting, Use and Zoning
- Attachment G – Site Plan
- Attachment H – Single Line Diagram
- Attachment I – Requested changes via tracked changes edits, to MCE’s Term Sheet(s).
- Attachment J – Pollinator Scorecard
- Attachment K – Sponsor Letter of Support (CS-GT only)
- Attachment J – Optional Elements

MCE encourages 2021 Green Tariff respondents to emphasize quality as opposed to quantity when considering the submittal of multiple responses. No more than three permutations per project will be considered, per respondent; multiple pricing offers (e.g., different COD-dependent prices for the same project) will not be considered independent projects for the sake of this limitation. Respondents may submit more than one project.

IV. Optional Elements

In addition to the required contents outlined in Section III above, there are a number of project characteristics that are of particular interest to MCE. While these elements are not required, MCE has a preference for projects that include the following:

- a. Participation of contractors, subcontractors or businesses that are owned by Disabled Veterans
- b. Participation of contractors, subcontractors or businesses that are located in or employ workers living in a Disadvantaged Community (DAC Zone) as identified by California Environmental Protection Agency’s (“CalEPA”) CalEnviroScreen 3.0 (or the latest version) Tool⁶
- c. A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation.
- d. Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation
- e. Projects that commit to including components and materials manufactured and/or assembled in the United States
- f. Projects that provide benefits to the local community including financial contributions, volunteer hours and in-kind contributions. Examples include, but are not limited to:

⁶ See at <https://oehha.ca.gov/calenviroscreen>. MCE will use the latest approved version of the CalEnviroScreen tool that is valid the day the RFO launches.

- Support of educational programs
 - Classroom equipment
 - Scholarships to college-bound students
 - Support of climate and energy education
- Support of Environmental Justice Initiatives:
 - Installation of solar panels and energy efficiency upgrades for low-income households or non-profit institutions
 - Partnering with environmental justice nonprofits to address air pollution and other environmental burdens
- Support of Workforce Development Initiatives:
 - Partnering with nonprofits that provide classroom or on-the-job training to local residents
 - Offer apprenticeships or summer internships for local youth
- Other:
 - Open space preservation
 - Habitat restoration
 - Food programs

As part of bidders' offer submission, bidders are encouraged to provide a detailed description of each proposed element. Please include a specific commitment for each item. As a condition precedent to commencement of the delivery term under the PPA, Seller must certify that it complied with the commitments and be able to demonstrate, upon request, compliance with these commitments. **This information should be completed in a separate attachment and labeled Attachment J – Optional Elements.**

V. Evaluation Criteria

MCE will evaluate responses in consideration of a common set of criteria, a partial list of which is included below. This list may be revised at MCE's sole discretion and includes:

- a. Overall quality of response, inclusive of completeness, timeliness, and conformity;
- b. Price and relative value within MCE's supply portfolio;
- c. Project location and local benefits, including Optional Elements and Workforce Development Initiatives;
- d. Project development status, including but not limited to progress toward interconnection, deliverability, siting, zoning, permitting, and financing requirements;
- e. Qualifications, experience, financial stability, and structure of the prospective project team (including its ownership);
- f. Environmental impacts and related mitigation requirements;
- g. Acceptance of MCE's standard contract terms; and
- h. Development milestone schedule, if applicable;

VI. Key Deadlines and Submission Requirements

MCE's 2021 Green Tariff RFO will be administered based on the following schedule:

Issue RFO	//2021
Bidder Webinar	//2021
Vendor Q&A Window	/ – //2021
Submission Deadline	//2021, 5:00 P.M. Pacific Prevailing Time
Short-list Notification	//2021
Final Selection(s)	//2021
Finalize Contract(s)	//2021

- a. *Deadline for Questions.* Any questions related to the content of this RFO must be submitted to the RFO Manager at greentariff@mccecleanenergy.org during the "Vendor Q&A window". Please see Section XII, below, for additional information regarding questions submitted to MCE regarding the 2021 Green Tariff RFO.
- b. *Deadline for Responses.* MCE Responses to all questions will be posted weekly.
- c. *Submission Deadline.* To be eligible for consideration, offers must be uploaded via the "Proposal Submission" link on MCE's website no later than 5:00 P.M. Pacific Prevailing Time on the above due date.

Below is a screenshot of the link to upload responses. In the "Name" field please enter the counterparty name (used on line 19, tab 2 of the Offer Form) – NOT your personal name. Then enter your counterparty email address. The "Company (optional)" field, please re-enter the counterparty name. At any time prior to the Submission Deadline, Respondent can upload documents as long as the same counterparty name and email address are used.

Send files to MCE

MCE RFO has invited you to send files

- d. *Supplier Interviews/Q&A.* As necessary, MCE may submit clarifying questions to certain respondents or conduct interviews, based on information provided in the Offer Form. MCE shall retain the right, in its sole discretion, to request information without notifying other

respondents. MCE shall establish due dates for any request(s) for additional information, which shall be communicated to the affected respondent(s).

- e. *Response Evaluation and Supplier Notification.* Following its review of proposed responses and clarifying materials, as well as any interview(s) that may be conducted during this process, MCE will notify all selected suppliers of its intent to pursue contract negotiations. Those suppliers not selected during this process will be notified accordingly.
- f. *Contract Approval and Execution.* MCE anticipates that the selection process will be completed by approximately XX , 2021 as indicated above. Please note that full execution of a contract is likely to occur after this date and is subject to MCE Board and CPUC approval.

VII. Supplier Diversity and Labor Practices

Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, MCE collects information regarding supplier diversity and labor practices from project developers and their subcontractors regarding past, current and/or planned efforts and policies. Each Respondent will be required to complete a Labor Practices questionnaire as part of its offer package (please see MCE's Open Season Offer Form). Additionally, pursuant to Senate Bill 255, which imposes supplier diversity reporting requirements on CCAs, Respondents that execute a PPA with MCE will be required to complete a Supplier Diversity questionnaire.

MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin; providing such information to MCE will not impact the selection process or good standing of executed PPAs.

VIII. CalEnviroScreen Disadvantaged Communities

For purposes of this RFO, the CPUC has defined eligible DACs as census tracts that either:

- (1) score at or above the 75th percentile (i.e., scoring in the top 25 percent statewide) in the CalEPA CalEnviroScreen 3.0 (or latest version) Tool on a statewide basis, or
- (2) Are one of the census tracts that score in the highest five percent of CalEnviroScreen's pollution burden, but that do not have an overall score.

Bidders can follow the process outlined below to identify whether or not their project is located in an eligible DAC:

The CalEPA has created an online map that displays the CalEnviroScreen results, where one can pan and zoom into various areas of California to graphically identify the general location of DACs. There are multiple ways to identify DACs.

- A. Via Data List (Spreadsheet) - In order to download a data list of areas that correspond to the preceding map, one can:

1. Visit the CalEnviroScreen website⁷
2. Download the List of Disadvantaged Communities Excel file
3. Filter the data set

- B. Search by Address - One can also determine DAC status of one or more specific addresses. For a single address, go back to the CalEnviroScreen map and, in the "Find address or place" field, input the address and determine the color coding alongside the map's legend.

For the purposes of this RFO, the project siting requirements are as follows (additional detail can be found in Appendix A):

DAC-GT: Project must be located in a DAC in PG&E's service area.

CS-GT: Project must be located in a DAC in MCE's service area and within 5 miles of subscribing customers' DAC census tract.

IX. General Terms and Conditions

MCE's Reserved Rights

MCE may, at its sole discretion, withdraw this Request for Offers at any time, and/or reject any or all offers submitted without awarding a contract. MCE also reserves the right to negotiate any price or provision as well as accept or reject any or all parts of each offer, whatever is deemed to be in the best interest of MCE.

Respondents are solely responsible for any costs or expenses incurred in connection with the preparation and submittal of an offer or proposal. MCE shall be held harmless and free from any and all liability, claims, or expenses whatsoever incurred by, or on behalf of, any person or organization responding to this RFP.

All data and information furnished by MCE or referred to in this RFP are furnished for the Respondent's convenience. MCE does not guarantee that such data and information are accurate and assumes no responsibility whatsoever as to the accuracy of such data or its interpretation.

During the evaluation process MCE may request from any respondent additional information which MCE deems necessary to determine the respondent's ability to perform the required services. If such information is requested, the respondent shall provide such information within a commercially reasonable amount of time.

⁷ The CalEnviroScreen 3.0 tool is available online at the following link:

<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30> MCE will use the version of the CalEnviroScreen tool that is valid the day the RFO launches to establish eligibility for participation under the RFO.

Public Records

All documents submitted in response to this Request will become the property of MCE upon submittal, and will be subject to the provisions of the California Public Records Act and any other applicable disclosure laws. Upon submission, all proposals shall be treated as confidential until the selection process is completed. Once a contract is awarded, all proposals shall be deemed public record. MCE is required to comply with the California Public Records Act as it relates to the treatment of any information marked "confidential." Respondents requesting that portions of its submittal should be exempt from disclosure must clearly identify those portions with the word "Confidential" printed on the lower right-hand corner of the page. Each page shall be clearly marked and separable from the proposal in order to facilitate public inspection of the non-confidential portion of the proposal. MCE will consider a respondent's request for an exemption from disclosure; however, if MCE receives a request for documents under the California Public Records Act, MCE will make a decision based upon applicable laws. Respondents should not over-designate material as confidential, and any requests or assertions by a respondent that the entire submittal, or significant portions thereof, are exempt from disclosure will not be honored.

X. Shortlist Deposit and Exclusive Negotiating Agreement

Selected respondent(s) will be notified of MCE's interest in further discussions and will be offered an Exclusive Negotiating Agreement for placement on MCE's 2021 Green Tariff shortlist. Respondents interested in being placed on the shortlist and negotiating a PPA shall execute the Exclusive Negotiating Agreement and submit a Shortlist Deposit of \$3.00/kW for all short-listed project capacity within ten (10) business days of such notification. The pro forma Exclusive Negotiating Agreement will be available for review by respondents prior to MCE's announcement of selected suppliers.

XI. California Public Utilities Commission Approval

The effectiveness of any executed DAC-GT or CS-GT PPA is expressly conditioned on MCE's receipt of final and non-appealable CPUC approval of such PPA.

XII. Questions

To promote accuracy and consistency of information provided to all participants, questions will only be accepted via email to MCE's RFO Manager at greentariifrfo@mcecleanenergy.org with the subject line of such emails reading "MCE 2021 Green Tariff Question." Please note, the deadline for submitting questions is indicated in Section VI above.

MCE will attempt to respond to submitted questions within a week of receipt. MCE will post the questions and responses to the solicitation page of MCE's website.

MCE reserves the right to combine similar questions, rephrase questions, or decline to answer questions, at its sole discretion. All questions must be submitted through the above process. No questions will be answered over the telephone or in person. Respondents may not have any contact regarding this procurement with any MCE official or staff from the time of issuance of this solicitation until the award of contract, other than through the process for submitting questions. Any contact in violation of these provisions will be grounds for disqualification.

Thank you for your interest!

APPENDIX A

Appendix A

Bid Requirements and Required Submission Documents for DAC-GT and CS-GT

Offer Requirements by Green Tariff Program

	DAC-GT	CS-GT
Applicable PPA Contract	MCE DAC-GT Contract	MCE CS-GT Contract
Technology	Solar PV (no storage); Must be a commercially-proven technology.	
Project Size	0.5 – 4.64 MW _{AC}	Less than 1.28 MW _{AC}
Location	<p>A conforming Project must meet the following location requirements:</p> <ol style="list-style-type: none"> 1. The entire Project site must be located in PG&E's electric service area. 2. The entire Project must be located within an eligible census tract(s) as described below: <ol style="list-style-type: none"> a) Census tracts with a score at or above the 75th percentile (i.e. scoring in the top 25% statewide) using the CalEnviroScreen Tool on a statewide basis; or b) Census tracts that score in the highest 5 percent of CalEnviroScreen's Pollution Burden but that do not have an overall score. <p>Behind-the-meter projects are ineligible.</p>	<p>A conforming Project must meet the following location requirements:</p> <ol style="list-style-type: none"> 1. The entire Project site must be located in MCE's electric service area. 2. The entire Project must be located within an eligible census tract(s) as described below: <ol style="list-style-type: none"> a) Census tracts with a score at or above the 75th percentile (i.e. scoring in the top 25% statewide) using the CalEnviroScreen Tool on a statewide basis; or b) Census tracts that score in the highest 5 percent of CalEnviroScreen's Pollution Burden but that do not have an overall score. c) The Project location must be deemed, to MCE's reasonable satisfaction, to have sufficient eligible customers within the qualifying customer location requirements, being that an eligible customer must be located in a DAC that's within 5 miles of the project.

	DAC-GT	CS-GT
		<p>Participants may submit their Project location information prior to offer submittal deadline at greentariiffrfo@mcecleanenergy.org and request verification that their Project is located in an area with sufficient eligible customers. Projects that do not confirm this eligibility requirement with MCE prior to submitting an offer may be at-risk of not having sufficient eligible customers within the customer location requirements and may be deemed nonconforming. Not meeting this requirement will result in a nonconforming offer.</p> <p>Behind-the-meter projects are ineligible.</p> <p><u>Priorities (not requirements)</u></p> <p>Per D.18-06-07, MCE will prioritize:</p> <p>a) Projects that are located in the top 5% census tracts of DACs per CalEnviroScreen; and/or</p> <p>b) Projects that leverage other government funding such as a state Community Services Department (CSD) grants or projects that provide evidence of support from programs such as Transformative Climate Communities or other local climate initiatives; and/or</p> <p>c) Job training and workforce development factors to enable creation of local job opportunities for low-income communities and diverse business enterprises.</p>
Renewables Portfolio Standard ("RPS") Eligibility	Project must be CEC pre-certified and qualify as RPS-eligible per the CEC RPS eligibility guidebook. Project must qualify as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12.	

	DAC-GT	CS-GT
Product	1. Energy 2. Capacity 3. PCC1 Renewable Energy Credit	
Development Status	New-build only	
Price	A single, flat price that remains constant throughout the entire delivery term and is not adjusted by periodic escalators or time of delivery factors.	
Term	10-, 15-, or 20-year. 20-year bid is required.	
COD	12/31/23 or earlier. Delivery day must be the beginning of the month.	
Other Offtake Agreements	Project may not have any other offtake agreements with additional Buyers.	
Delivery Point	NP-15 trading hub (preferred) and/or project pNode	
Deliverability	In order of preference: 1. Full Capacity Deliverability Status (FCDS) 2. Partial Capacity Deliverability Status (PCDS) 3. Energy-only	
Scheduling Coordinator	MCE prefers to maintain Scheduling Coordinator responsibilities and dispatch rights.	
Security Requirements	Development (Pre-COD): \$60/kW Performance (Post-COD): \$60/kW	
Interconnection	Completed Phase I or Equivalent Study	
Site Control	Full site control via ownership, lease or an option to lease or own. Lease term must be greater than or equal to PPA term offer.	
Green-E® Certification	Facilities must be certified and in compliance with the Green-e® Energy National Standard. Projects that are awarded a PPA must provide a Green-e Energy Tracking Attestation prior to achieving commercial operation and updates as required.	
California Air Resources Board ("CARB") Voluntary Renewable Energy Program	Project must comply with the requirements of CARB's Voluntary Renewable Electricity Program and Seller shall provide MCE with all documents necessary to enable MCE to retire greenhouse gas allowances on behalf of Customers in compliance with the Voluntary Renewable Electricity Program.	
Community Sponsor	N/A	Community sponsorship of the project by a Community-based Organization ("CBO") or local government entity on behalf of residents is required to be eligible to participate in CS-GT. Local government entities include schools. The sponsor's role is to work with the project developer to encourage program participation in the community. Sponsors are also required to include job training and workforce development in their efforts to benefit the local communities.

	DAC-GT	CS-GT
		<p>MCE will provide support to local CBOs and project developers to identify potential CS project sites and sponsors. More information can be found on the RFO website.</p> <p>See Appendix C for more details on the Community Sponsor requirement.</p>
Permission to Operate ("PTO")	N/A	25% percent of each project's capacity must be subscribed by eligible low-income customers prior to PTO being issued.
Workforce Development	Please see Appendix B for further details on Workforce Development considerations regarding: Prevailing Wage, Local Hiring, Union Labor and Responsible Hiring.	

Submission Requirements

	DAC-GT	CS-GT
Offer Form Template	A completed offer form with the applicable sections completed for DAC-GT.	A completed offer form with the applicable sections completed for CS-GT.
Financing Plan (Attachment A)	An explanation of the proposer's financial capabilities and plans to finance and provide credit support for the project included in the offer. Please include any other financial information that would be necessary for MCE's evaluation.	
Financial Statements (Attachment B)	Two years of audited financial statements for the proposer or proposer's financial guarantor.	
Organizational Chart (Attachment C)	A profile of proposer's organization and its ownership structure, including direct ownership and ultimate parent company. This should be in the form of a diagram.	
Latest Interconnection Document (Attachment D)	<p>The latest interconnection document, which may be one of the following:</p> <ul style="list-style-type: none"> i. Fast Track Review report demonstrating the Project has "passed" the respective Fast Track screens or that the Project may otherwise be interconnected consistent with safety, reliability, and power quality standards; ii. Completed System Impact Study or Facilities Study; iii. Completed Phase I Interconnection Study; iv. Completed Phase II Interconnection Study; or v. A signed Generator Interconnection Agreement 	
Project Development Timeline (Attachment E)	A GANTT chart schedule detailing the timing and progress of key project milestones included on the cover sheet of the PPA.	
Permitting, Land Use and Zoning (Attachment F)	A description of the environmental compliance and zoning requirements and all regulatory permits, licenses or approvals required for the resource to supply renewable power.	
Map / Site Plan (Attachment G)	A to-scale Site Map of the generating resource showing the arrangement of all major components of the facility with the name of the facility, census tract, outer boundaries, major cross streets, nameplate capacity, longitude and latitude of the centroid of the generating resource clearly labeled. Please also include all Assessor Parcel Numbers included in and adjacent to the facility and any environmentally sensitive areas.	
Single Line Diagram (Attachment H)	A Single Line Diagram that includes the generating resource's point of interconnection to the electric transmission or distribution system.	
Redlined PPA Term Sheet (Attachment I)	Redlined DAC-GT Term Sheet	Redlined CS-GT Term Sheet
Pollinator-Friendly Scorecard (Attachment J)	A completed pollinator scorecard.	

Sponsor Letter of Commitment (Attachment K)	N/A	A letter of commitment from a qualifying sponsor(s) is required. See Appendix C for additional information.
Optional Elements (Attachment J)	Bidders can provide a word document detailing their offer's ability to meet MCE's preferred offer attributes. See section IV for additional information.	

APPENDIX B

Appendix B

Workforce Development Considerations

I. Local Hire:

If a proposed Project is to be located within MCE's Service area, Seller will ensure that fifty percent (50%) of the construction workhours from its workforce (including contractors and subcontractors) at the project site during the Construction Phase (e.g., the period from Full Notice to Proceed (NTP) through receipt of a Permission To Operate (PTO) letter from the interconnecting utility) are obtained from permanent residents who live within the same county in which the Eligible Resource will be located (the "Local Hire Requirement"). Seller's construction of the Eligible Resource is also subject to any local hire requirements specific to the city or town where the proposed generating resource is located. As a condition precedent to commencement of the delivery term under the PPA, Seller must certify that it met the Local Hire Requirement and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the PPA.

II. Prevailing Wage:

If a proposed Project is to be located within MCE's Service area, Seller will ensure that all employees hired by Seller, and its contractors and subcontractors, that are performing work or providing services at the project site during the Construction Phase are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by Division 2, Part 7, Chapter 1 of the California Labor Code ("Prevailing Wage Requirement"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of the California Labor Code. As a condition precedent to commencement of the delivery term under the PPA, Seller must certify that it met the Prevailing Wage Requirement, and be able to demonstrate, upon request, compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the PPA.

III. Union Labor

A proposed generating resource to be located in Contra Costa County must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and attached project labor agreement (collectively, the "PLA"). The PLA applies to "Covered Work" (as defined therein) for solar photovoltaic and associated energy storage projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to enter into a project labor agreement of similar scope and requirements with participating unions for workforce hired as described in the PLA referenced above. As a condition precedent to commencement of the delivery term under the PPA, Seller must certify that it complied with the foregoing union labor requirements and local hire requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit. Failure to comply with this requirement may, in MCE's sole discretion, result in termination of the PPA.

IV. Responsible Procurement:

MCE will not accept any proposals for generating facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Under each PPA, Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the applicable generating and/or storage facility.

APPENDIX C

Appendix C

Sponsor Letter of Support

Sponsor Letter of Support Requirement

Bidders must submit a letter of commitment (Attachment K) from a non-profit CBO or a local government entity or school that would serve as a sponsor for the CS-GT project on behalf of the residents that are located in, or within five miles, a DAC within MCE's service area for the offered project. At a minimum, this letter must contain:

1. Demonstration of substantial interest of community members in subscribing to Project;
2. Estimated number of subscribers, with justification to ensure Project is sized to likely demand;
3. A preliminary plan to conduct outreach and recruit subscribers (which may be conducted in conjunction with the developer and/or MCE); and
4. Siting preferences, including community-suggested host sites, and verification that the site chosen for the bid is consistent with community preference.

ATTACHMENT 2

Pro-forma PPA DAC-GT

MCE PRO FORMA

8 JUNE 2021

DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Entity name, state of formation, type of entity]

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A ____ MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 3.0 (or the latest version) tool (such community, a "**DAC**"), within PG&E's distribution service territory.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	
Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

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

Expected Energy:

Contract Year	Expected Energy (MWh)
1-XX	<i>[If there is an annual adjustment for degradation, this should be noted.]</i>

Guaranteed Capacity: ____ MW *[Guaranteed Capacity must not be less than 0.5 MW nor exceed 4.64 MW.]*

Contract Price: shall be \$[XX]/MWh. *[Per MCE Advice Letter 42-E, “bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC’s Energy Division Staff via email on September 5, 2019”.]*

Product:

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

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security: *[Insert dollar amount equal to \$60/kW of Guaranteed Capacity].*

Performance Security: *[Insert dollar amount equal to \$60/kW of Guaranteed Capacity].*

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of _____, 2021 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

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

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

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

“Buyer” means Marin Clean Energy, a California joint powers authority.

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

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

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

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

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

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

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

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

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

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

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.7(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, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

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

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

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

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

“CEQA” means the California Environmental Quality Act.

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

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

“COD Delay Damages” means an amount equal to [\$XXX/day, which is equal to the Development Security divided by 90].

“Compliance Actions” has the meaning set forth in Section 3.10.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.10.

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

“Construction Delay Damages” means an amount equal to [\$XXX/day, which is equal to the Development Security divided by 180].

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

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

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

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

“Contract Year” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

“**COVID-19**” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

“**CPUC Approval**” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

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

“**Curtailment Cap**” means the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

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

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

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

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

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

“**DAC-GT**” means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

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

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

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

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

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

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

“**Dedicated Interconnection Capacity**” has the meaning set forth in Section 4.10.

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

“**Delay Damages**” means Construction Delay Damages and COD Delay Damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Expected FCDS Date” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

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

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

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

“FERC” means the Federal Energy Regulatory Commission 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).

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

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

“Forward Certificate Transfers” has the meaning set forth in Section 4.7(a).

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

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

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

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

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party hereto.

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

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

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

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

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

“Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by eighty-five percent (85%).

“Guaranteed RA Amount” means the amount of MW equal to the Net Qualifying Capacity (NQC) of the Facility.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements

at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"Guaranty" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

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

"Indemnified Party" has the meaning set forth in Section 16.1.

"Indemnifying Party" has the meaning set forth in Section 16.1.

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

"Installed Capacity" means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

"Interconnection Agreement" means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator 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, as applicable, 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.

"Interconnection Point" has the meaning set forth in Exhibit A.

"Interest Rate" has the meaning set forth in Section 8.2.

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

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

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

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

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

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

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

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

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

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

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

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

trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities 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 set forth in Exhibit A.

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

“Performance Measurement Period” shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than

12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

“Performance Security” means (i) cash, or (ii) a Letter of Credit or (iii) a Guaranty, in the amount set forth on the Cover Sheet.

“Permitted Transferee” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(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 a third-party with such experience to operate the Facility.

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

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

“Planned Outage” has the meaning set forth in Section 4.5(a).

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

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

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

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

“Qualified Issuer” means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

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

“RA Deficiency Amount” has the meaning set forth in Section 3.7(d).

“RA Guarantee Date” means the date that is sixty (60) days after the Commercial Operation Date.

“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.7(d), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the NQC the Facility would have otherwise qualified for due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO’s reduction in the Net Qualifying Capacity of the Facility due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“RA Showing” means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

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

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

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

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

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

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

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

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

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

“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 4.7(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.

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

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

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

“Station Use” means:

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

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

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

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and

use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

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

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

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

“Transmission System” means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

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

“Workforce Requirements” means, collectively, the workforce and prevailing wage requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b).

“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 4.7(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 January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

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

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

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

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

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

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

(f) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and 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 demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(h) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages;

(j) Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO;

(k) Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff;

(l) Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable;

(m) If applicable, Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(n) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(o) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

2.3 CPUC Approval. Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within

one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

2.4 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. In the event Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the AGREEMENT and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

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

2.6 **Workforce Requirements.** Seller agrees to comply with the Workforce Requirements and to provide Buyer copies of documentation establishing ongoing compliance with the Workforce Requirements as may be reasonably requested by Buyer from time to time.

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 from Seller at the applicable prices set forth in Exhibit C, all of the Product produced by or associated with 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's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event,

(B) a Curtailment Period; provided such Curtailment Period is not attributable to Buyer's breach of its obligations under this Agreement or any other agreement, or (C) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1. 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.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may 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. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), 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 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that

the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy.** Prior to the Commercial Operation Date, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues received by Buyer for such Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

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

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

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

(d) Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (A) the CPUC System RA Penalty and (B) CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. RA Deficiency Amounts will be netted against amounts owing to Seller pursuant to Section 8.6.

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

(f) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements, if any, including (A) assisting Buyer in registering the Facility with the

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

(g) Subject to Section 3.11 and at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.9 **California Renewables Portfolio Standard.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

(b) **Transfer of Renewable Energy Credits.** Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in

law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

3.10 Change in Law

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

(b) Compliance Expenditure Cap. If Seller establishes to Buyer's reasonable satisfaction that 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 the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.10 (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**.”

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall 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 provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with **Exhibit D**.

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

4.2 **Title and Risk of Loss.**

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

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

4.3 **Forecasting.** Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Expected Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 ("**Average Expected Energy**"), or as reasonably requested by 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 the SC (if applicable) a non-binding forecast of the Available Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**"), or as reasonably requested by Buyer.

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Industry Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Capacity and (ii) hourly expected Facility 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 (i) the Available Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer 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 Facility 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 Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(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 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for such amounts (the "**Forecasting Penalty**") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.

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

4.4 **Dispatch Down/Curtailment**

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

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

4.5 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(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, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

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

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

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

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

4.6 Scheduling Coordinator Responsibilities. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in Exhibit D.

4.7 WREGIS. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller’s obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.8 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, Curtailment Periods, and Buyer Curtailment Periods (the “**Adjusted Energy Production**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.9 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer’s dispatch rights of

the Facility to be fully reflected in the CAISO's market optimization (collectively, the "**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the Dedicated Interconnection Capacity.

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the 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 Product that are imposed on Product at and after its delivery to Buyer at 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 Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent

such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7 METERING

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

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall reflect the CAISO T+9 settlement information and shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within five (5) Business Days after the CAISO T+9 settlement information becomes available.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due

date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records 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, 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. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice, payment or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned 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

undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of 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 any unpaid Construction Delay Damages within five (5) 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. Upon the earlier of (i) Seller's delivery of the Performance Security or (ii) sixty (60) days after termination of this Agreement, Buyer shall 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 (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

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

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation

thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

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

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

ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such

electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) 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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the 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 shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

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

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

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

(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 such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred eighty (180) days of the Guaranteed Construction Start Date

(v) 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 either (x) 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; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Industry Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, 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;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

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

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

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

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

(F) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

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

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

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other

sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; 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 be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

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

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 Waiver and Exclusion of Other Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local**

Hire Requirement”). Seller’s construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located.

(c) **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats**. If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard (“**Pollinator Scorecard**”) in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

(A) 36-inch minimum height above ground of the lowest edge of the solar panels;

(B) Burying conduits and wiring with homeruns tight to bottom of panels;

(C) Designing inter-row access/spacing to enable vegetation management; and

(D) Utilizing ‘BeeWhere’ registration if beehives are placed onsite.

Additional pollinator reference materials can be found at Pollinator Partnership at www.pollinator.org and EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in

selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **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 16 INDEMNIFICATION

16.1 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 16.1 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.

16.2 **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 16 may apply, the Indemnified Party shall notify 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 otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's 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 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its 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 insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Umbrella/Excess Liability Insurance. Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) 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 cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-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. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(j) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, 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 17 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 18

CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller

including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a

Party.

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

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively

revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and 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 electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

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

19.11 **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 15. Notwithstanding the foregoing, (i) 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, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.13 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

[SELLER]

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: *[Note – Site must be located in a DAC]*

Site includes all or some of the following APNs:

County: _____ County, California

Type of Generating Facility: _____

Guaranteed Capacity: ____ MW (AC)

Maximum Output: ____ MW

Delivery Point: Facility Pnode

Interconnection Point: *[e.g., XX substation]*

Settlement Point: *[e.g., NP-15 or PG&E DLAP (TH_NP15_GEN-APND). Use only if the Contract Price is subject to a Settlement Point adjustment. Otherwise, delete.]*

Facility Pnode:

Participating Transmission Owner: Pacific Gas and Electric Company (PG&E) (or any successor entity)

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction 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 Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction 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 Damage Payment, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.

- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction 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 COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD 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 Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the Agreement, or (iv) for delays that are not

claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.**

If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) 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.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy, up to one hundred and five percent (105%) of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to \$0.00/MWh.

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

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(e) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(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 Facility Energy, and if applicable, the Test Energy, at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined under the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay any undisputed CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

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

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

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

EXHIBIT E
FORM OF PROGRESS REPORT

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. List of issues that are likely to potentially affect Seller's Milestones.
9. Seller's monthly report shall (a) describe the progress towards meeting the Milestones, including whether Seller has met or is on target to meet the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting. Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

	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																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

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

EXHIBIT F-2

FORM OF MONTHLY AVAILABLE CAPACITY REPORT

[Available Capacity, MW per hour] – [Insert Month]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, 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 (as defined in the CAISO Tariff) 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 market value of Replacement Green Attributes, as reasonably determined by Buyer.

D = Contract Price, in \$/MWh

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

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

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner and CAISO.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. A performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").
5. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

Sign: _____

Print: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

Sign: _____

Print: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [Seller Entity] (“**Seller**”) to Marin Clean Energy, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
2. the Construction Start Date occurred on _____ (the “**Construction Start Date**”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____.

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

[SELLER ENTITY]

Sign: _____

Print: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy
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. [XXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of *[insert date]* and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on *[insert date]* which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to *[bank email address]* or (c) facsimile to *[bank fax number]*. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

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

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

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

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

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

[*Bank Name*]

[*Insert officer name*]

[*Insert officer title*]

(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, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit 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 by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [_____] a [_____] (“Guarantor”), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [SELLER ENTITY], a _____ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure

(the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's

organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[]

Attn: []

Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M
METERING DIAGRAM

EXHIBIT N

NOTICES

_____ ("Seller")	MARIN CLEAN ENERGY, a California joint powers authority ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: 829602338 Federal Tax ID Number: 26-4300997
Invoices: Attn: Phone: E-mail:	Invoices: Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: Settlements@mcecleanenergy.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 E-mail: dascheduler@zglobal.biz
Confirmations: Attn: Phone: Email:	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Phone: E-mail:	Payments: Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: Settlements@mcecleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: 811108740
With additional Notices of an Event of Default to: Attn: Phone: E-mail:	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: Phone: Email:	Emergency Contact: Attn: Phone: E-mail:

EXHIBIT O

SELLER COMMITMENTS

[Drafting Note: Parties to add further detail regarding these commitments as needed.]

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☐ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☐ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 3.0 (or the latest version) Tool;
- ☐ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☐ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☐ Projects that commit to including components and materials manufactured and/or assembled in the United States;
- ☐ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of [*describe community benefits*]; and
- ☐ Other: [*describe open space preservation, habitat improvement, or food programs*].

EXHIBIT P

POLLINATOR SCORECARD



Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.

1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points
- ☐ 46-60 % +10 points
- ☐ 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points
- ☐ 51-75% +10 points
- ☐ 76-100% +15 points

Total points

3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points
- ☐ 12-15 species +10 points
- ☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points
- ☐ Summer (June-August) +5 points
- ☐ Fall (September-November) +5 points
- ☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points
 - ☐ Native trees/shrubs +2 points
 - ☐ Clean, perennial water sources +2 points
 - ☐ Created nesting feature(s) +2 points
- (i.e., native bee houses) Total points

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points
- ☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points
- ☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points
- ☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points
- ☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points
- ☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

POLLINATOR
PARTNERSHIP



EXHIBIT Q
OPERATING RESTRICTIONS

EXHIBIT R

DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

* Required

1. Email address *

2. Business Name *

3. Where is your business located/headquartered? *

4. Is your business certified under General Order 156 (GO 156)? *

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com

Mark only one oval.

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

5. If you answered "yes" or "qualified but not certified", under which categories?

Please choose all that apply. *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ Woman owned
- ☐ Minority Owned
- ☐ Disabled Vet Owned
- ☐ LGBT owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)

6. If a minority-owned business enterprise, certified or qualified as which of the following? *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

8. If certified, current annual revenue:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here:

<https://sch.supplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

Check all that apply.

- ☐ 1 Agricultural production- crops
- ☐ 2 Agricultural production- livestock
- ☐ 7 Agricultural services
- ☐ 8 Forestry
- ☐ 9 Fishing, hunting, and trapping
- ☐ 10 Metal mining
- ☐ 12 Coal mining
- ☐ 13 Oil and gas extraction
- ☐ 14 Nonmetallic minerals, except fuels
- ☐ 15 General building contractors
- ☐ 16 Heavy construction contractors
- ☐ 17 Special trade contractors
- ☐ 20 Food and kindred products
- ☐ 21 Tobacco manufactures
- ☐ 22 Textile mill products
- ☐ 23 Apparel and other textile products
- ☐ 24 Lumber and wood products
- ☐ 25 Furniture and fixtures
- ☐ 26 Paper and allied products
- ☐ 27 Printing and publishing
- ☐ 28 Chemicals and allied products
- ☐ 29 Petroleum and coal products
- ☐ 30 Rubber and miscellaneous plastics products
- ☐ 31 Leather and leather products
- ☐ 32 Stone, clay, glass, and concrete products
- ☐ 33 Primary metal industries
- ☐ 34 Fabricated metal products
- ☐ 35 Industrial machinery and equipment
- ☐ 36 Electrical and electronic equipment
- ☐ 37 Transportation equipment
- ☐ 38 Instruments and related products
- ☐ 39 Miscellaneous manufacturing industries
- ☐ 41 Local and interurban passenger transit

- ☐ 42 Motor freight transportation and warehousing
- ☐ 43 U.S. Postal Service
- ☐ 44 Water transportation
- ☐ 45 Transportation by air
- ☐ 46 Pipelines, except natural gas
- ☐ 47 Transportation services
- ☐ 48 Communications
- ☐ 49 Electric, gas, and sanitary services
- ☐ 50 Wholesale trade--durable goods
- ☐ 51 Wholesale trade--nondurable goods
- ☐ 52 Building materials, hardware, garden supply, & mobile home
- ☐ 53 General merchandise stores
- ☐ 54 Food stores
- ☐ 55 Automotive dealers and gasoline service stations
- ☐ 56 Apparel and accessory stores
- ☐ 57 Furniture, home furnishings and equipment stores
- ☐ 58 Eating and drinking places
- ☐ 59 Miscellaneous retail
- ☐ 60 Depository institutions
- ☐ 61 Nondepository credit institutions
- ☐ 62 Security, commodity brokers, and services
- ☐ 63 Insurance carriers
- ☐ 64 Insurance agents, brokers, and service
- ☐ 65 Real estate
- ☐ 67 Holding and other investment offices
- ☐ 70 Hotels, rooming houses, camps, and other lodging places
- ☐ 72 Personal services
- ☐ 73 Business services
- ☐ 75 Automotive repair, services, and parking
- ☐ 76 Miscellaneous repair services
- ☐ 78 Motion pictures
- ☐ 79 Amusement and recreational services
- ☐ 80 Health services
- ☐ 81 Legal services
- ☐ 82 Educational services
- ☐ 83 Social services
- ☐ 84 Museums, art galleries, botanical & zoological gardens
- ☐ 86 Membership organizations
- ☐ 87 Engineering and management services

- ☐ 88 Private households
- ☐ 89 Miscellaneous services
- ☐ 91 Executive, legislative, and general government
- ☐ 92 Justice, public order, and safety
- ☐ 93 Finance, taxation, and monetary policy
- ☐ 94 Administration of human resources
- ☐ 95 Environmental quality and housing
- ☐ 96 Administration of economic programs
- ☐ 97 National security and international affairs

10. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

Subcontractors

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? *

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. : \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

**Labor
Agreements**

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? *

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

Check all that apply.

- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, history of local hire but not in this contract with MCE
- ☐ Yes, history of union labor but not in this contract with MCE
- ☐ Yes, history of multi-trade PLA but not in this contract with MCE
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

15. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

17. If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?

18. Does your business pay workers prevailing wage rates or the equivalent? *

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html

Mark only one oval.

- ☐ Yes, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

19. Does your business support and/or use apprenticeship programs? *

Mark only one oval.

- ☐ Yes, including in this contract with MCE
- ☐ Yes, but not in this contract with MCE
- ☐ No
- ☐ Not applicable

20. If yes, please describe the apprenticeship programs supported/used.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

Equity, Diversity,
Inclusion, and Justice

MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

22. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

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ATTACHMENT 3

Pro-forma PPA CS-GT

COMMUNITY SOLAR GREEN TARIFF (CS-GT)

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Entity name, state of formation, type of entity]

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A ____ MW renewable energy generating facility located in a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 3.0 (or the latest version) tool (such community, a "**DAC**"), which is both within MCE's distribution service territory and within five (5) miles of the participating customers' DAC census tract.

Milestones:

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

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

Expected Energy:

Contract Year	Expected Energy (MWh)
1-XX	<i>[If there is an annual adjustment for degradation, this should be noted.]</i>

Guaranteed Capacity: ____ MW *[Guaranteed Capacity may not exceed 1.28 MW.]*

Contract Price: shall be \$[XX]/MWh. *[Per MCE Advice Letter 42-E, “bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC’s Energy Division Staff via email on September 5, 2019”.]*

Product:

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

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security and Performance Security

Development Security: *[Insert dollar amount equal to \$60/kW of Guaranteed Capacity].*

Performance Security: *[Insert dollar amount equal to \$60/kW of Guaranteed Capacity].*

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of _____, 2021 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10.

“**Adjusted Energy Production**” has the meaning set forth in Section 4.8.

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

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

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

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

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

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

“Buyer” means Marin Clean Energy, a California joint powers authority.

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

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

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

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

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

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

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

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

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

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

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.7(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, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

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

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

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

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy. Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

“CEQA” means the California Environmental Quality Act.

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

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

“COD Delay Damages” means an amount equal to [\$XXX/day, which is equal to the Development Security divided by 90].

“Compliance Actions” has the meaning set forth in Section 3.10.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.10.

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

“Construction Delay Damages” means an amount equal to [\$XXX/day, which is equal to the Development Security divided by 180].

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

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

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

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

“Contract Year” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

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

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

“COVID-19” means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof.

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

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves this Agreement in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

“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.

“CS-GT” means the Community Solar Green Tariff program approved by the CPUC.

“Curtailment Cap” means the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

“Curtailment Order” means any of the following:

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

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

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

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

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

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

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

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

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

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

“**Dedicated Interconnection Capacity**” has the meaning set forth in Section 4.10.

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

“**Deficient Month**” has the meaning set forth in Section 4.7(e).

“**Delay Damages**” means Construction Delay Damages and COD Delay Damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Expected FCDS Date” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

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

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

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

“FERC” means the Federal Energy Regulatory Commission 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).

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

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

“Forward Certificate Transfers” has the meaning set forth in Section 4.7(a).

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

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

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

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

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau,

or entity with authority to bind a Party at law, including CAISO; *provided, however*, that “Governmental Authority” shall not in any event include any Party hereto.

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

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

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

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

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

“Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by eighty-five percent (85%).

“Guaranteed RA Amount” means the amount of MW equal to the Net Qualifying Capacity (NQC) of the Facility.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements

at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

"Guaranty" means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably acceptable to Buyer.

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

"Indemnified Party" has the meaning set forth in Section 16.1.

"Indemnifying Party" has the meaning set forth in Section 16.1.

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

"Installed Capacity" means the actual generating capacity of the Facility, as measured in MW at the Delivery Point, that achieves Commercial Operation (whether prior to, on, or after the Guaranteed Commercial Operation Date), adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate(s) substantially in the form attached as Exhibit H hereto.

"Interconnection Agreement" means the interconnection agreement(s) entered into by Seller with the CAISO, the Participating Transmission Owner and/or the distribution operator 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, as applicable, 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.

"Interconnection Point" has the meaning set forth in Exhibit A.

"Interest Rate" has the meaning set forth in Section 8.2.

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

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

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

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

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

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

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

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

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

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

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

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

trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

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

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

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

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

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

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

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

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

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

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

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

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

“Participating Transmission Owner” or **“PTO”** means an entity that owns, operates and maintains transmission or distribution lines and associated facilities 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 set forth in Exhibit A.

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

“Performance Measurement Period” shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than

12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

“Performance Security” means (i) cash, or (ii) a Letter of Credit or (iii) a Guaranty, in the amount set forth on the Cover Sheet.

“Permitted Transferee” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(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 a third-party with such experience to operate the Facility.

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

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

“Planned Outage” has the meaning set forth in Section 4.5(a).

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

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

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

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

“Qualified Issuer” means a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) otherwise reasonably acceptable to Buyer.

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

“RA Deficiency Amount” has the meaning set forth in Section 3.7(d).

“RA Guarantee Date” means the date that is sixty (60) days after the Commercial Operation Date.

“RA Shortfall Amount” means, for purposes of calculating an RA Deficiency Amount under Section 3.7(d), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the NQC the Facility would have otherwise qualified for due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, and (c) the CAISO’s reduction in the Net Qualifying Capacity of the Facility due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“RA Showing” means the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings) that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to CAISO), pursuant to the Resource Adequacy Rulings, to CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

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

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

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

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

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

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

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

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

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

“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 4.7(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.

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

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

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

“Station Use” means:

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

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

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

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and

use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

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

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

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

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

“Transmission System” means the transmission, distribution or interconnection facilities that provide energy delivery services to the Delivery Point and/or the CAISO Grid, as applicable.

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

“Workforce Requirements” means, collectively, the workforce and prevailing wage requirements set forth in Section 13.4(a) and the Local Hire Requirements in Section 13.4(b).

“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 4.7(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 January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

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

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

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

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

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

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

(f) Seller (with the reasonable cooperation and assistance of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and 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 demonstrated compliance with the workforce and prevailing wage requirements set forth in Section 13.4(a) by certifying such compliance to Buyer in writing and providing reasonably requested documentation demonstrating such compliance, including copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

(h) Seller has demonstrated compliance with the Local Hire Requirement set forth in Section 13.4(b) by certifying to Buyer in writing that it met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit;

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

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages;

(j) Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO;

(k) Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff;

(l) Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable;

(m) If applicable, Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(n) Twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers;

(o) CPUC Approval has been obtained, or waived by Buyer in Buyer's sole discretion, and such waiver is set forth in writing; and

(p) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.

2.3 **CPUC Approval.** Within ninety (90) days after the Effective Date of this Agreement, Buyer shall file with the CPUC the appropriate request for CPUC Approval. As requested by Buyer, Seller shall use commercially reasonable efforts to support Buyer in obtaining CPUC Approval. MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Agreement or which contains findings required for CPUC Approval with

conditions or modifications unacceptable to either Party. Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by Buyer in its sole discretion within one hundred eighty (180) days after Buyer files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after Buyer files the request for CPUC Approval.

2.4 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings (no more than monthly) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. In the event Seller misses any Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the AGREEMENT and retain the Development Security as damages, in addition to any other remedies it may have at law or equity. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

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

2.6 **Workforce Requirements.** Seller agrees to comply with the Workforce Requirements and to provide Buyer copies of documentation establishing ongoing compliance with the Workforce Requirements as may be reasonably requested by Buyer from time to time.

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

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may 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. Subject to Seller's responsibility for CAISO penalties pursuant to Section 4.3(c), to the extent there are such deviations between Facility Energy and Scheduled Energy, any CAISO costs, charges or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), 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 3.5, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental

Attributes, including with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 Test Energy. Prior to the Commercial Operation Date, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues received by Buyer for such Test Energy. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 Capacity Attributes. Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

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

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

(d) Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (A) the CPUC System RA Penalty and (B) CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting. RA Deficiency Amounts will be netted against amounts owing to Seller pursuant to Section 8.6.

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

(f) At Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any,

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

(g) Subject to Section 3.11 and at all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

3.8 **CEC Certification and Verification.** Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within ninety (90) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.9 **California Renewables Portfolio Standard.**

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [STC 6].

(b) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public

Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2].

(d) Applicable Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

3.10 Change in Law

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

(b) Compliance Expenditure Cap. If Seller establishes to Buyer's reasonable satisfaction that 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 the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.10 (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**.”

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall 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 provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including Station Use, Electrical Losses, and any operation and maintenance charges imposed by the Participating Transmission Owner directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer’s designated Scheduling Coordinator) in accordance with Exhibit D.

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

4.2 **Title and Risk of Loss.**

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

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

4.3 **Forecasting.** Seller shall provide the Available Capacity forecasts described below. Seller's Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) **Annual Forecast of Expected Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1 ("**Average Expected Energy**"), or as reasonably requested by 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 the SC (if applicable) a non-binding forecast of the Available Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**"), or as reasonably requested by Buyer.

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Industry Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Capacity and (ii) hourly expected Facility 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 (i) the Available Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer 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 Facility 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 Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(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 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for such amounts (the "**Forecasting Penalty**") for each such hour. Settlement of Forecasting Penalties shall occur as set forth in Section 8.6 of this Agreement.

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

4.4 **Dispatch Down/Curtailment**

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

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

4.5 **Reduction in Delivery Obligation.** For the avoidance of doubt, and in no way limiting Section 3.1:

(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, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in accordance with Prudent Industry Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, a "**Planned Outage**").

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

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

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

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

4.6 Scheduling Coordinator Responsibilities. Buyer shall be the Scheduling Coordinator for the Facility and shall perform such responsibilities in accordance with requirements set forth in Exhibit D.

4.7 WREGIS. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.7. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced on a one-for-one basis by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 for the applicable Contract Year. Without limiting Seller’s obligations under this Section 4.7, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.7 after the Effective Date, the Parties promptly shall modify this Section 4.7 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

4.8 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, Curtailment Periods, and Buyer Curtailment Periods (the “**Adjusted Energy Production**”). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G.

4.9 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.10 **Interconnection.** The Facility shall interconnect at the Interconnection Point and Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point. Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer’s dispatch rights of

the Facility to be fully reflected in the CAISO's market optimization (collectively, the "**Dedicated Interconnection Capacity**"). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the Dedicated Interconnection Capacity.

4.11 **Green e-Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form ("**Attestation**") for Product delivered under this Agreement to the Center for Resource Solutions ("**CRS**") at <https://www.tfaforms.com/4652008> or its successor and shall be submitted both prior to COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to COD and on a monthly basis no later than sixty (60) days after the last day of the month in which the applicable Facility Energy was generated.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the 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 Product that are imposed on Product at and after its delivery to Buyer at 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 Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent

such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

ARTICLE 7 METERING

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

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

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall reflect the CAISO T+9 settlement information and shall include all information necessary to confirm the amount due. Seller shall use commercially reasonable efforts to provide the invoice within five (5) Business Days after the CAISO T+9 settlement information becomes available.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within thirty (30) Days from the invoice date. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due

date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records 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, 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. Unless otherwise agreed by the Parties, no adjustment of invoices shall be permitted after twenty-four (24) months from the date of the invoice.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice, payment or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned 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

undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Section 3.7(d), Section 4.3(e), or Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of 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 any unpaid Construction Delay Damages within five (5) 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. Upon the earlier of (i) Seller's delivery of the Performance Security or (ii) sixty (60) days after termination of this Agreement, Buyer shall 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 (A) fails to maintain its status as a Qualified Issuer, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (C) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

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

8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, and other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation

thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

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

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

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

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

ARTICLE 9

NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or to such other people or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder; provided, however, that changes to invoicing, payment, wire transfer and other banking information on Exhibit N must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to Exhibit N.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such

electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 Definition.

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include: an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) 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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the 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 shall promptly resume performance of its obligations hereunder upon removal or termination of the Force Majeure Event. Neither Party shall be considered in breach or default of this Agreement, nor shall it be liable to the other Party, if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

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

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for costs incurred and balances owed prior to the effective date of such termination and those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An "**Event of Default**" shall mean,

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

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

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

(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 such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;

(iii) Seller has failed to demonstrate compliance with the Workforce Requirements or failed to provide documentation of the Workforce Requirements requested by Buyer pursuant to Section 2.6, and Seller has not cured such failure within thirty (30) days after receiving Notice thereof from Buyer;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred eighty (180) days of the Guaranteed Construction Start Date

(v) 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 either (x) 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; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Industry Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, 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;

(vii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

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

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

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

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

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

(F) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

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

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

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

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

(d) to suspend performance; or

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

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

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of the relevant product, information vendors and other

sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; 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 be required to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 15.

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

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

12.2 Waiver and Exclusion of Other Damages. THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Seller Covenants.** Seller covenants that commencing on the Effective Date and continuing throughout the Delivery Term:

(a) **Workforce and Prevailing Wage Requirements.** Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "**PLA**"). The PLA applies to "**Covered Work**" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.

(b) **Local Hire Requirement:** Seller shall ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the "**Local**

Hire Requirement”). Seller’s construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located.

(c) **Ground-Mounted Solar Requirements for Pollinator-Friendly Habitats**. If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to provide such narrative to Buyer no later than the Construction Start Date.

(i) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a pollinator-friendly solar scorecard (“**Pollinator Scorecard**”) in the form attached as Exhibit P. The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first Pollinator Scorecard, however, planning documentation must be provided with the first Pollinator Scorecard that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on each Pollinator Scorecard.

(ii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to MCE that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated scorecard.

(iii) Seller shall provide MCE with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation.

(iv) Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:

(A) 36-inch minimum height above ground of the lowest edge of the solar panels;

(B) Burying conduits and wiring with homeruns tight to bottom of panels;

(C) Designing inter-row access/spacing to enable vegetation management; and

(D) Utilizing ‘BeeWhere’ registration if beehives are placed onsite.

Additional pollinator reference materials can be found at Pollinator Partnership at www.pollinator.org and EPRI at <https://www.epri.com/#/pages/sa/pollinators?lang=en-US>, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).

13.5 **Seller Commitments.** Seller shall comply with the Seller Commitments set forth in Exhibit O and agrees to provide Buyer copies of documentation establishing ongoing compliance with the Seller Commitments as may be reasonably requested by Buyer from time to time.

13.6 **Diversity Reporting.** Seller agrees to, or cause its contractors to, complete the Supplier Diversity and Labor Practices questionnaire attached as Exhibit R, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

13.7 **Responsible Procurement.** Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, not to exceed, except as agreed in the collateral assignment agreement, a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller, any foreclosure of similar proceeding if required by Lender to cure any Event of Default);

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that (i) meets the definition of Permitted Transferee and (ii) is an entity that Buyer is permitted to contract with under applicable Law; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller.

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Applicable Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Francisco County, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in

selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

15.3 **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 16 INDEMNIFICATION

16.1 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 16.1 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.

16.2 **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 16 may apply, the Indemnified Party shall notify 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 otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's 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 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, covering all operations by or on behalf of Seller arising out of or connected with this Agreement, including coverage for bodily injury, broad form property damage, personal and advertising injury, products/completed operations, and contractual liability. Such insurance shall be in a minimum amount of per occurrence and annual aggregate of not less than Two Million Dollars (\$2,000,000), exclusive of defense costs, for all coverages. The policy shall be endorsed to provide contractual liability in the required amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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

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

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

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Pollution Legal Liability Insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate, naming Seller (and Lender if any) as additional named insured.

(g) Subcontractor Insurance. Seller shall require all of its 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 insured to insurance carried pursuant to clauses (g)(i) and (g)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Umbrella/Excess Liability Insurance. Seller shall maintain at all times during the Contract Term umbrella/excess liability providing coverage excess of the underlying Employer's Liability, Commercial General Liability, and Business Auto Insurance, on terms at least as broad as the underlying coverage, with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and in the annual aggregate. The insurance requirements of this Section 17.1 can be provided by any combination of Seller's primary and excess liability policies.

(i) 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 cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance or self-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. Buyer shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.

(j) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, 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 17 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 18

CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller

including (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the “**Disclosing Party**”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its Affiliates, and Seller’s actual or potential agents, consultants, contractors, or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a

Party.

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

ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

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

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

19.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively

revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

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

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and 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 electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

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

19.11 **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 15. Notwithstanding the foregoing, (i) 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, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

19.12 **Forward Contract.** The Parties intend that this Agreement constitute a “forward contract” within the meaning of the U.S. Bankruptcy Code, and that Buyer and Seller are deemed “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.13 **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

[SELLER]

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs: *[Note – Site must be located in a DAC, which is both within MCE's distribution service territory and also within five (5) miles of the participating customers' DAC census tract.]*

County: _____ County, California

Type of Generating Facility: _____

Guaranteed Capacity: ____ MW (AC)

Maximum Output: ____ MW

Delivery Point: Facility Pnode

Interconnection Point: *[e.g., XX substation]*

Settlement Point: *[e.g., NP-15 or PG&E DLAP (TH_NP15_GEN-APND). Use only if the Contract Price is subject to a Settlement Point adjustment. Otherwise, delete.]*

Facility Pnode:

Participating Transmission Owner: Pacific Gas and Electric Company (PG&E) (or any successor entity)

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**

- a. **“Construction Start”** will occur upon satisfaction of the following: (i) Seller has acquired the applicable regulatory authorizations, approvals and permits required for the commencement of construction of the Facility, (ii) Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and (iii) Seller has executed an engineering, procurement, and construction contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction of the Facility (such authorization to include, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Delay Damages to Buyer on account of such delay. Construction Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction 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 Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction 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 Damage Payment, upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** **“Commercial Operation”** means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the **“COD Certificate”**) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The **“Commercial Operation Date”** shall be the date on which Commercial Operation is achieved.

- a. Seller shall use commercially reasonable efforts to cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Construction 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 COD Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer's receipt of COD 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 Damage Payment upon exercise of Buyer's remedies pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of due diligence by Seller.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period above shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, no extension shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the Agreement, or (iv) for delays that are not

claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed Capacity.**

If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) 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.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) Facility Energy. Buyer shall pay Seller the Contract Price for each MWh of Product, as measured by the amount of Facility Energy, up to one hundred and five percent (105%) of the Expected Energy for each Contract Year.

(b) Annual Excess Energy. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to \$0.00/MWh.

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

(d) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(e) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(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 Facility Energy, and if applicable, the Test Energy, at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined under the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are

imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay any undisputed CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

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

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

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

EXHIBIT E
FORM OF PROGRESS REPORT

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including OSHA labor hour reports and Seller and/or sponsor's outreach efforts to encourage community participation in the CS-GT program, including with respect to eligible low-income customers.
7. Forecast of activities scheduled for the current calendar quarter, including planned Seller and/or sponsor's outreach efforts to encourage community participation in the CS-GT program, including with respect to eligible low-income customers.
8. List of issues that are likely to potentially affect Seller's Milestones.
9. Seller's monthly report shall (a) describe the progress towards meeting the Milestones, including whether Seller has met or is on target to meet the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting. Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

FORM OF AVERAGE EXPECTED ENERGY REPORT

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
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NOV																								
DEC																								

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

EXHIBIT F-2

FORM OF MONTHLY AVAILABLE CAPACITY REPORT

[Available Capacity, MW per hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.8, 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 (as defined in the CAISO Tariff) 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 market value of Replacement Green Attributes, as reasonably determined by Buyer.

D = Contract Price, in \$/MWh

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

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

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Participating Transmission Owner and CAISO.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. A performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").
5. The Installed Capacity is not less than ninety-five (95%) of the Guaranteed Capacity.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Owner on [Date].
7. The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation by the Participating Transmission Owner on [Date].
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [Date].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

Sign: _____

Print: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between [Seller Entity] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the performance test for the Facility demonstrated peak electrical output of __ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

Sign: _____

Print: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by [Seller Entity] ("**Seller**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
2. the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____.

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

[SELLER ENTITY]

Sign: _____

Print: _____

Title: _____

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiration Date:

Beneficiary:

Marin Clean Energy
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. [XXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of *[insert date]* and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on *[insert date]* which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

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

The Drawing Certificate may be presented by (a) physical delivery, (b) e-mail to *[bank email address]* or (c) facsimile to *[bank fax number]*. Transmittal by email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer before the Expiration

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

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

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

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

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

[*Bank Name*]

[*Insert officer name*]

[*Insert officer title*]

(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, as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit 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 by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

Name and Title of Authorized Representative

Date_____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this "Guaranty") is entered into as of [_____] (the "Effective Date") by and between [_____] a [_____] ("Guarantor"), and Marin Clean Energy, a California joint powers authority (together with its successors and permitted assigns, "Buyer").

Recitals

- A. Buyer and [SELLER ENTITY], a _____ ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [____], 20____.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty.** For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed _____ Dollars (\$_____). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the PPA. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure

(the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earliest of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. **Subrogation.** Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. **Representations and Warranties.** Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [*limited liability company*][*corporate*] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's

organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. Any party may change its address to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[]

Attn: []

Fax: []

If delivered to Guarantor, to it at

[]

Attn: []

Fax: []

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of San Francisco, California.

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force

and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M
METERING DIAGRAM

EXHIBIT N

NOTICES

_____ ("Seller")	MARIN CLEAN ENERGY, a California joint powers authority ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: 829602338 Federal Tax ID Number: 26-4300997
Invoices: Attn: Phone: E-mail:	Invoices: Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: Settlements@mcecleanenergy.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 E-mail: dascheduler@zglobal.biz
Confirmations: Attn: Phone: Email:	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Phone: E-mail:	Payments: Attn: Power Settlement Analyst Phone: (415) 464-6683 E-mail: Settlements@mcecleanenergy.org
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: 811108740
With additional Notices of an Event of Default to: Attn: Phone: E-mail:	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: Phone: Email:	Emergency Contact: Attn: Phone: E-mail:

EXHIBIT O

SELLER COMMITMENTS

[Drafting Note: Parties to add further detail regarding these commitments as needed.]

Seller to check as applicable (collectively, the “Seller Commitments”):

- ☐ Participation of contractors or subcontractors or businesses that are Veteran-owned;
- ☐ *[Describe Seller’s and sponsor’s proposed CS-GT program community outreach efforts.]*
- ☐ Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency’s CalEnviroScreen 3.0 (or the latest version) Tool;
- ☐ A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation;
- ☐ Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation;
- ☐ Projects that commit to including components and materials manufactured and/or assembled in the United States;
- ☐ Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of *[describe community benefits]*; and
- ☐ Other: *[describe open space preservation, habitat improvement, or food programs]*.

EXHIBIT P

POLLINATOR SCORECARD



Northern California / Oregon Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.

1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points
- ☐ 46-60 % +10 points
- ☐ 61+ % +15 points

Total points

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points
- ☐ 51-75% +10 points
- ☐ 76-100% +15 points

Total points

3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points
- ☐ 12-15 species +10 points
- ☐ 16 or more species +15 points

Total points

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points
- ☐ Summer (June-August) +5 points
- ☐ Fall (September-November) +5 points
- ☐ Winter (December-February) +5 points

Total points

Note: Check local resources for data on bloom seasons

5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points
 - ☐ Native trees/shrubs +2 points
 - ☐ Clean, perennial water sources +2 points
 - ☐ Created nesting feature(s) +2 points
- (i.e., native bee houses) Total points

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. +15 points
- ☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points

7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points
- ☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points
- ☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points

8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points
- ☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points
- ☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points

9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

POLLINATOR
PARTNERSHIP



EXHIBIT Q
OPERATING RESTRICTIONS

EXHIBIT R

DIVERSITY REPORTING

10/9/2020

MCE Supplier Diversity Questionnaire

MCE Supplier Diversity Questionnaire

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

*** Required**

1. Email address *

2. Business Name *

3. Where is your business located/headquartered? *

4. Is your business certified under General Order 156 (GO 156)? *

General Order 156 (GO 156) is a California Public Utilities Commission ruling that requires utility entities to report annually on their contracts with majority women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises (WMDVLGBTBEs) in all categories. Qualified businesses become GO 156 Certified through the CPUC and are then added to the GO 156 Clearinghouse database. The CPUC Clearinghouse can be found here: www.thesupplierclearinghouse.com

Mark only one oval.

☐ Yes

☐ No

☐ Qualified as WMDVLGBTBEs but not GO 156 Certified

5. If you answered "yes" or "qualified but not certified", under which categories?

Please choose all that apply. *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ Woman owned
- ☐ Minority Owned
- ☐ Disabled Vet Owned
- ☐ LGBT owned
- ☐ Other 8(a) (found to be disadvantaged by the US Small Business Administration)

6. If a minority-owned business enterprise, certified or qualified as which of the following? *

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

Check all that apply.

- ☐ African American
- ☐ Asian American
- ☐ Hispanic American
- ☐ Native American

7. If certified, annual revenue reported to the Supplier Clearinghouse:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

8. If certified, current annual revenue:

Mark only one oval.

- ☐ Under \$1 million
- ☐ Under \$5 million
- ☐ Under \$10 million
- ☐ Above \$10 million

9. Please list the Standardized Industrial Code (SIC) of the products and services contracted for. If you need more information, click the orange button reading "Look up Commodity Codes" here:

<https://sch.supplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp>

Check all that apply.

- ☐ 1 Agricultural production- crops
- ☐ 2 Agricultural production- livestock
- ☐ 7 Agricultural services
- ☐ 8 Forestry
- ☐ 9 Fishing, hunting, and trapping
- ☐ 10 Metal mining
- ☐ 12 Coal mining
- ☐ 13 Oil and gas extraction
- ☐ 14 Nonmetallic minerals, except fuels
- ☐ 15 General building contractors
- ☐ 16 Heavy construction contractors
- ☐ 17 Special trade contractors
- ☐ 20 Food and kindred products
- ☐ 21 Tobacco manufactures
- ☐ 22 Textile mill products
- ☐ 23 Apparel and other textile products
- ☐ 24 Lumber and wood products
- ☐ 25 Furniture and fixtures
- ☐ 26 Paper and allied products
- ☐ 27 Printing and publishing
- ☐ 28 Chemicals and allied products
- ☐ 29 Petroleum and coal products
- ☐ 30 Rubber and miscellaneous plastics products
- ☐ 31 Leather and leather products
- ☐ 32 Stone, clay, glass, and concrete products
- ☐ 33 Primary metal industries
- ☐ 34 Fabricated metal products
- ☐ 35 Industrial machinery and equipment
- ☐ 36 Electrical and electronic equipment
- ☐ 37 Transportation equipment
- ☐ 38 Instruments and related products
- ☐ 39 Miscellaneous manufacturing industries
- ☐ 41 Local and interurban passenger transit

- ☐ 42 Motor freight transportation and warehousing
- ☐ 43 U.S. Postal Service
- ☐ 44 Water transportation
- ☐ 45 Transportation by air
- ☐ 46 Pipelines, except natural gas
- ☐ 47 Transportation services
- ☐ 48 Communications
- ☐ 49 Electric, gas, and sanitary services
- ☐ 50 Wholesale trade--durable goods
- ☐ 51 Wholesale trade--nondurable goods
- ☐ 52 Building materials, hardware, garden supply, & mobile home
- ☐ 53 General merchandise stores
- ☐ 54 Food stores
- ☐ 55 Automotive dealers and gasoline service stations
- ☐ 56 Apparel and accessory stores
- ☐ 57 Furniture, home furnishings and equipment stores
- ☐ 58 Eating and drinking places
- ☐ 59 Miscellaneous retail
- ☐ 60 Depository institutions
- ☐ 61 Nondepository credit institutions
- ☐ 62 Security, commodity brokers, and services
- ☐ 63 Insurance carriers
- ☐ 64 Insurance agents, brokers, and service
- ☐ 65 Real estate
- ☐ 67 Holding and other investment offices
- ☐ 70 Hotels, rooming houses, camps, and other lodging places
- ☐ 72 Personal services
- ☐ 73 Business services
- ☐ 75 Automotive repair, services, and parking
- ☐ 76 Miscellaneous repair services
- ☐ 78 Motion pictures
- ☐ 79 Amusement and recreational services
- ☐ 80 Health services
- ☐ 81 Legal services
- ☐ 82 Educational services
- ☐ 83 Social services
- ☐ 84 Museums, art galleries, botanical & zoological gardens
- ☐ 86 Membership organizations
- ☐ 87 Engineering and management services

- ☐ 88 Private households
- ☐ 89 Miscellaneous services
- ☐ 91 Executive, legislative, and general government
- ☐ 92 Justice, public order, and safety
- ☐ 93 Finance, taxation, and monetary policy
- ☐ 94 Administration of human resources
- ☐ 95 Environmental quality and housing
- ☐ 96 Administration of economic programs
- ☐ 97 National security and international affairs

10. If your business is majority women, minority, disabled veteran, or LGBT owned, but not GO 156 certified, please explain why your business has not gone through the certification process.

Subcontractors

The questions in this section relate to Supplier Diversity. Please note that not all questions may apply to your business. For the questions that do not apply, please skip them or answer "not applicable."

*Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

11. Will your business use subcontractors that are certified under GO 156 for this recent contract with MCE? *

Mark only one oval.

- ☐ Yes
- ☐ No
- ☐ Not applicable

12. If you answered yes to the previous question, please provide a list of those certified subcontractors, the anticipated subcontract amount, and if this is for products or services. Example: Electrical Design Technology, Inc. : \$100,000, products (batteries). Please provide information only on subcontractors you intend to use for this recent MCE contract.

13. If applicable, please describe any hiring targets your business has for minority-owned, women-owned, LGBTQ-owned, or disabled veteran-owned subcontractors.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

**Labor
Agreements**

This section of questions focuses on the labor agreements of each business. If your business/contract with MCE does not have a labor component, please answer "not applicable."

14. Does your business have a history of using local-hires, union labor, or multi-trade project labor agreements? *

Local hires can be defined as labor sourced from within MCE's service area which includes the cities and towns of Benicia, Concord, Danville, El Cerrito, Lafayette, Martinez, Moraga, Oakley, Pinole, Pittsburg, Richmond, San Pablo, San Ramon, and Walnut Creek as well as Marin County, Napa County, unincorporated Contra Costa County, and unincorporated Solano County.

Check all that apply.

- ☐ Yes, local labor in this recent contract with MCE
- ☐ Yes, union labor in this recent contract with MCE
- ☐ Yes, multi-trade PLA in this recent contract with MCE
- ☐ Yes, history of local hire but not in this contract with MCE
- ☐ Yes, history of union labor but not in this contract with MCE
- ☐ Yes, history of multi-trade PLA but not in this contract with MCE
- ☐ Uses California-based labor, but not local to MCE service area
- ☐ None of the above
- ☐ Not applicable

15. If you answered yes to the previous question, please provide the percentage of labor agreements with local, union, and multi-trade labor (if available) and describe past efforts.

16. If you're employing workers or businesses in the MCE service area, please quantify the number of workers/businesses, the businesses used, or in which communities the workers or businesses reside.

17. If you answered "uses California-based labor, but not local to MCE service area," from where in California is the labor sourced?

18. Does your business pay workers prevailing wage rates or the equivalent? *

Prevailing wage in California is required by state law for all workers employed on public works projects and determined by the California Department of Industrial Relations according to the type of work and location of the project. To see the latest prevailing wage rates, go to www.dir.ca.gov/Public-Works/Prevailing-Wage.html

Mark only one oval.

- ☐ Yes, including for this contract with MCE
- ☐ Yes, but not for this contract with MCE
- ☐ No
- ☐ Not applicable

19. Does your business support and/or use apprenticeship programs? *

Mark only one oval.

- ☐ Yes, including in this contract with MCE
- ☐ Yes, but not in this contract with MCE
- ☐ No
- ☐ Not applicable

20. If yes, please describe the apprenticeship programs supported/used.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process. Responses are collected for informational and reporting purposes only pursuant to SB 255.

Equity, Diversity,
Inclusion, and Justice

MCE is committed to equity, diversity, inclusion, and justice both within our organization and within our communities.

21. If your business has initiatives to promote workplace diversity, please describe such initiatives or provide any supporting statistics or documentation for diversity within the business

22. If there is anything else related to Supplier Diversity that is not captured in your answers above, please describe below.

Pursuant to Proposition 209, MCE does not give preferential treatment based on race, sex, color, ethnicity, or national origin. Providing information in these categories is optional and will not impact the selection process.

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ATTACHMENT 4

Pro-forma PPA term sheet

MCE 2021 DAC-GT and CS-GT RFO

**TERM SHEET
FOR
POWER PURCHASE AGREEMENT**

This term sheet ("**Term Sheet**") is entered into between Marin Clean Energy, a California joint powers authority ("**MCE**" or "**Buyer**") and [INSERT SELLER NAME] ("**Seller**"), as of [mm/dd/yyyy] (the "**Effective Date**"). Buyer and Seller are each a "**Party**" and, collectively, the "**Parties**." This Term Sheet includes the key commercial terms and conditions to be included in a proposed power purchase agreement (the "**PPA**") for renewable energy (the "**Proposed Transaction**") to be negotiated between Seller and Buyer in connection with the MCE's Request for Offers ("**RFO**") for Disadvantaged Communities Green Tariff ("**DAC-GT**") and Community Solar Green Tariff ("**CS-GT**") programs. Negotiation of the PPA is subject to Seller's selection for the RFO shortlist by Buyer, the terms and conditions of the RFO, and timely execution of the Exclusive Negotiating Agreement. Until a definitive agreement is approved by MCE's management and Board of Directors and the California Public Utilities Commission ("**CPUC**"), and signed and delivered, no party shall have any legal obligations, expressed or implied, or arising in any other manner, to proceed with the Proposed Transaction or the PPA.

1. Power Purchase Agreement Terms and Conditions

Description of Facility:	A [XX] MW _{AC} solar photovoltaic electricity generating facility, located in [REDACTED] County, in the State of California (" Facility "). The Facility is located in a disadvantaged community (" DAC ") [within PG&E's distribution service territory][within five (5) miles of the participating customers' DAC census tract located in MCE's service territory].
Product:	<p>The "Product" shall meet the Portfolio Content Category 1 specifications, and includes all of the following:</p> <ol style="list-style-type: none">(1) Facility Energy;(2) Environmental Attributes: All renewable energy credits ("RECs") and any other environmental attributes associated with Facility Energy;(3) Capacity Attributes: All capacity rights, including resource adequacy benefits, if any, associated with the Facility;(4) Ancillary Services: All ancillary services, products and other attributes, if any, that may be obtained from the Facility; and <p>Specifications for Portfolio Content Category 1 are described in California Public Utilities Code §399.16, California Public</p>

	Utilities Commission Decision 11-12-052, and other applicable statutes, regulations, and regulatory orders.
Contract Price:	<p>The “Contract Price” shall be \$[XX]/MWh.][<i>Per MCE Advice Letter 42-E, “bid pricing must be at or below the statewide CCA cost cap provided to CCAs by the CPUC’s Energy Division Staff via email on September 5, 2019”.]</i></p> <p>If pricing is based on a settlement point other than the P-Node, e.g., NP-15 or PG&E DLAP (TH NP15_GEN-APND), the Contract Price shall be subject to a Settlement Point adjustment. The “Settlement Point” shall be [].</p>
Delivery Term:	<p>“Delivery Term” means [XX] Contract Years. “Contract Year” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.</p>
Guaranteed Capacity:	<p>The Facility has a Guaranteed Capacity of [XX] MW_{AC}. [<i>Guaranteed Capacity must not be less than 0.5 MW nor exceed 4.64 MW for DAC-GT and not exceed 1.28 MW for CS-GT.</i>]</p>
Expected Energy:	<p>“Expected Energy” means [XXX,XXX] MWh during the first Contract Year and for each Contract Year thereafter during the Delivery Term. [<i>If there is an annual adjustment for degradation, this should be noted.</i>]</p>
Interconnection Point:	<p>The Facility shall interconnect to [e.g., XX substation] (the “Interconnection Point”). Seller shall be responsible for all costs of interconnecting the Facility to the Interconnection Point.</p>
Delivery Point:	<p>“Delivery Point” means the Facility Pnode on the CAISO-Controlled Grid.</p>
Test Energy Rate:	<p>Prior to COD, Buyer will purchase all Test Energy and any associated Product and Seller will be compensated at one hundred percent (100%) of net CAISO revenues.</p>

<p>Guaranteed Energy Production:</p>	<p>Seller shall deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period.</p> <p>The “<u>Guaranteed Energy Production</u>” means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by eighty-five percent (85%).</p> <p>The “<u>Performance Measurement Period</u>” shall be each two (2) consecutive Contract Year period during the Delivery Term, calculated on a rolling basis. The Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.</p> <p>For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of Force Majeure Events, System Emergency, and Curtailment Periods (the “<u>Adjusted Energy Production</u>”).</p> <p>If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer liquidated damages equal to (a) the difference of the Guaranteed Energy Production less the Adjusted Energy Production, multiplied by (b) the replacement price for the energy and RECs less the Contract Price. No payment shall be due if the calculation yields a negative number.</p>
<p>Excess Energy:</p>	<p>If during any settlement interval, the Delivered Energy is greater than the Guaranteed Capacity (“<u>Excess Energy</u>”), then the price paid by Buyer for the Excess Energy shall be zero dollars (\$0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Buyer an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy.</p>
<p>Annual Excess Energy:</p>	<p>If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable</p>

	<p>Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh.</p> <p>If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and ten percent (110%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to \$0.00/MWh.</p>
Curtailment:	<p>In the event the Facility is curtailed due to a System Emergency (to be defined in the PPA), Force Majeure, by the CAISO or the transmission owner, or for any reason other than Buyer's sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Buyer shall not be obligated to pay for such curtailed energy.</p> <p>Buyer shall have the right to order Seller to curtail deliveries of Facility Energy, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments in excess of the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions.</p> <p><u>"Curtailment Cap"</u> is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.</p> <p><u>"Deemed Delivered Energy"</u> 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 due to a Buyer-directed curtailment, which amount shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments.</p>
REC Tracking System:	<p>Seller shall transfer RECs associated with the generation from the Facility for each month via WREGIS pursuant to the timelines in the WREGIS Operating Rules.</p> <p>Each party shall be responsible for setting up an account with WREGIS.</p>
Green-E Certification:	<p>Seller shall submit a Green-e® Energy Tracking Attestation Form (<u>"Attestation"</u>) to the Center for Resource Solutions, or its successor (<u>"CRS"</u>) for all renewable energy delivered under the PPA. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted both prior to</p>

	COD and within sixty (60) days of the last day of the month in which the energy from the Project was generated.
Progress Reporting:	<p>After execution of the PPA, Seller shall provide a monthly report to Buyer that (a) describes the progress towards meeting the Facility Development Milestones; (b) identifies any missed Facility Development Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Facility Development Milestones and all subsequent Facility Development Milestones by the Guaranteed Commercial Operation Date.</p> <p>In the event Seller misses any Facility Development Milestones and cannot reasonably demonstrate a plan for completing the Facility by the Guaranteed COD, Buyer shall have the right to terminate the PPA and retain the Development Security as damages, in addition to any other remedies it may have at law or equity.</p>
RA Capacity:	The Net Qualifying Capacity (NQC) of the [Facility] is [XX] MW (the " Guaranteed RA Amount "). <i>[If there is an annual adjustment for degradation, this should be noted with a table.]</i>
Resource Adequacy Failure:	<p>For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the "RA Deficiency Amount") equal to the product of the difference, expressed in kW, of (i) the Guaranteed RA Amount, minus (ii) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer's monthly or annual RA Plan to the CAISO and CPUC and counted as Resource Adequacy for System RA and, if applicable, Local RA, (such difference, the "RA Shortfall"), multiplied by the sum of (a) the CPUC System RA Penalty and (b) CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in amounts up to the RA Shortfall, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice to Buyer at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.</p>
Station Use:	Buyer will not be responsible for Station Use and Station Use will not be provided by the Facility.

Expected Construction Start Date:	<p>Seller reasonably expects to achieve Construction Start by the following date [] (the “<u>Expected Construction Start Date</u>”).</p>
Guaranteed Construction Start Date:	<p>The “<u>Guaranteed Construction Start Date</u>” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred eighty (180) days on a cumulative basis. For clarity, these permitted extensions (the “<u>Development Cure Period</u>”) extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, (iii) Seller failed to provide written notice of a Force Majeure Event to Buyer as required under the PPA, or (iv) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that and delays described above, including from Force Majeure Events, did not result from Seller’s actions or failure to take commercially reasonable actions.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer, (the “<u>Construction Delay Damages</u>”) for each day of delay, in the amount equal to [\$XXX/day, which is equal to the Development Security divided by 180]. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute</p>

	<p>an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development Security.</p>
Expected Commercial Operation Date:	<p>Seller reasonably expects to achieve Commercial Operation by the following date [] (the “<u>Expected Commercial Operation Date</u>”).</p>
Guaranteed Commercial Operation Date:	<p>The “<u>Guaranteed Commercial Operation Date</u>” or “<u>Guaranteed COD</u>” means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis under the Development Cure Period.</p> <p>If Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to the Buyer for each day of delay until Seller achieves COD.</p> <p>“<u>COD Delay Damages</u>” are equal to [\$XXX/day, which is equal to the Development Security divided by 90]. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance.</p> <p>Failure to achieve COD within 90 days of the Guaranteed COD shall constitute an Event of Default, and Buyer shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.</p>
Commercial Operation Date (“<u>COD</u>”):	<p>The COD shall be the date when all of the following requirements have been met to Buyer’s reasonable satisfaction including Seller providing a certificate from an independent engineer to Buyer with respect to subparts (i) through (v):</p> <ul style="list-style-type: none"> (i) Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity. (ii) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing. (iii) The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

	<p>(iv) Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.</p> <p>(v) Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.</p> <p>(vi) Authorization to parallel the Facility was obtained from the Participating Transmission Owner.</p> <p>(vii) Seller has provided Buyer with a copy of written notice from the CAISO supporting Commercial Operation, in accordance with the CAISO Tariff.</p> <p>(viii) Seller has provided Buyer with a copy of written notice from the CAISO that the Facility has achieved Full Capacity Deliverability Status, if applicable.</p> <p>(ix) If applicable, Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility.</p> <p>(x) All applicable permits and government approvals required for the operation of the Facility have been obtained.</p> <p>(xi) For CSGT projects – twenty-five percent (25%) of the Guaranteed Capacity must be subscribed by eligible low-income customers.</p> <p>(xii) CPUC Approval has been obtained, or waived by MCE in MCE's sole discretion, and such waiver is set forth in writing.</p> <p>(xiii) Seller has provided copies of all documentation required to be provided as a condition precedent to commencement of the Delivery Term, e.g., Interconnection Agreement, proof of insurance, satisfaction of other Seller commitments, etc.</p> <p>(xiv) Seller has delivered the Performance Security to Buyer.</p> <p>(xv) Seller has paid Buyer all amounts owing under this Agreement, if any.</p> <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.</p>
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	<p>If Seller has not installed one hundred percent (100%) of the Guaranteed Capacity within one hundred twenty (120) days after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Guaranteed Capacity exceeds the Guaranteed Capacity, and the Guaranteed Capacity and other applicable portions of the PPA shall be adjusted accordingly.</p> <p>“Capacity Damages” means an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) per MW.</p> <p>Seller shall provide notice of expected COD to Buyer in writing no less than sixty (60) days in advance of such date.</p>
Facility Development Milestones:	<ul style="list-style-type: none"> • [mm/dd/yyyy] – Execute Interconnection Agreement • [mm/dd/yyyy] – Procure major equipment • [mm/dd/yyyy] – Obtain federal and state discretionary permits • [mm/dd/yyyy] – Expected Construction Start Date • [mm/dd/yyyy] – Obtain Full Capacity Deliverability Status • [mm/dd/yyyy] – Expected Commercial Operation Date
Deliverability:	<p>If applicable, the Facility will have Full Capacity Deliverability Status by the Commercial Operation Date.</p>
Dedicated Interconnection Capacity:	<p>Seller shall ensure during the Test Energy period and throughout the Delivery Term that (a) the Facility will have an interconnection agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such interconnection agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller’s obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer’s dispatch rights of the Facility to be fully reflected in the CAISO’s market optimization (collectively, the “Dedicated Interconnection Capacity”). Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller’s inability to provide the Dedicated Interconnection Capacity.</p>

Scheduling Requirements and CAISO Settlements:	<p>If applicable, Buyer or Buyer’s agent shall act as Scheduling Coordinator for the Facility. Buyer shall be financially responsible for such services and shall pay for all CAISO charges and retain all CAISO payments; provided however, that notwithstanding the foregoing, Seller shall assume all liability and reimburse Buyer for any and all costs or charges (i) incurred by Buyer because of Seller’s failure to perform, (ii) incurred by Buyer because of any outages for which notice has not been provided as required, (iii) associated with Resource Adequacy Capacity (as defined by the CAISO) from the Facility (including RAIMM and other Non-Availability Charges (as defined by the CAISO)), if applicable or (iv) to the extent arising as a result of Seller’s failure to comply with a timely Buyer Curtailment Order if such failure results in incremental costs to Buyer.</p> <p>Seller shall provide to Buyer non-binding annual, monthly and day-ahead forecasts of Facility energy within a timeline that allows Buyer’s Scheduling Coordinator to meet the CAISO day-ahead scheduling protocols and deadlines.</p>
Monthly Settlement and Invoice:	<p>After the end of each month of the Delivery Term, Seller shall send a detailed invoice to Buyer for the amount due for Product delivered during such month. The invoice shall reflect the CAISO T+9 settlement information and shall include all information necessary to confirm the amount due.</p> <p>Payment for undisputed amounts shall be due to the applicable party thirty (30) days from the invoice date, with disputed payments subject to Buyer’s billing dispute process.</p>
Operations and Maintenance:	<p>Seller shall not during the months of June through September inclusive schedule any non-emergency maintenance that reduces the energy generating capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September, (iii) such outage is required in accordance with prudent electrical practices, or (iv) the Parties agree otherwise in writing.</p>
Credit Requirements:	<p>Seller shall post security as follows:</p> <p><u>Development Security</u> – \$60/kW of Guaranteed Capacity</p> <p><u>Performance Security</u> – \$60/kW of Guaranteed Capacity</p>

	<p>To secure its obligations under this PPA, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date.</p> <p>Development Security shall be in the form of cash or a Letter of Credit.</p> <p>To secure its obligations under this PPA, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date.</p>
Condition Precedent:	<p>Within ninety (90) days after the Effective Date of the PPA, MCE shall file with the CPUC the appropriate request for CPUC Approval. As requested by MCE, Seller shall use commercially reasonable efforts to support MCE in obtaining CPUC Approval.</p> <p>MCE has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve the PPA or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party.</p> <p>Either Party has the right to terminate this Agreement on Notice, which will be effective five (5) Business Days after such Notice is given, if CPUC Approval has not been obtained or waived by MCE in its sole discretion within one hundred eighty (180) days after MCE files its request for CPUC Approval and a Notice of termination is given on or before the two hundred tenth (210th) day after MCE files the request for CPUC Approval.</p>
Workforce and Prevailing Wage Requirements:	<p>Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. If Seller's Facility is located in Contra Costa County, Seller must agree to comply with the terms of that certain Letter Agreement between MCE and IBEW Local 302, dated June 20, 2017, and the project labor agreement attached thereto (collectively, the "<u>PLA</u>"). The PLA applies to "<u>Covered Work</u>" (as defined therein) for solar photovoltaic projects for which MCE is the power supply off-taker. If Seller's Facility is located outside Contra Costa County, Seller is required to enter into project labor agreements of similar scope and requirements with participating unions for workforce hired.</p> <p>As a condition precedent to commencement of the Delivery Term, Seller must certify that it complied with the foregoing</p>

	union labor requirements, and be able to demonstrate, upon request, compliance with this requirement via copies of executed PLAs or similar agreements, a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.
Local Hire Requirements:	Seller shall ensure that fifty percent (50%) of the construction work hours from its workforce (including contractors and subcontractors) providing construction-related work and services at the Site are obtained from permanent residents who live within the same county in which the Facility will be located, as measured during the period beginning on the Construction Start Date ending on the Commercial Operation Date (the “ Local Hire Requirement ”). Seller’s construction of the Facility shall also be subject to any local hire requirements specific to the city or town where the Facility is located. As a condition precedent to commencement of the Delivery Term, Seller must certify to Buyer in writing that Seller met the Local Hire Requirement and, if requested by Buyer, demonstrating compliance with this requirement via a certified payroll system and such other documentation reasonably requested by Buyer, including pursuant to an audit.
Diversity Reporting:	Seller shall be required under the PPA to complete the Supplier Diversity and Labor Practices questionnaire in MCE’s Offer Form, or a similar questionnaire, and agrees to comply with similar regular reporting requirements related to diversity and labor practices.
Responsible Procurement:	Buyer will not accept any proposals for facilities that rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor. Seller must certify that it will not utilize such equipment or resources in connection with the construction, operation or maintenance of the Facility.
Pollinators:	(i) If arable land is used for the Site, Seller shall provide a written narrative that describes the vegetation rehabilitation design and management plan for the Site, including site preparation, landscape drawings and/or seed/plant listing, implementation, and long-term management plans. Seller shall use reasonable efforts to

	<p>provide such narrative to Buyer no later than the Construction Start Date.</p> <p>(ii) In addition, within thirty (30) days of the Commercial Operation Date Seller shall submit to Buyer a Pollinator-friendly solar scorecard ("<u>Pollinator Scorecard</u>") (a form of which is included in the PPA). The Pollinator Scorecard includes language that deems planning for the implementation of pollinator-friendly habitat as acceptable. Not all planned activities need to be completed upon submission of the first scorecard, however planning documentation must be provided that details the upcoming activities. Seller shall use commercially reasonable efforts to achieve a score of 70 or above on the Pollinator Scorecard.</p> <p>(iii) Seller shall complete installation of pollinator habitat within two (2) years of Commercial Operation and supply an updated Pollinator Scorecard to Buyer that reflects the habitat installed. Documentation of work performed relating to site preparation and seed installation will be provided to Buyer with the updated Pollinator Scorecard.</p> <p>(iv) Seller shall provide Buyer with an updated Pollinator Scorecard within sixty (60) days of the 5th, 10th, and 15th anniversary of Commercial Operation.</p> <p>Seller is strongly encouraged to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats and reduce maintenance costs:</p> <ul style="list-style-type: none"> i 36-inch minimum height above ground of the lowest edge of the solar panels; ii Burying conduits and wiring with homeruns tight to bottom of panels; iii Designing inter-row access/spacing to enable vegetation management; and iv Utilizing 'BeeWhere' registration if beehives are placed onsite. <p>Additional pollinator reference materials can be found at Pollinator Partnership at www.pollinator.org and EPRI at https://www.epri.com/#/pages/sa/pollinators?lang=en-US, including EPRI Overview of Pollinator-Friendly Solar Energy (December 2019).</p>
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Other Seller Commitments:	<p>Seller to check as applicable:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Participation of contractors or subcontractors or businesses that are Disabled Veteran-owned; <input type="checkbox"/> Participation of contractors or subcontractors or businesses that are located or employ workers from a DAC Zone as identified by California Environmental Protection Agency's ("CalEPA") CalEnviroScreen 3.0 (or the latest version) Tool. <input type="checkbox"/> A plan that includes the participation of local residents in the construction of the project, as well as the ongoing operations and maintenance of the facility after completion. The plan should include permanent residents who live within the jurisdictional county and/or those who reside within a 50-mile radius of the installation. <input type="checkbox"/> Projects that commit to sourcing a high percentage of materials and components from suppliers located within the jurisdictional county or within a 50-mile radius of the installation <input type="checkbox"/> Projects that commit to including components and materials manufactured and/or assembled in the United States <input type="checkbox"/> Pledge of community benefits (apprenticeships, scholarships, food programs, school programs, open space preservation, parks, etc.) in the form of <i>[describe community benefits]</i>. <input type="checkbox"/> Other: <i>[describe other community benefits provided by Project]</i>.
Site Control:	<p>Seller shall maintain site control of the Facility throughout the Delivery Term.</p>
Assignment:	<p>Neither party may assign the PPA without prior written consent of the other party, which shall not be unreasonably withheld.</p>

Dispute Resolution:	In the event of any dispute arising under the PPA, within ten (10) days following the receipt of a written notice from either Party identifying such dispute, the authorized members of the Parties' senior management 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 thirty (30) days of initiating such discussions, the parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity.
Confidentiality:	Upon shortlisting, Seller shall execute a Mutual Non-Disclosure Agreement with Buyer.
Exclusivity:	Upon shortlisting, Seller shall execute an Exclusive Negotiating Agreement with Buyer and provide a Shortlist Deposit in accordance with the Exclusive Negotiating Agreement.
No Recourse to Members of Buyer:	Buyer is organized as a Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members in connection with this Agreement.
Force Majeure:	<p><u>"Force Majeure Event"</u> 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.</p> <p>Notwithstanding the foregoing, the term <u>"Force Majeure Event"</u> 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 the Product at a lower price, or Seller's ability to sell Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for</p>

	<p>the construction, operation, or maintenance of the Facility; (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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) 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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA.</p> <p>For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether 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, Force Majeure Event may include an epidemic or pandemic, including in connection with efforts occurring after the Effective Date to combat the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("<u>COVID-19</u>").</p> <p>Within two (2) Business Days of commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of the Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.</p>
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<p>Other Standard Contract Terms to be included in the PPA:</p>	<ul style="list-style-type: none"> • <u>Event of Default</u>: Events of Default shall include, but not be limited to, failure to pay any amounts when due, breach of representations and warranties, failure to perform covenants and material obligations in the PPA, bankruptcy, and assignment other than as permitted by the PPA. In addition, it shall be a Seller Event of Default if COD is not achieved within achieved within 90 days after the Guaranteed COD. • <u>Indemnification</u>: Mutual indemnification for third party claims arising from negligence, willful misconduct, or breach of the PPA. • <u>Governing Law</u>: State of California • <u>Venue</u>: San Francisco County
<p>Definitions:</p>	<p>The following terms, when used herein with initial capitalization, shall have the meanings set forth below:</p> <p>“CAISO” means the California Independent System Operator.</p> <p>“CAISO-Controlled Grid” has the meaning set forth in the CAISO Tariff.</p> <p>“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.</p> <p>“California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, <i>inter alia</i>, 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.</p> <p>“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which approves the PPA in its entirety, including payments to be made by the Buyer. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.</p> <p>“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.</p>

	<p><u>“Letter(s) of Credit”</u> 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 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 the PPA, or as otherwise reasonably acceptable to Buyer.</p> <p><u>“MW”</u> means megawatts in alternating current, unless expressly stated in terms of direct current.</p> <p><u>“MWh”</u> means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.</p> <p><u>“Scheduling Coordinator”</u> has the meaning set forth in the CAISO Tariff.</p>
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2. **Additional Term Sheet Provisions**

- 2.1 Neither Party Obligated to Enter Into Proposed Transaction.** This Term Sheet is intended to provide an overview of the Proposed Transaction and is not intended to constitute a binding contract or an offer to enter into an PPA with respect to the Proposed Transaction and does not obligate either Party to enter into the Proposed Transaction or execute any agreement, including the PPA, in connection with the Proposed Transaction. Neither Party will be deemed to have agreed to the PPA and will not be bound by any term thereof, unless and until authorized representatives of both Parties execute final definitive documents, enforceable in accordance with their terms.
- 2.2 Expenses.** Each Party will pay its own costs and expenses (whether internal or out-of-pocket, and whether for legal, financial, technical or other consultants, or other purposes) in connection with the Term Sheet and any definitive agreements.
- 2.3 Termination.** This Term Sheet will terminate upon the earlier of (a) execution of the PPA or (b) expiration of the Exclusivity Deadline (as defined in the Exclusive Negotiating Agreement), as such Exclusivity Deadline may be extended by the Parties in accordance with the Exclusive Negotiating Agreement.
- 2.4 Governing Law.** This Term Sheet is governed by, and construed in accordance with, the laws of the State of California.
- 2.5 Counterparts and Electronic Signatures.** This Term Sheet may be executed electronically and in counterparts, each of which will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. The Parties may rely on electronic or scanned signatures as originals. Delivery of an executed signature page of this Term Sheet by electronic transmission (including email transmission of a PDF image) shall be the same as delivery of an original executed signature page.

- 2.6 Prior Agreements.** This Term Sheet supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
- 2.7 Assignment.** This Term Sheet will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party will assign, pledge or otherwise transfer this Term Sheet or any right or obligation under this Term Sheet without first obtaining the other Party's prior written consent.
- 2.8 No Consequential Damages.** IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS TERM SHEET.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the Parties hereto have by their duly authorized representatives executed this Term Sheet as of the Effective Date.

**MARIN CLEAN ENERGY, a California
joint powers authority**

[SELLER]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____



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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Forward
Resource Adequacy Procurement Obligations.

R.19-11-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
COMMENTS ON THE PROPOSED DECISION**

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June 10, 2021

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SUMMARY OF RECOMMENDATIONS

- Given current market and regulatory conditions, the Commission should forego significant and increasingly punitive changes to the system Resource Adequacy penalty framework and adopt a waiver process for load-serving entities taking commercially reasonable actions to procure sufficient system and flexible Resource Adequacy.
 - The Commission should not adopt a Resource Adequacy imports proposal that creates further uncertainty around the ability for import capacity to meet Resource Adequacy obligations by introducing an ex-post compliance check on actions outside the control of the load-serving entity.
-

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Oversee the
Resource Adequacy Program, Consider
Program Refinements, and Establish Forward
Resource Adequacy Procurement Obligations.

R.19-11-009

**CALIFORNIA COMMUNITY CHOICE ASSOCIATION'S
COMMENTS ON THE PROPOSED DECISION**

The California Community Choice Association¹ (CalCCA) submits these comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Adopting Local Capacity Obligations for 2022-2024, Flexible Capacity Obligations for 2022, and Refinements to the Resource Adequacy Program* (Proposed Decision), filed May 21, 2021.

I. INTRODUCTION

CalCCA commends the Commission's consideration of the many important Resource Adequacy (RA) program reforms proposed within Track 3B.1 and Track 4. Given that the Commission is considering more permanent, large-scale changes in Track 3B.2, CalCCA appreciates the limited scope of changes in this Proposed Decision. Narrowing the proposed reforms rightly avoids implementing changes that will no longer be relevant once Track 3B.2 concludes and that

¹ California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

will take resources away from the important reforms necessary within Track 3B.2. CalCCA generally supports the Proposed Decision; however, CalCCA requests the Commission make the following necessary improvements:

- Adopt a waiver process for load-serving entities (LSEs) taking commercially reasonable actions to procure sufficient system and flexible RA, rather than place increasingly punitive penalties on LSEs who demonstrate reasonable efforts to comply; and
- Defer adoption of the ex-post compliance review proposal, and instead direct parties to develop a compliance proposal that does not find LSEs deficient for actions outside their control and provides certainty regarding an LSE's compliance prior to the RA compliance month.

II. THE COMMISSION SHOULD ADOPT A WAIVER PROCESS FOR LSES TAKING COMMERCIALY REASONABLE ACTIONS TO PROCURE SUFFICIENT SYSTEM AND FLEXIBLE RA

A. The Proposed Decision adopts significant changes to the existing penalty structure without considering current market and regulatory conditions

The Proposed Decision adopts Pacific Gas and Electric Company's (PG&E's) point and tier penalty structure proposal for system RA deficiencies. Under this structure, points would accumulate for each month with a deficiency; with deficiencies in summer months resulting in 2 points and deficiencies in winter months resulting in 1 point. The applicable system RA penalty price would be multiplied by a factor of 1, 2, or 3 depending on the tier the LSE is assigned based on the number of points it accrues. If an LSE's deficiency is less than 1% of the LSE's system RA requirement, the penalty still applies but no points will be accrued. Points accrued within an RA compliance year will be carried over into the next RA compliance year and an LSE's points will be removed after 24 months without a deficiency.

In opening comments on Track 3B.1 and Track 4 revised proposals, CalCCA expressed support for limited modifications to the existing RA penalty structure to prevent LSEs from relying on penalties as a compliance strategy, provided the Commission also adopts a system and flexible penalty waiver framework and a moderate implementation timeline (i.e., effective for 2024 RA

compliance year) to give time for additional procurement to take place.² However, the Proposed Decision adopts extensive changes and places increasingly punitive consequences on LSEs without any mention of a waiver process to accompany the changes. This fails to consider the root causes of LSE deficiencies: scarce market conditions and regulatory decisions that hinder LSEs' ability to meet their system RA obligations. Adopting the Proposed Decision as is will result in increased customer costs without any incremental reliability benefit, given these root causes have yet to be fully addressed. As such, the Commission should defer adoption of the revised penalty framework and instead modify the Proposed Decision to include a system and flexible RA waiver process that grants waivers to LSEs that demonstrate reasonable effort to meet their obligations.

1. Increasing penalties does not address tight RA supply and capacity market power

In the Proposed Decision, the Commission states it has observed an increasing number of LSEs being penalized for system RA deficiencies and cites the current penalty structure as inadequate in deterring LSEs from repeat deficiencies.³ As CalCCA explained in its comments to PG&E's revised proposal, the increased number of LSE deficiencies is not a function of inadequate penalties but instead a function of RA market tightness and regulatory decisions that hinder LSEs' ability to meet their system RA obligations despite taking reasonable actions to procure.⁴ The Proposed Decision does not address either of these factors, and instead increases the magnitude of penalties, which will not address the root cause of the deficiencies or achieve the Commission's objective of decreasing the number of deficient showings.

² *Opening Comments of the California Community Choice Association on Track 3B.1 and Track 4 Revised Proposals*, Mar. 12, 2021 (CalCCA Opening Comments), at 6.

³ Proposed Decision, at 58.

⁴ CalCCA Opening Comments, at 6-9.

As CalCCA highlighted in its comments on the RA Track 2 Proposed Decision⁵, the Commission adopted the local RA waiver on two grounds: to address significantly increased costs or the exercise of market power^{6, 7} and to prevent making LSEs that are unable to contract for sufficient local RA to meet their requirement “subject to both backstop procurement costs and potential penalties.” Both factors also apply to system RA today.⁸ It is worth noting that both Western Community Energy (WCE) and San Diego Community Power (SDCP) filed and received waivers for their respective 2021 local RA showings. San Jose Clean Energy (SJCE) also filed and received a waiver for their 2020 local RA showing. In part, the approvals were based upon the fact that the LSEs “held solicitations and pursued all commercially reasonable efforts to acquire the resources needed to meet the LSE’s local procurement obligation”.⁹ However, at the same time under the same circumstances, the Commission cited the LSEs for system RA deficiencies for the same RA year they received their local waiver. Due to the lack of a formal waiver process, LSEs are currently pursuing appeals of their respective penalties.

The appeal process is both burdensome and insufficient. Citation appeals burden the Commission and the LSEs’ resources because they are adjudicatory proceedings that require

⁵ *California Community Choice Association Comments on the Proposed Decision Adopting Local Capacity Obligations For 2021-2023, Adopting Flexible Capacity Obligations For 2021, and Refining the Resource Adequacy Program*, June 11, 2020 (CalCCA Comments on the RA Track 2 Proposed Decision), at 2-5.

⁶ D.06-06-064, Conclusion of Law 27 at 86 (“A waiver process is necessary as a market power mitigation measure, and should therefore be adopted as a component of the Local RAR program.”).

⁷ D.04-10-034 at 15 (“We understand the need to provide mechanisms to pay competitive market costs to new and continuing suppliers. However, we will not “pay any price” or require utilities to sign contracts that meet these requirements at any cost. The memories of the 2000-2001 energy crisis are still fresh in our minds, and the fallout and tremendous costs of that time continue on. We recognize that there is a difference between competitive market costs and prices that arise from the exercise of market power.”) footnote omitted.

⁸ D.06-06-064 at 71.

⁹ Letter to WCE from Ed Randolph approving Advice Letter 3-E, Dec. 30, 2020; Letter to SDGP from Ed Randolph approving Advice Letter 1-E, Dec. 30, 2020; Letter to WCE from Ed Randolph approving Advice Letter 3-E, June 1, 2020.

preparation and consideration of multiple filings and evidence, evidentiary hearings, draft resolutions, public comments on the resolutions, and in some cases, rehearing applications.¹⁰ These proceedings also take considerable time to sort through; SJCE's appeal to citation E-4195-0052 took one year and a half to be completed.¹¹ WCE and SDCP appeals were filed in March of 2021 and SDCP's current schedule goes through at least August of 2021¹² while WCE's current schedule goes through at least November of 2021.¹³

The appeal process is also insufficient to address current RA market conditions. In fact, in citation appeal proceedings, the Commission has rejected market conditions to excuse a citation for system RA deficiencies, even when RA was not available¹⁴ or when procuring RA was commercially impracticable.¹⁵ The Commission does not consider the totality of circumstances when assessing an appeal.¹⁶ More importantly, the Commission has indicated that the citation appeal process is not the proper forum to consider "waivers to system and flexible RA requirements on the basis of a tightening RA market."¹⁷

Penalties and waivers are intrinsically linked and two sides of the same coin. The former ensure compliance with the RA requirements, while the latter avoid abuse of market power. The Commission should not increase penalties without fully understanding the market forces that are leading to increasing deficiencies. The Commission has recognized that "a tightening RA market may necessitate system and flexible RA waivers for circumstances beyond the control of an

¹⁰ *See, e.g., Appeal of City of San José, administrator of San José Clean Energy, to Citation E-4195-0052 issued on February 27, 2019 by Consumer Protection and Enforcement Division, Appeal K.19-03-024.*

¹¹ SJCE filed its Notice of Appeal on March 29, 2019. Resolution ALJ-382, resolving the citation appeal, was issued on September 18, 2020.

¹² *Email Ruling Setting Schedule and Requesting Information, Appeal K.21-03-005, Apr. 16, 2021.*

¹³ *Email Ruling Ordering Joint Response, Appeal K.21-03-006, Apr. 2, 2021.*

¹⁴ Resolution ALJ-382, at 5.

¹⁵ Resolution ALJ-406, at 6.

¹⁶ *California Community Choice Association Motion for Party Status, Appeal K.19-03-024, May 14, 2020.*

¹⁷ Resolution ALJ-406, at 8.

individual LSE” but has deferred the adoption of such waivers because “there remain significant, unresolved issues that require further consideration ... including potential leaning by LSEs and market power issues. Such market power issues may include potential gaming by generators that may, for example, withhold capacity during more expensive peak months”¹⁸ These issues remain unresolved. However, the Commission has decided to increase penalties, which would only address the first of these issues (LSEs leaning) but would do nothing to mitigate the second (market power). Adopting higher penalties without a corresponding waiver for system and flexible RA would create a significant imbalance in the market, greatly favoring suppliers and priming the conditions for market power abuse.

The California Independent System Operator’s (CAISO’s) Stack Analysis shows that total System RA capacity is very limited, with little or no excess in the system over coming years.¹⁹ Therefore, LSE deficiencies are best solved through the Integrated Resource Planning (IRP) process and additional resources coming online, and not through increased penalties on LSEs with limited options for compliance. This is because penalizing LSEs who, despite commercially reasonable efforts, are unable to meet their requirements will not add capacity to the market in the near term. Until the supply margin increases in the RA market, it will remain difficult if not impossible to obtain RA contracts that fulfill obligations at a reasonable price. In a tight RA market without a waiver process in place, increased penalties will simply result in a transfer of wealth from LSEs to suppliers. When the penalties for RA shortages are near the cost of new entry, LSEs are incentivized to invest in new resources rather than existing resources. Given the time it takes for new resources to come online, RA prices will go up in the meantime, and wealth will transfer from LSEs to suppliers until new resources come online. For this reason, the Commission should use the IRP as the appropriate venue to develop and equitably allocate the development of new resources in a timely

¹⁸ *Decision Adopting Local Capacity Obligations for 2020-2022, Adopting Flexible Capacity Obligations for 2020, and Refining the Resource Adequacy Program*, June 27, 2019 (D.19-06-026), at 18.

¹⁹ *Testimony of Jeff Billinton On Behalf of the California Independent System Operator*, Rulemaking (R.) 20-11-003, Jan. 11, 2021, Table 2 at 12.

manner such that the RA penalty is not attempting to create a market for new resources. Increasing penalties on LSEs whose compliance is impaired by supply limitations will only increase customer costs without providing any incremental reliability benefit.

Additionally, CalCCA has significant concerns that market power exists in the RA market, such that increasing the penalty prices will only further drive up the cost of RA without resulting in additional resources shown. The Commission previously rejected CalCCA's proposal for a system waiver in Track 2 on the grounds that "a system and flexible waiver process requires further development and study,"²⁰ noting in particular concerns regarding "potential leaning by LSEs and market power issues."²¹ Since then, no study has been conducted on market power issues in the RA capacity market specifically. However, the CAISO's Department of Market Monitoring (DMM) routinely assesses the competitiveness of the CAISO's energy markets using a residual supply index.²² DMM found in their 2020 Fourth Quarter Report on Market Issues and Performance roughly 300 hours with an uncompetitive level of supply in the third quarter of 2020 when the three largest suppliers were removed and 150 hours with an uncompetitive level of supply in the fourth quarter. Both of these numbers are higher than those for the third and fourth quarters of the previous four years.²³ While this analysis is indicative of structural uncompetitiveness in the energy market, it is reasonable to assume that if the energy market is uncompetitive in up to 300 hours then it would be difficult for LSEs to procure sufficient resources in the RA market, where LSEs are required to procure up to 1-in-2 peak load plus a 15 percent planning reserve margin. CalCCA asks the

²⁰ Proposed *Decision Adopting Local Capacity Obligations For 2021-2023, Adopting Flexible Capacity Obligations For 2021, and Refining the Resource Adequacy Program*, May 22, 2020, at 58.

²¹ *Id.* at 59.

²² The residual supply index is the ratio of supply from non-pivotal suppliers to demand.

²³ DMM 2020 Fourth Quarter Report on Market Issues and Performance at 111-112.

<http://www.caiso.com/Documents/2020-Fourth-Quarter-Report-on-Market-Issues-and-Performance-April-28-2021.pdf>

Commission to further examine the issue of market power as it applies specifically to the RA market. In the meantime, adopting a waiver process for system and flexible resource adequacy is consistent with Commission’s long-standing commitment to “ensure that LSEs are not placed in a position whereby they would have to pay any price to acquire the capacity needed for their RA obligations.”²⁴

2. The recent decision on the Power Charge Indifference Adjustment further exacerbates challenges non-IOU LSEs face in meeting system RA requirements

The Commission’s failure to address the allocation of RA attributes from resources procured in investor-owned utility (IOU) Power Charge Indifference Adjustment (PCIA) portfolios further exacerbates the challenges non-IOU LSEs face in meeting their system RA obligations. The IOUs’ “right of first refusal” to all resources within their PCIA portfolio significantly limits other LSEs’ access to RA attributes and puts them at disproportionately greater risk of non-compliance. The Commission’s recent decision, Decision (D.) 21-05-030, failed to adopt any changes that would give fair access to RA products in the PCIA portfolio, including the Working Group 3 proposal that would have provided pro rata access to all customers based on their cost responsibility.²⁵ This decision makes the proposed penalty structure wholly inequitable, given certain LSEs do not have access to a large portion of the RA fleet. This, combined with the already tight RA market conditions, makes it unreasonable to expect more punitive penalties to achieve the desired result of reducing LSE deficiencies.

²⁴ D.05-10-042 at 66.

²⁵ *Phase 2 Decision on Power Charge Indifference Adjustment Cap and Portfolio Optimization* (D.21-05-030), May 20, 2021.

B. The Commission should only apply system RA penalties to LSEs who fail to seek a system RA waiver or fail to demonstrate reasonable commercial efforts to meet their system and flexible obligations

For all the reasons outlined above, increasing the penalties to deficient LSEs will not, on its own, achieve the Commission's objective of reducing the number of deficient LSEs. Instead, the Commission should institute a system waiver process to avoid penalizing LSEs that demonstrate reasonable efforts to comply and address the capacity shortfall issues that cause LSEs to be deficient in the first instance.

The Commission should adopt a system and flexible waiver process that closely examines compliance efforts and only grants a waiver if certain criteria are met that prove the LSE took reasonable efforts to procure RA capacity. As outlined in CalCCA's opening comments to the proposal, the waiver process should look at (1) the number of Requests for Offer (RFOs) in which the LSE participated; (2) the number of RFOs issued by the LSE itself; (3) the number and nature of bilateral negotiations; and (4) the prices and terms of any rejected offers. The waiver process should also examine an LSE's level of compliance with any outstanding procurement directives; for example, an LSE that has not materially complied with procurement order milestones for reasons within its control may not be eligible for the waiver. It could also consider the launch dates of new LSEs, taking a different approach to recent launches.²⁶

Implementing a system and flexible waiver process that considers these factors presents little risk, given the Commission would not grant any waiver unless the LSE met the above criteria demonstrating reasonable actions were taken to meet their procurement obligations. Additionally, in the event there is system RA left unprocured after the waiver process, the CAISO would continue to have backstop authority to procure such resources and allocate costs to deficient LSEs as they do for

²⁶ CalCCA Opening Comments, at 10.

local RA today. The Commission should only apply the penalty structure ultimately adopted to LSEs who fail to seek a system RA waiver or fail to demonstrate reasonable commercial efforts to meet their system and flexible obligations through waiver process.

C. Should the Commission move forward with modifying the penalty structure as proposed, clarification is needed on how points are tallied and tiers are assigned

CalCCA recommends the Commission not adopt the revised penalty structure, particularly without a system and flexible waiver process in place. However, in the event the Commission does move forward, several clarifications are needed. First, it is not clear if points would be tallied for the annual showings in addition to the monthly showings or for the monthly showings only. In the event penalties are applied for the annual showings, it is not clear if deficiencies will be counted as 1 point (or 2 points in summer months) for the single annual showing or for each month that the annual showing is deficient. Second, it is not clear whether the multiplication of the penalty prices is tiered or based on the total points accumulated. For example, if an LSE accumulates 6 points in one year and falls into tier 2, would the LSE pay the tier 2 price for all deficiencies, or would they pay the tier 1 penalty price for deficiencies resulting in points 0-5 and the tier 2 price for the deficiency resulting in point 6? These clarifications are needed if the Commission adopts the revised penalty structure adopted in the Proposed Decision to provide LSEs clarity about how a penalty would actually be assessed. Similarly, the proposed requirement for having points removed only after 24 months of no deficiency may result in overly punitive penalties for entities that have significantly improved on their RA showings. Take, for example, an entity with points that put them in tier 3 after 2022. In 2023 and 2024, they accrue no points until the last month of 2024, when they accrue 1 point. In this scenario, the entity would remain in tier 3 for at least another two years, despite significant improvement. Therefore, CalCCA suggests all points expire after two years from the violation. Since these and other technical issues have yet to be resolved, CalCCA recommends that language of

the Proposed Decision be revised to accommodate further technical development through working groups if the penalty proposal is adopted.

III. THE COMMISSION SHOULD NOT ADOPT A RA IMPORTS PROPOSAL THAT CREATES FURTHER UNCERTAINTY AROUND THE ABILITY OF IMPORT CAPACITY TO MEET RA OBLIGATIONS

The Proposed Decision defers consideration of the CAISO's RA import proposal, stating the rules recently adopted in D.20-06-028 have not been in place long enough to sufficiently evaluate their effectiveness. Instead, the Proposed Decision adopts Energy Division's (ED's) compliance proposal in which ED staff will review non-resource specific imports in two steps. In the first step, ED staff will review contracts at the time of filing to assess ex-ante compliance with D.20-06-028. In the second step, ED staff will review bid and self-schedule activity for ex-post compliance with D.20-06-028. Failure to comply with the requirements in step one or step two will result in an LSE deficiency. The Proposed Decision also adopts CalCCA's suggested refinement to the ex-ante assessment that requires ED provide a standard template of the required components to confirm an RA product.²⁷

CalCCA supports deferring the consideration of CAISO's RA import proposal at this time. CalCCA previously expressed concern that the proposal's firm transmission requirements present risk of existing firm transmission holders exercising market power and, in turn, increasing costs to consumers without incremental reliability benefit.²⁸ Lack of liquidity in the firm transmission market puts potential suppliers without firm transmission rights at a significant disadvantage, resulting in a smaller pool of suppliers (the ones that already own or have access to the transmission). If the Commission elects to reconsider the CAISO's RA import proposal, these factors should be carefully considered given the important role RA imports currently play in maintaining grid reliability.

²⁷ CalCCA Opening Comments, at 17.

²⁸ *Id.*, at 13.

While CalCCA supports deferring consideration of the CAISO's proposal, CalCCA has significant concerns about the proposal adopted that would assess compliance after bids and self-schedules were submitted. Therefore, the Commission should also defer adoption of the ex-post compliance review proposal, and instead direct parties to develop a compliance proposal that does not find LSEs deficient for actions outside their control and provides certainty regarding an LSE's compliance prior to the RA compliance month. Historically, the RA program always provided an LSE with certainty around whether or not it was compliant with its RA obligations following its RA showings but prior to the start of the RA compliance month. Under the proposal adopted in the Proposed Decision, LSEs will be uncertain of their compliance until long after the annual and month ahead showings. Because the submission of bids and self-schedules by RA imports are typically not under the control of the LSE, the LSE would have very limited control over its ability to meet its own compliance obligations.

It is also not clear the proposal offers significant reliability or economic benefits in certain instances. As an example, in comments to ED's proposal, Southern California Edison Company (SCE) highlights the scenario where a resource bids \$0.01/MWh, clears the market, and is delivered.²⁹ In this case, the RA import has provided the energy associated with its RA obligation at a near zero price, but the LSE is still found out of compliance under the proposal adopted in the Proposed Decision, despite no reliability or economic benefit resulting from assigning a deficiency. The Proposed Decision cites the scenario outlined by SCE but does not offer clarity as to if an LSE would be found out of compliance in this case and at what magnitude. CalCCA highlights this example as one instance where an RA import reliably and cost-effectively provides energy backing the RA contract, but the LSE is still found out of compliance for something outside their control.

²⁹ *Southern California Edison Company's (U 338-E) Comments on Track 3B.1, 3B.2 and 4 Proposals*, Mar. 12, 2021, at 33.

CalCCA is concerned that introducing such uncertainty at this time will negatively impact overall supply of RA imports as LSEs may be more reluctant to contract with imports given the associated compliance risk. The proposal will increase an LSE's risk associated with import RA contracts given the potential of being found out of compliance for the bidding and self-scheduling practices of the import under contract. If the LSE attempts to place non-compliance risk upon the seller of the import contract for failing to meet the bidding obligations of the Commission, then the risk of failure, potentially due to inadvertent error, will very likely be included in the cost of the contract. In the end, the price of the penalty will likely be borne by the customer without additional reliability benefit. Additionally, it is not clear how expeditiously the review of bidding and self-schedule data will occur and when compliance information around how previous RA import contracts performed will be relayed to the LSE, further increasing uncertainty. The Commission should delay the adoption of the ex-post compliance review until a proposal can be developed that provides upfront certainty of an LSE's compliance, while meeting the objective of reliable, cost effective RA imports.

IV. CALCCA SUPPORTS THE COMMISSION'S RECOMMENDATION TO CONTINUE THE LOCAL CAPACITY REQUIREMENTS (LCR) WORKSHOPS

The Proposed Decision adopts the 2022-2024 LCR values for all local areas, including values for the Greater Bay Area, which have increased substantially for the second year in a row.³⁰ The Commission finds value in continuing the LCR working group established by the Commission in D.20-06-031 given the substantial increase in the Greater Bay Area LCR requirement, and recommends PG&E and CalCCA co-lead the LCR working group.³¹ CalCCA appreciates the Commission's recommendation and looks forward to co-leading workshops to further explore the six

³⁰ Proposed Decision, at 14.

³¹ *Id.*, at 13.

LCR-related topics outlined in the Proposed Decision.³² As noted in CalCCA’s comments on the LCR study, the Commission should also require PG&E to examine alternate solutions to the local area needs identified to determine if the significant increase in local area need for the PG&E Greater Bay Area can be mitigated through improvements to the transmission system.³³

V. FACTUAL, LEGAL, AND TECHNICAL ERRORS AND CLARIFICATIONS

A. The Commission should clarify when Effective Load Carrying Capacity (ELCC) changes will apply

The Proposed Decision adopts a biennial update schedule to the ELCC methodology and regional ELCC values for wind resources for the upcoming ELCC update.³⁴ CalCCA requests clarification on when the next ELCC study update will occur and the specific RA compliance year the regional wind and updated ELCC values will apply.

VI. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the proposed decision as provided in Attachment A.

Respectfully submitted,



Evelyn Kahl
General Counsel to the
California Community Choice Association

June 10, 2021

³² Ibid.

³³ *California Community Choice Association’s Comments on Final 2021 LCR Report*, May 7, 2021, at 4.

³⁴ Proposed Decision, at 44.

ATTACHMENT A

Proposed Changes to Findings of Fact, Conclusions of Law and Ordering Paragraphs

FINDINGS OF FACT

12. ~~PG&E's proposed~~ The existing penalty structure is a reasonable mechanism to discourage an LSE's repeated deficiencies through increased penalty prices under current conditions. The penalty structure should be modified to account for very small deficiencies. A system and flexible waiver is reasonable, particularly in the face of persistent system RA market and regulatory conditions.
13. Energy Division's proposed ex-ante compliance review process for non-resource specific imports reasonably sets expectations as to what constitutes a deficiency and establishes a timeframe for final determinations.

CONCLUSIONS OF LAW

13. ~~PG&E's proposed~~ The existing penalty structure should be ~~adopted~~ maintained with a system and flexible RA waiver ~~modification to account for very small deficiencies.~~
14. Energy Division's proposed ex-ante compliance review process for non-resource specific imports should be adopted.

ORDERING PARAGRAPHS

5. The working group shall file and serve a report in this proceeding no later than February 2022 that provides recommendations on the following issues:
- (a) Evaluation of the California Independent System Operator's (CAISO) current reliability criteria in relation to the North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) mandatory reliability standards;

- (b) Interpretation and implementation of CAISO’s reliability standards, mandatory NERC and WECC reliability standards, and the associated reliability benefits and costs;
- (c) Benefits and costs of the change from the old reliability criteria “Option 2/Category C” to CAISO’s current reliability criteria;
- (d) Potential modifications to the current Local Capacity Requirement (LCR) timeline or processes to allow for more meaningful vetting of the LCR study results;
- (e) Inclusion of energy storage limits in the LCR report and its implications for future resource procurement; ~~and~~
- (f) How best to harmonize the Commission’s and CAISO’s local resource accounting rules; and
- (g) Alternate solutions to the local area needs identified to determine if the significant increase in local area need for the PG&E Greater Bay Area can be mitigated through improvements to the transmission system.

16. ~~The following penalty structure is adopted for system Resource Adequacy (RA) deficiencies and is added to the current penalty structure:~~

Months	Points for Each Instance of System RA Deficiency
Non-Summer (November – April)	1
Summer (May – October)	2

Tier	Accrued Points	System RA Penalty Price
1	0-5	Applicable system RA penalty price
2	6-10	2x the applicable system RA penalty price
3	11+	3x the applicable system RA penalty price

~~If a load-serving entity's (LSE) deficiency is less than 1% of the LSE's system RA requirement, no points will be accrued. An LSE that does not have a deficiency for 24 consecutive months shall have all accrued points removed. All accrued points within an RA compliance year shall be carried over to the next RA compliance year. This structure is effective for the 2022 RA compliance year.~~

17. Energy Division's compliance review and approval process for non-resource specific

Resource Adequacy (RA) imports is adopted, as follows:

- Step 1: Energy Division Staff reviews contracts at the time of filing to assess “*ex ante*” compliance with contract provisions required by Decision (D.) 20-06-028, and
- ~~Step 2: Energy Division Staff reviews bid and self-schedule activity once data becomes available “*ex post*” to assess whether the resource performed as required by D.20-06-028.~~
 - ~~(1) If Energy Division Staff does not identify any issues with a load-serving entity's (LSE) filing in Step 1 (and there are otherwise no issues with the filing), Staff has the discretion to provisionally approve the filing, subject to final approval after Step 2.~~
 - (2) If Energy Division Staff identifies an issue with an LSE's filing in Step 1, Staff will treat the resource as if it were not made available to the California Independent System Operator on a Supply Plan. As with other RA resources, a correction or deficiency notice will be issued, depending on if the LSE has enough capacity to meet its RA requirement without the import.
 - ~~(3) If Energy Division Staff does not identify any issues in Step 2, Staff will confirm whether any Step 1 deficiency was cured (if applicable) or approve the filing.~~

~~(4) If Energy Division Staff identifies an issue in Step 2, Staff will process a deficiency notice. Because the supporting data would be available after the compliance month has passed, Energy Division Staff and the Consumer Protection and Enforcement Division (CPED) are authorized to treat deficiencies in Step 2 as “not replaced” (or not cured) under the existing penalty structure.~~

New Ordering Paragraph: A system and flexible waiver is adopted using the mechanism in place for local RA waivers.

1. Please provide a summary of your organization's comments on Aggregate Capability Constraint (ACC) proposal:

CalCCA appreciates the opportunity to submit comments and supports the CAISO's proposal to allow multiple aggregate capability constraints (ACCs) at a single generating facility with co-located resources.

2. Provide your organization's comments on the ACC final proposal:

CalCCA supports the proposed enhancements to allow multiple aggregate capability constraints (ACCs) at a single generating facility with co-located resources through the "master" ACC that prevents dispatch above the point of interconnection limit and "sub" ACCs that model contractual limits when there are multiple off-takers for a co-located resource. Given the investment tax credit (ITC) incentivizes the pairing of new storage at existing solar sites, it is likely sub-ACCs will be highly utilized to model separate contracts with new and existing resources at the same generating facility.

CalCCA understands sub-ACCs will have lower priority than the power-balance constraint, and higher priority than economic bids.¹ As such, ACCs may be relaxed when the market struggles to meet supply and demand. This is a reasonable outcome when additional MWs are needed and available to maintain reliability. However, CalCCA requests the CAISO provide additional detail as to specifically how and when sub-ACCs will be relaxed, and how and when relaxation of those constraints will be communicated to market participants.

3. Provide your organization's comments on the ACC revised draft tariff language:

CalCCA has no comments on the revised draft tariff language at this time.

4. Provide any additional comments. You may upload attachments using the "attachments" field below:

CalCCA has no additional comments at this time.

¹ Final Proposal at 9.



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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Address
Energy Utility Customer Bill Debt
Accumulated During the COVID-19
Pandemic.

R.21-02-014
(February 11, 2021)

**COMMENTS OF
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE PROPOSED DECISION**

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June 14, 2021

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SUMMARY OF RECOMMENDATIONS

- Extend the “pro rata” distribution of partial payments of past due balances through the term of the 24-month COVID-19 relief payment plans to ensure that the payments for substantial arrearages sustained throughout the COVID-19 pandemic are proportionally allocated among IOUs and CCAs.
 - Adopt the Proposed Decision’s proposal to automatically enroll customers in the 24-month COVID-19 relief payment plans, while acknowledging that automatic enrollment is not adopted for the Arrearage Management Plan (AMP).
-

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Address
Energy Utility Customer Bill Debt
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R.21-02-014
(February 11, 2021)

**COMMENTS OF
CALIFORNIA COMMUNITY CHOICE ASSOCIATION
ON THE PROPOSED DECISION**

The California Community Choice Association¹ (CalCCA) submits these Comments pursuant to Rule 14.3 of the California Public Utilities Commission (Commission) Rules of Practice and Procedure on the proposed *Decision Addressing Energy Utility Customer Bill Debt Via Automatic Enrollment In Long Term Payment Plans* (Proposed Decision or PD), issued on May 24, 2021.

I. INTRODUCTION

CalCCA supports the Proposed Decision’s directive to “automatically provide all residential customers two years over which to pay off energy bill debt, with an opt-out provision.”² The Proposed Decision omits from its scope, however, a critical issue that must be addressed in the Commission’s final decision: the allocation methodology for partial payments

¹ California Community Choice Association represents the interests of 22 community choice electricity providers in California: Apple Valley Choice Energy, Baldwin Park Resident Owned Utility District, Central Coast Community Energy, Clean Energy Alliance, Clean Power Alliance, CleanPowerSF, Desert Community Energy, East Bay Community Energy, Lancaster Choice Energy, Marin Clean Energy, Peninsula Clean Energy, Pico Rivera Innovative Municipal Energy, Pioneer Community Energy, Pomona Choice Energy, Rancho Mirage Energy Authority, Redwood Coast Energy Authority, San Diego Community Power, San Jacinto Power, San José Clean Energy, Silicon Valley Clean Energy, Sonoma Clean Power, and Valley Clean Energy.

² Proposed Decision at 1.

made by customers under the adopted payment plan 7.c.³ Absent Commission action in this decision, partial payments under the Pacific Gas and Electric Company (PG&E) and San Diego Gas & Electric Company (SDG&E) tariffs will revert to their pre-pandemic allocation methodology, which prioritizes payments on all arrearages owed the investor-owned utility (IOUs) *before* commencing payment of arrearages owed to the Community Choice Aggregator (CCA). Even in normal conditions, this “utility first” approach increases outstanding arrearages for CCAs and, at worst, could cause a higher proportion of bad debt for CCAs than for the remainder of the customer bill. COVID-19 pandemic conditions have exponentially increased this problem – a risk the Commission and IOUs foresaw in creating pro-rata partial payment rules in the context of emergency protections for residential customers. CalCCA urges the Commission to extend the suspension of the “utility first” payment waterfall through the two-year term of the Proposed Decision’s COVID-19 relief payment plan.⁴

In addition, CalCCA supports the proposed auto-enrollment of eligible customers under the COVID-19 Relief Payment Plans. While this approach may not be suitable for the AMP, as discussed below, it will best serve customers under the new payment plans.

Finally, CalCCA requests that the Commission correct the Proposed Decision to reflect CalCCA’s submission of an opening brief.

II. THE COMMISSION SHOULD EXTEND THE “PRO RATA” PARTIAL PAYMENT WATERFALL FOR THE DURATION OF THE COVID-19 RELIEF PAYMENT PLANS

The Scoping Memo⁵ included seven high level issue categories for consideration in this rulemaking. Issue 7 encompassed issues related to third-party service providers, including CCAs:

³ *Id.* at 14, Issue 7.c.

⁴ If the Commission decides at a future date to extend the relief payment plan, the waterfall should be extended on the same basis.

⁵ *Assigned Commissioner’s Scoping Memo and Ruling*, Mar. 15, 2021 (Scoping Memo).

7. Should arrearage relief be applied to Core Transport Agent (CTA), Energy Service Provider (ESP), and Community Choice Aggregator (CCA) customers? If so, how?⁶

While all of the subparts of this question are important, subpart ‘c’ posed a question of great urgency: “[t]o what extent does Public Utilities Code Section 779.2 require utilities to allocate partial payments first to disconnectable charges?”⁷ Unfortunately, the Proposed Decision excludes all of the questions included in Issue 7, deferring them for further consideration.

As discussed below, Pacific Gas and Electric Company (PG&E) and SDG&E, encouraged by the Commission’s actions, suspended the “utility first” payment waterfall through June 30, 2021 – the currently scheduled end of the COVID-19 customer protections. If the Commission does not act in this decision to direct the IOUs to extend this suspension, CCAs will face disproportional financial risk as payment of their arrearages from residential customers are deferred until the IOUs’ charges have been fully satisfied. The Commission thus should extend the payment waterfall suspension through the term of the COVID-19 relief payment plans.

A. PG&E’s and SDG&E’s Tariffs Require Allocation of Partial Payments to IOU Arrearages before Commencing Application of Payments to CCA Arrearages

PG&E Rule 23.R.2. establishes a general rule for allocation of partial payments by residential customers.

Except as provided below in Section 3, if a customer makes only a partial payment for a service account, the payment shall be allocated proportionally between PG&E’s charges and the CCA’s charges.

Critically, however, the tariff provides an exception in Rule 23.R.3, which provides:

⁶ *Id.* at 6.

⁷ *Id.* at 7.

In evaluating a delinquent residential Service Account for service termination and to the extent required by law or Commission regulations, partial payments shall be allocated first to delinquent disconnectable charges.⁸

This exception, however, applies only in evaluating a delinquent residential account “for service termination.”

SDG&E’s tariff is similar, although broader. SDG&E Rule 27.R.2. provides that all payments, except for disconnectable charges, will be allocated pro rata to SDG&E and the CCA:

Partial payments by customers shall be allocated on a pro rata basis to the Utility charges for which delinquency may result in disconnection, and then any balance shall be prorated between the CCA and other Utility charges.

Any exception applies only in addressing delinquent charges that may result in disconnection. Notably, this rule is not limited to residential customer payments, but extends to all customer payments.

The partial payment provisions of these tariffs were suspended during COVID-19, as discussed below. Absent an extension of the suspension, the IOUs will revert to the “utility first” partial payment allocation.

B. Resolution M-4842 Suspended the “Utility First” Partial Payment Waterfall During the COVID-19 Customer Protections and Resolution M-4849 Extended this Suspension

On April 16, 2020, the Commission issued Resolution M-4842, ordering all utilities to suspend customer disconnections and requiring each IOU to file an implementation advice letter.

⁸ “Disconnectable charges” is not defined in PG&E’s tariff. The phrase appears to derive from Public Utilities Code Section 779.2, which was enacted in 1984 -- nearly two decades before CCAs were authorized to provide electrical services. The statute prohibits an electrical corporation from disconnecting a customer for nonpayment of third-party charges; consequently, only utility charges -- not CCA charges -- are “disconnectable charges.”

Among earlier versions of its advice letters, PG&E filed Advice 4244-G/5816-E, on May 1, 2020. The advice letter responded to CalCCA's protest, which sought suspension of the "utility first" partial payment waterfall. PG&E explained:

As a result of these efforts, PG&E and CalCCA agree on a proposal for PG&E to suspend the allocation method for partial payments relating to past due accounts under Electric Rule 23.R.3 for a limited period due to COVID-19. According to this proposal, PG&E will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through April 16, 2021, and track any associated uncollectibles through the CPPMA for future recovery as described in Section D of this advice letter. PG&E will resume allocation of payments from residential CCA customers in accordance with Electric Rule 23.R.3 starting April 17, 2021. PG&E and CalCCA will monitor and meet to discuss any potential impacts this proposal may have on customers, and PG&E reserves the right to request modifications due to the uncertainty associated with the COVID-19 pandemic.

Advice 4244-G/5816-E was approved by the Energy Division.

As the pandemic continued, the Commission issued Resolution M-4849 on February 11, 2021, extending the protections directed in Resolution M-4842: It stated:

Therefore, due to the continued economic harm from the COVID-19 pandemic, the Commission extends to California customers the Emergency Customer Protections from D.19-07-015 and D.19-08-025, as ordered by Resolution M-4842, through June 30, 2021, and the Commission reserves an option to extend.

In response, PG&E filed Advice 4388-G/6092-E extending its COVID-19 protections. Among other things, PG&E highlighted a change to Rule 23 as follows:

Revising footnote to Section R.3 of Electric Rule 23 to note that due to the COVID-19 pandemic and pursuant to CPUC Resolutions M-4842 and M-4849, PG&E has suspended Section R.3 of Electric Rule 23 and will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through June 30, 2021, as described in Advice 4244-G/ 5516-E and Advice 4388-G/6092-E.

Rule 23.R. has a footnote which reads:

Due to the COVID-19 pandemic and pursuant to CPUC Resolutions M-4842 and M-4849, PG&E has suspended Section R.3 of Electric Rule 23 and will allocate partial payments received from residential CCA customers on a pro rata basis with CCAs for up to one year, through June 30, 2021, as described in Advice 4244-G-A/5516-E-A and Advice 4388-G/6092-E.

SDG&E's circumstances are similar to PG&E's. Most recently, Advice 3716-E/2961-G confirmed its treatment. SDG&E explained:

D.19-07-015 directs SDG&E to coordinate with community choice aggregators (CCAs) during disasters to share information on affected customers. Consistent with its discussion with the CCAs in SDG&E's service territory, SDG&E suspended the allocation method for partial payments under Rule 27R.2 for CCA customers on payment plans implemented pursuant to the emergency customer protections for a limited period. During this period, SDG&E has allocated partial payments from CCA customers on a pro rata basis between SDG&E charges and CCA charges. Any associated uncollectibles resulting from this temporary adjustment will be tracked through the CPPMA for future recovery. SDG&E will resume allocating the payments from all CCA customers to disconnectable charges first, in accordance with Rule 27R.2, starting July 1, 2021.

PG&E and SDG&E will thus resume their "utility first" partial payment allocation methodologies on July 1, 2021 absent Commission action.

C. The Importance of the Pro Rata Allocation Methodology Has Grown Exponentially in the Face of Substantial Pandemic-Related Arrearages

The Proposed Decision highlights the magnitude of customer arrearages the IOUs and other load-serving entities face, concluding that arrearages have grown to \$1.3 billion over the pandemic period.⁹ These balances, provided by the IOUs in their March 30, 2021, responses to the Administrative Law Judge's request for data, include the substantial arrearages owed CCAs.

⁹ Proposed Decision at 9.

For example, PG&E breaks out arrearages for bundled and unbundled residential customers, showing that of \$654 million in total residential customer arrearages, unbundled (i.e., CCA) customers account for \$255 million or nearly 40 percent.¹⁰ Southern California Edison Compay's (SCE's) submission shows that of \$353 million in residential customer arrearages, \$44 million or 12 percent are unbundled accounts.¹¹ SDG&E was unable to separate the unbundled portion of its reported \$76 million of residential arrearages.¹²

CCAs are likely exposed to more than \$300 million of bad debt expense; like the IOUs, this exposure presents a challenge to their financial stability. Applying customer payments to all IOU arrearages *before* paying down any CCA arrearages materially exacerbates that risk.

D. The Commission Should Extend the Pro Rata Allocation Methodology for Partial Payments of Past Due Balances through the Term of the COVID-19 Relief Payment Plans

Not all customer arrearages will be covered by federal or state relief funds, and all LSEs will be exposed to some level of increased bad debt expense as a result of the COVID-19 pandemic. With the disconnection moratorium and customer protections set to expire soon on June 30, 2021, CalCCA urges the Commission to extend the “pro rata” treatment now to ensure that both IOUs and CCAs enter the post-COVID transition period on equal footing and to prevent CCAs from being exposed to greater risk in terms of revenue recovery. This approach

¹⁰ *Response of Pacific Gas and Electric Company (U 39 M) to the Administrative Law Judge's Ruling Directing Utilities to Provide Data*, Mar. 30, 2021, Attachment A, Table 6, at 11.
<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M376/K042/376042388.PDF>

¹¹ *Responses of Southern California Edison Company (U 338-E) on Administrative Law Judge's Ruling Directing Utilities to Provide Data*, Mar. 30, 2021, Attachment A at A-1.
<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M376/K054/376054716.PDF>

¹² *San Diego Gas & Electric Company's (U 902 M) Response to the Administrative Law Judge's Ruling Directing Utilities to Provide Data*, Mar. 30, 2021, Attachment A, Excel Data.
<https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M376/K031/376031787.PDF>

should apply to all payments of past due balances, regardless of the customer's enrollment in any payment plan.

Timing is important. Extension of the suspension now is necessary to ensure the IOUs' billing systems are prepared for the June 30, 2021, transition, which will occur only six days after the Commission's decision is voted out.

III. THE COMMISSION SHOULD ADOPT THE PROPOSED DECISION'S AUTOMATIC ENROLLMENT PROPOSAL

The Proposed Decision establishes a 24-month payment plan for customers with arrearages of 60-days or older.¹³ The general payment plan is designed to “bridge the gap between the end of the disconnection moratorium and the availability of significant arrearage relief on the horizon”¹⁴ and to provide the “simplest and most direct strategy to reach all customers in need of assistance,” at a critical time of economic recovery.¹⁵ The 24-month payment plans, also known as the Covid-19 Relief Payment Plan, will prevent customer disconnections, if customers are making their on-time, partial payments. CalCCA supports the proposal because this is a step to protecting customers from a disconnection.

The Commission should modify the Proposed Decision, however, to clarify CalCCA's views. The Proposed Decision explains that Parties, including CalCCA, have expressed concerns for automatic enrollment of customers in relief programs.¹⁶ To provide clarity, CalCCA does not support automatic enrollment of the AMP, and suggests that enrollment occurs on a request-to-

¹³ Proposed Decision, Order 1 at 40.

¹⁴ *Id.*, Finding of Fact 8, at 36.

¹⁵ *Id.*, Finding of Fact 12, at 36.

¹⁶ *Id.* at 17.

participate basis.¹⁷ Customers who may not know program rules when auto-enrolled may miss payments, therefore inadvertently blocking the customer from AMP benefits for one year.

The 24-month Covid-19 Relief Payment Plan, however, should not have similar consequences. Therefore, CalCCA supports automatically enrolling residential and commercial customers who have 60-days or older arrearages to amortize their debt over 24 months. One point, however, requires clarification. The Proposed Decision states:

At the very least, the parameters we mandate of automatic enrollment, coupled with a two-year term and two waivers for customers who miss payments, provide a minimum five months of time for customers to access one of the many promising programs offering significant forgiveness.¹⁸

The Commission should clarify, in the final decision or through the implementing advice letters, what steps will be taken if a customer misses two payments.

Finally, the Proposed Decision orders the IOUs to file Tier 2 Advice Letters reporting their networks of Community-Based Organizations (CBOs).¹⁹ This exercise will map out potential partnerships, ensuring various communities are reached and supported at this time. CalCCA supports the plans to include CBOs, especially informing customers about the automatic enrollment plans. Targeted mailers to customers auto-enrolled is a potential outreach mechanism. Lastly, CCAs are open to using their established platforms to inform customers of these plans with the help of the IOUs' materials.

¹⁷ *California Community Choice Association Opening Brief*, Apr. 23, 2021, at 6.
<https://docs.cpuc.ca.gov/SearchRes.aspx?DocFormat=ALL&DocID=380856215>

¹⁸ Proposed Decision at 16.

¹⁹ *Id.* at 41.

IV. CONCLUSION

CalCCA appreciates the opportunity to submit these comments and requests adoption of the recommendations proposed herein. For all the foregoing reasons, the Commission should modify the Proposed Decision as provided in Attachment A.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Evelyn Kahl".

Evelyn Kahl
General Counsel to the
California Community Choice Association

June 14, 2021

ATTACHMENT A

Proposed Changes

FINDINGS OF FACT

2. The dollar amount of utility bill arrearages has increased throughout the COVID-19 pandemic period. The substantial utility bill arrearages reflect the magnitude of bundled and unbundled customer arrearages faced by IOUs and CCAs.

15. Nothing prevents customers enrolled in COVID-19 Relief payment plans from accessing additional or alternative programs, such as opting in to enroll in the Arrearages Management Plan (AMP), to address their utility arrearages. However, opting into the AMP program according to the AMP rules would necessitate moving out of the COVID-19 Relief payment plans.

NEW CONCLUSIONS OF LAW

PG&E and SDG&E, in response to Resolutions M-4842 and M-4849, suspended the provisions of their respective payment rules requiring application of partial payments on past due balances first to IOU balances before remitting payment to CCAs on their past due balances.

Resolution M-4849, which extended Resolution M-4842's suspension of the application of partial payment balances first to IOU balances, and instead allowed a pro-rata allocation of the partial payments between the IOU and CCAs, is set to expire as of July 1, 2021. In Resolution M-4842, the Commission reserved an option to extend the suspension.

It is reasonable to extend the "pro-rata" distribution of partial payments among IOUs and CCAs through the term of the 24-month COVID-19 relief payment plans to ensure that the payments for substantial arrearages sustained throughout the COVID-19 pandemic are proportionally allocated among IOUs and CCAs.

The pro-rata distribution among IOUs and CCAs, extended through the term of the 24-month COVID-19 relief payment plans, shall apply to all payments of past due balances, regardless of the customer's enrollment in any payment plan.

NEW ORDERING PARAGRAPH

Pacific Gas and Electric Company and San Diego Gas & Electric Company shall continue to apply partial payments on past due balances pro-rata between the IOU and CCAs, throughout the term of the COVID-19 Relief Payment Plans. The pro rata distribution among IOUs and CCAs shall apply to all payments of past due balances, regardless of the customer's enrollment in any payment plan.

TEXT CHANGE at page 6

The following parties filed opening and reply briefs on schedule:5 CASMU, PG&E, SCE, SDG&E, SoCalGas, TURN, Cal Advocates, CalCCA, UCAN, jointly LCJA, CEJA and Greenlining, jointly NCLC and CforAT.

June 14, 2021

California Public Utilities Commission
Energy Division
Attention: Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298



MCE Advice Letter 51-E

RE: Revised Budget Request for the Disadvantaged Communities Green Tariff and the Community Solar Green Tariff Programs for Program Years 2021 and 2022

Pursuant to Ordering Paragraph (“OP”) 6 of Resolution E-5124,¹ Marin Clean Energy (“MCE”) hereby submits this Tier 1 Advice Letter (“AL”) to submit updated budget forecasts for the Disadvantaged Communities Green Tariff (“DAC-GT”) and Community Solar Green Tariff (“CS-GT”) programs for program years (“PY”) 2021 and 2022. These budget updates reflect the changes in program implementation as directed by Resolution E-5124.

TIER DESIGNATION

This AL has a Tier 1 designation pursuant to OP 6 of Resolution E-5124.

EFFECTIVE DATE

MCE requests that this Tier 1 AL become effective upon date of submittal, which is June 14, 2021.

BACKGROUND

On June 21, 2018, the California Public Utilities Commission (“Commission” or “CPUC”) approved D.18-06-027, adopting two new community solar programs to promote the use of renewable generation among residential customers in disadvantaged communities (“DACs”),² as directed by the California Legislature in Assembly Bill (“AB”) 327 (Perea), Stats. 2013, ch 611. The DAC-GT and the CS-GT programs offer 100% solar energy to eligible customers and provide a 20% discount on the electric portion of the bill.

Pursuant to OP 17 of D.18-06-027, Community Choice Aggregators (“CCAs”) may develop their own DAC-GT and CS-GT programs and must file a Tier 3 AL to propose implementation details

¹ Resolution E-5124, Approving with modification, Community Choice Aggregator tariffs to implement the Disadvantaged Communities Green Tariff and Community Solar Green Tariff programs, from April 16, 2021.

² DACs are defined under D.18-06-027 as communities that are identified in the CalEnviroScreen 3.0 as among the top 25 percent of census tracts statewide, plus the census tracts in the highest five percent of CalEnviroScreen’s Pollution Burden that do not have an overall CalEnviroScreen score because of unreliable socioeconomic or health data.

(“Implementation AL”).³ On May 7, 2020, MCE filed its Implementation AL for the DAC-GT and CS-GT programs with the Commission in MCE AL 42-E. This Implementation AL included forecasted program budgets for PYs 2020 and 2021. Additionally, MCE filed AL 47-E on February 1, 2021 to submit the program budget request and marketing, education and outreach (“ME&O”) plan for PY 2022. The Commission disposed of MCE AL 47-E on March 5, 2021.

On April 15, 2021, the Commission issued Resolution E-5124 which approved MCE’s DAC-GT and CS-GT Implementation AL with modifications.⁴ OP 6 of Resolution E-5124 directed CCAs to submit updated budget forecasts for PYs 2021 and 2022 to reflect the changes made to CCA Implementation Plans and budgets in the Resolution.

PURPOSE

MCE hereby submits the revised budget request for PYs 2021 and 2022 for the DAC-GT and CS-GT programs. Per Resolution E-5124-E, MCE makes the following updates to the original budget forecasts:

1. Incorporate CCA Integration Costs;
2. Update the forecasted costs for providing the 20% bill discount on the full electric bill;
3. Revise forecasted IT costs due to the changes in methodology to calculate and recover the 20% bill discount for participating customers.

The following provides a summary of the budget revisions. More details can be found in Appendix A.

1. CCA Integration Costs

Resolution E-5124 authorized PG&E to charge “CCA Integration Costs”, defined as administrative, IT, or other discrete activities taken by PG&E in order to facilitate implementation of the DAC-GT and CS-GT programs by CCAs. The Resolution also specified that general CCA Integration Costs should be distributed in equal parts among participating CCAs. Any CCA Integration Costs that are specific to an individual CCA, should be attributed to the respective CCA.⁵

Furthermore, the Resolution determined that CCAs will be responsible for including their corresponding share of CCA Integration Costs under each of their “program administration” budget line items in the annual budget AL due on February 15 each year. To facilitate the inclusion of CCA Integration Costs on the CCA budget ALs, PG&E must provide the CCAs with *forecasted* CCA Integration Costs for the upcoming PY by December 1 and with *actual* CCA Integration Costs from the previous PY by January 15 of each year.⁶ For PYs 2021 and 2022, PG&E must provide the forecasted CCA Integration Costs within 30 days of the approval of the final Resolution.⁷

PG&E informed each CCA of its forecasted CCA Integration Costs for PYs 2021 and 2022 on

³ D.18-06-027, at p.104 (OP 17).

⁴ Resolution E-5124, OP 1 at 32.

⁵ Id. at p.11

⁶ Id.

⁷ Id., OP 5 at 33.

May 17, 2021 in a timely fashion. An update to the CCA Integration Costs was provided by PG&E on May 21, 2021. MCE hereby incorporates the CCA Integration Costs provided by PG&E into the PY 2021 and 2022 budget forecast.

2. Cost for Providing the 20% Bill Discount on the Full Electric Bill

D.18-06-027 stated that the 20 percent discount for both the DAC-GT and CS-GT programs will be “on the total bill”⁸ and did not specify how the discount should be applied in practice. CCAs had proposed in their Implementation ALs that CCAs should calculate and recover the 20% discount on the *generation* portion of the electric bill while PG&E calculates and recovers the 20% bill discount on the *delivery* portion of the electric bill (the “hybrid approach”). Hence, CCAs had included in their PY 2021 and 2022 budget forecasts only the bill discount costs associated with providing the discount on the generation portion of the electric bill.⁹

Resolution E-5124 determined that CCAs must calculate the 20% discount on the full electric portion of the bill (i.e., both generation and delivery portions of the electric bill) and that the full bill discount will be shown on the generation portion of the customer bills.¹⁰ Hence, MCE is updating its cost forecast for providing the 20% bill discount to customers, based on the full electric bill, for PYs 2021 and 2022.

3. Revised IT Costs

As part of its administrative budget, MCE forecasts IT costs associated with the implementation of the DAC-GT and CS-GT programs. The original budget forecast for PYs 2021 and 2021 based the IT cost estimate on the assumption that PG&E will be calculating and recovering the 20% bill discount on the delivery portion of the electric bill. As Resolution E-5124 determined that CCAs are responsible for calculating and recovering the 20% discount on the full electric bill (i.e., the generation and delivery portion of the electric bill), MCE must update its forecasted IT costs for PYs 2021 and 2022 to accurately reflect the estimated cost increase. More details about the reasons for the IT cost increase can be found in Appendix A.

4. Summary

Based on these updates, MCE submits a revised budget forecast of \$1,040,758 for PY 2021 and \$2,352,492 for PY 2022. MCE deducts the budget carry-over of \$460,190 from PY 2020, as well as the original budget of \$1,393,247 for PY 2021 which had already been approved by the Commission in D.20-12-038 as part of PG&E’s 2021 ERRA filing.¹¹ This leads to a revised budget request for PY 2022 of \$1,539,812. More details can be found in Appendix A.

Once the Commission approves MCE’s revised budget request, PG&E will be responsible for including the revised budget request for MCE’s DAC-GT and CS-GT programs in the 2022 ERRA Update filing due in early November of 2021. Once PG&E receives approval of its ERRA filing

⁸ D.18-06-027 at 74.

⁹ CleanPower SF was the only CCA that forecasted the 20% bill discount costs based on the full electric bill.

¹⁰ Resolution E-5124 at p.12.

¹¹ D.20-12-038, Decision Adopting Pacific Gas and Electric Company’s 2021 Energy Resource Recovery Account Forecast, Generation Non-Bypassable Charges Forecast, Greenhouse Gas Forecast Revenue Return and Reconciliation, and Related Calculations and Rate Proposals, at 26.

from the Commission, PG&E will set aside the requested MCE budget in a sub-account of its DAC-GT and CS-GT balancing accounts. PG&E will then transfer program funds to MCE as determined in OP 3 of Resolution E-5124.¹²

CONCLUSION

MCE respectfully requests the Commission approve the budgets proposed herein and direct PG&E to transfer funds sufficient to meet MCE's approved annual budgets per the funding mechanisms established in Resolution E-5124.¹³

NOTICE

A copy of this AL is being served on the official Commission service lists for Rulemaking R.14-07-002.

For changes to this service lists, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at Process_Office@cpuc.ca.gov.

PROTESTS

*****Pursuant to the Commission's Practioner Alert, all requirements for hard copy service of documents pursuant to the Commission Rule of Practice and Procedure, including Rule 1.10 (e) requirement to serve the Administrative Law Judge with hard copies of all electronically served documents, are suspended until further notice, except as otherwise directed by the Administrative Law Judge. Please submit protests or responses to this advice letter to EDTariffUnit@cpuc.ca.gov and jkopyciok-lande@mcecleanenergy.org*****

Anyone wishing to protest this advice letter filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received no later than 20 days after the date of this advice filing. Protests must be submitted to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Copies should also be mailed to the attention of the Deputy Executive Director, Energy Division, Room 4004 (same address above).

In addition, protests and all other correspondence regarding this advice letter shall be sent by letter or transmitted electronically to the attention of:

Jana Kopyciok-Lande

¹² Id., OP 3 at 32.

¹³ Id.

Strategic Policy Manager
MARIN CLEAN ENERGY
1125 Tamalpais Ave
San Rafael, CA 94901
Email: jkopyciok-lande@mcecleanenergy.org

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

CORRESPONDENCE

For questions, please contact Jana Kopyciok-Lande at (415) 464-6044 or by electronic mail at jkopyciok-lande@mceCleanEnergy.org.

/s/ Jana Kopyciok-Lande

Jana Kopyciok-Lande
Strategic Policy Manager
MARIN CLEAN ENERGY

cc: Service List: R.14-07-002



ADVICE LETTER SUMMARY

ENERGY UTILITY



MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No.:

Utility type:

☐ ELC ☐ GAS ☐ WATER
☐ PLC ☐ HEAT

Contact Person:

Phone #:

E-mail:

E-mail Disposition Notice to:

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas WATER = Water
PLC = Pipeline HEAT = Heat

(Date Submitted / Received Stamp by CPUC)

Advice Letter (AL) #:

Tier Designation:

Subject of AL:

Keywords (choose from CPUC listing):

AL Type: ☐ Monthly ☐ Quarterly ☐ Annual ☐ One-Time ☐ Other:

If AL submitted in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL:

Summarize differences between the AL and the prior withdrawn or rejected AL:

Confidential treatment requested? ☐ Yes ☐ No

If yes, specification of confidential information:

Confidential information will be made available to appropriate parties who execute a nondisclosure agreement. Name and contact information to request nondisclosure agreement/ access to confidential information:

Resolution required? ☐ Yes ☐ No

Requested effective date:

No. of tariff sheets:

Estimated system annual revenue effect (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Service affected and changes proposed¹:

Pending advice letters that revise the same tariff sheets:

¹Discuss in AL if more space is needed.

Protests and all other correspondence regarding this AL are due no later than 20 days after the date of this submittal, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Avenue
San Francisco, CA 94102
Email: EDTariffUnit@cpuc.ca.gov

Name:
Title:
Utility Name:
Address:
City:
State: Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

Name:
Title:
Utility Name:
Address:
City:
State: Zip:
Telephone (xxx) xxx-xxxx:
Facsimile (xxx) xxx-xxxx:
Email:

ENERGY Advice Letter Keywords

Affiliate	Direct Access	Preliminary Statement
Agreements	Disconnect Service	Procurement
Agriculture	ECAC / Energy Cost Adjustment	Qualifying Facility
Avoided Cost	EOR / Enhanced Oil Recovery	Rebates
Balancing Account	Energy Charge	Refunds
Baseline	Energy Efficiency	Reliability
Bilingual	Establish Service	Re-MAT/Bio-MAT
Billings	Expand Service Area	Revenue Allocation
Bioenergy	Forms	Rule 21
Brokerage Fees	Franchise Fee / User Tax	Rules
CARE	G.O. 131-D	Section 851
CPUC Reimbursement Fee	GRC / General Rate Case	Self Generation
Capacity	Hazardous Waste	Service Area Map
Cogeneration	Increase Rates	Service Outage
Compliance	Interruptible Service	Solar
Conditions of Service	Interutility Transportation	Standby Service
Connection	LIEE / Low-Income Energy Efficiency	Storage
Conservation	LIRA / Low-Income Ratepayer Assistance	Street Lights
Consolidate Tariffs	Late Payment Charge	Surcharges
Contracts	Line Extensions	Tariffs
Core	Memorandum Account	Taxes
Credit	Metered Energy Efficiency	Text Changes
Curtailable Service	Metering	Transformer
Customer Charge	Mobile Home Parks	Transition Cost
Customer Owned Generation	Name Change	Transmission Lines
Decrease Rates	Non-Core	Transportation Electrification
Demand Charge	Non-firm Service Contracts	Transportation Rates
Demand Side Fund	Nuclear	Undergrounding
Demand Side Management	Oil Pipelines	Voltage Discount
Demand Side Response	PBR / Performance Based Ratemaking	Wind Power
Deposits	Portfolio	Withdrawal of Service
Depreciation	Power Lines	

APPENDIX A

**Revised Budget Forecast for the Disadvantaged Communities
Green Tariff and Community Solar Green Tariff Programs
for Program Years 2021 and 2022**

Proposed by Marin Clean Energy



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San Rafael, CA 94901
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June 14, 2021

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1. BACKGROUND

On April 15, 2021, the Commission issued Resolution E-5124, approving, with modifications, MCE's Implementation Advice Letter for the DAC-GT and CS-GT programs. The Resolution also directed MCE to submit updated budget forecasts for PYs 2021 and 2022 to reflect changes made to CCA Implementation Plans and budgets in the Resolution. More specifically, MCE makes the following updates to the original budget forecasts:

1. Incorporate additional PG&E CCA Integration Costs;
2. Update the forecasted costs for providing the 20% bill discount on the full electric bill;
3. Revise forecasted IT costs due to the changes in billing methodology to calculate and recover the 20% bill discount for participating customers.

CCA Integration Costs

Resolution E-5124 authorized PG&E to charge "CCA Integration Costs", defined as administrative, IT, or other discrete activities taken by PG&E in order to facilitate implementation of the DAC-GT and CS-GT programs by CCAs. The Resolution also specified that general CCA Integration Costs should be distributed in equal parts among participating CCAs. Any CCA Integration Costs that are specific to an individual CCA, should be attributed to the respective CCA.¹

For PYs 2021 and 2022, the Resolution determined that PG&E must provide the forecasted CCA Integration Costs within 30 days of the approval of the final Resolution.² PG&E informed each CCA of its forecasted CCA Integration Costs for PYs 2021 and 2022 on May 17, 2021 in a timely fashion. An update to the CCA Integration Costs was provided by PG&E on May 21, 2021. MCE hereby incorporates CCA Integration Costs of \$14,120 for PY 2021 and \$62,028 for PY 2022 into the budget forecast.

Cost for Providing the 20% Bill Discount on the Full Electric Bill

Resolution E-5124 determined that CCAs must calculate the 20% discount on the full electric portion of the bill (i.e., both generation and delivery portions of the electric bill) and that the full bill discount will be shown on the generation portion of the customer bills.³ Hence, MCE is updating its cost forecast for providing the 20% bill discount to customers, based on the full electric bill, for PYs 2021 and 2022.

In addition, MCE updates its forecasted bill discount cost to incorporate (1) the updated program launch timeline for PY 2021; (2) auto-enrollment provisions;⁴ and (3) the increased capacity allocation for MCE's programs.⁵ All those factors combined lead to a budget increase of \$279 for PY 2021 and of \$256,291 for PY 2022 for providing the bill discount to participating customers.

¹ Resolution E-5124 at p.11.

² Id., OP 5 at 33.

³ Resolution E-5124 at p.12.

⁴ See MCE AL 42-E-A.

⁵ See MCE AL 42-E-B.

Revised IT Costs

As part of its administrative budget, MCE forecasts IT costs associated with the implementation of the DAC-GT and CS-GT programs. The original budget forecast for PYs 2021 and 2022 based the IT cost estimate on the assumption that PG&E will be calculating and recovering the 20% bill discount on the delivery portion of the electric bill. As Resolution E-5124 determined that CCAs are responsible for calculating and recovering the 20% discount on the full electric bill (i.e., the generation and delivery portion of the electric bill), MCE must update its forecasted IT costs for PYs 2021 and 2022 to accurately reflect the estimated cost increase.

Based on the approved billing methodology, MCE has updated the program IT costs to reflect the more manual nature of the billing methodology. While the automated billing systems are being built, those systems will not be automated at the time of MCE's DAC-GT program launch. Until such time that the billing systems are automated, data will be received and transmitted manually via a secure file transfer protocol between PG&E and MCE's Data Manager, Calpine. The protocol includes ad-hoc reporting measures to identify participants, eligibility, discount base, billing line-item calculations and usage, which will be manually uploaded, screened and maintained until the automatic process has been completed.

Due to these billing implementation changes, MCE expects increased IT labor costs, as well as direct costs from MCE's billing provider Calpine, of \$53,220 for PY 2021 and \$16,163 for PY 2022.

A summary of MCE's revised budget request can be found in the following.

2. REVISED BUDGET FORECAST FOR PY 2021 & 2022

For PY 2021, MCE requests a total revised budget of \$1,040,758 for the DAC-GT and CS-GT programs. For 2022, MCE requests a total revised budget of \$2,352,492 for the DAC-GT and CS-GT programs. A detailed budget forecast for each program by budget line item can be found in the table below.

Table 1: MCE Revised Budget Forecast for PY 2021 and 2022

1. Budget Forecast PY 2021 and 2022								
Tab	Category	DAC-GT			CS-GT			
		2021	2022	Total	2021	2022	Total	
1	Generation Cost Delta	\$ 379,234	\$ 1,220,491	\$ 1,599,725	\$ -	\$ -	\$ -	
2	20% Bill Discount	\$ 162,850	\$ 488,549	\$ 651,399	\$ -	\$ -	\$ -	
	Program Administration							
3a	Program Management	\$ 93,000	\$ 101,250	\$ 194,250	\$ 125,400	\$ 136,950	\$ 262,350	
3b	Information Technology	\$ 44,197	\$ 40,604	\$ 84,801	\$ 24,053	\$ 22,007	\$ 46,060	
3c	Billing Operations	\$ 34,325	\$ 37,342	\$ 71,667	\$ 9,475	\$ 10,308	\$ 19,783	
3d	Regulatory Compliance	\$ 6,480	\$ 14,280	\$ 20,760	\$ 6,480	\$ 14,280	\$ 20,760	
3e	Procurement	\$ 14,545	\$ 18,235	\$ 32,780	\$ 19,945	\$ 31,682	\$ 51,627	
3f	CCA Integration Costs	\$ 12,856	\$ 31,014	\$ 43,871	\$ 1,263	\$ 31,014	\$ 32,278	
	Subtotal Program Administration	\$ 205,403	\$ 242,725	\$ 448,129	\$ 186,617	\$ 246,241	\$ 432,858	
	Marketing, Education & Outreach							
41	Labor Costs	\$ 43,740	\$ 18,445	\$ 62,185	\$ 14,364	\$ 54,740	\$ 69,104	
4b	Outreach and Material Costs	\$ 7,000	\$ 2,800	\$ 9,800	\$ 21,550	\$ 53,500	\$ 75,050	
4c	Local CBO/ Sponsor Costs	\$ -	\$ -	\$ -	\$ 20,000	\$ 25,000	\$ 45,000	
	Subtotal ME&O	\$ 50,740	\$ 21,245	\$ 71,985	\$ 55,914	\$ 133,240	\$ 189,154	
Total		\$ 798,227	\$ 1,973,011	\$ 2,771,238	\$ 242,531	\$ 379,481	\$ 622,012	\$ 3,393,249

4. BUDGET CAPS

Resolution E-4999 establishes a budget cap of 10% of the total budget for program administration costs and a budget cap of 4% of the total budget for ME&O costs.⁶ However, administrative and ME&O costs may be higher than these budget allocations in the first two years of program implementation (i.e., PYs 2021 and 2022 for MCE), acknowledging that program start-up costs may be higher.⁷ Hence, MCE will only include information on budget caps in subsequent submissions of the Annual Budget Advice Letter.

5. BUDGET RECONCILIATION FOR PY 2020

MCE submitted a budget forecast for PY 2020 as an attachment to its Implementation AL 42-E which was filed with the Commission on May 7, 2020. Due to delays in the AL approval process, MCE did not launch the DAC-GT and CS-GT programs in 2020 as originally expected. 2021 will be MCE's first program year.

Hence, MCE reconciled all forecasted program costs from PY 2020 in its PY 2022 budget advice letter from February 2021.⁸ MCE incorporates the budget reconciliation for PY 2020 into this revised budget advice letter without any changes. The table below shows the forecasted costs for PY 2020 per budget line item that will be carried forward to future program years.

⁶ Resolution E-4999 determined that Program Administrators can submit a Tier 3 Advice Letter requesting an adjustment to the budget allocations if the need arises. See Resolution E-4999 at p.27.

⁷ See Resolution E-4999 at p.30.

⁸ See MCE AL 47-E.

Table 2: MCE Budget Reconciliation for PY 2020

Tab	Category	DAC-GT			CS-GT		
		Forecast	Actual	True-up	Forecast	Actual	True-up
1	Generation Cost Delta	\$ 36,199	\$ -	\$ 36,199	\$ -	\$ -	\$ -
2	20% Bill Discount	\$ 7,564	\$ -	\$ 7,564	\$ -	\$ -	\$ -
	Program Administration						
3a	Program Management	\$ 118,820	\$ -	\$ 118,820	\$ 89,420	\$ -	\$ 89,420
3b	Information Technology	\$ 24,814	\$ -	\$ 24,814	\$ 24,814	\$ -	\$ 24,814
3c	Billing Operations	\$ 23,180	\$ -	\$ 23,180	\$ 5,970	\$ -	\$ 5,970
3d	Regulatory Compliance	\$ 11,760	\$ -	\$ 11,760	\$ 11,760	\$ -	\$ 11,760
3e	Procurement	\$ 20,295	\$ -	\$ 20,295	\$ 34,995	\$ -	\$ 34,995
	Subtotal Program Administration	\$ 198,869	\$ -	\$ 198,869	\$ 166,959	\$ -	\$ 166,959
	Marketing, Education & Outreach						
4a	Labor Costs	\$ 21,560	\$ -	\$ 21,560	\$ 5,390	\$ -	\$ 5,390
4b	Outreach and Material Costs	\$ 5,650	\$ -	\$ 5,650	\$ 3,000	\$ -	\$ 3,000
4c	Local CBO/ Sponsor Costs	\$ -	\$ -	\$ -	\$ 15,000	\$ -	\$ 15,000
	Subtotal ME&O	\$ 27,210	\$ -	\$ 27,210	\$ 23,390	\$ -	\$ 23,390
Total		\$ 269,841	\$ -	\$ 269,841	\$ 190,349	\$ -	\$ 190,349

6. REVISED BUDGET REQUEST FOR PY 2022

In summary, MCE submits a revised budget forecast of \$1,040,758 for PY 2021 and \$2,352,492 for PY 2022. MCE deducts the budget carry-over of \$460,190 from PY 2020, as well as the original budget of \$1,393,247 for PY 2021 which had already been approved by the Commission in D.20-12-038 as part of PG&E's 2021 ERRRA filing.⁹ This leads to a revised budget request for PY 2022 of \$1,539,812.

Table 3: MCE Revised Budget Request for PY 2022

	DAC-GT	CS-GT	Total
Budget Carry-over from PY 2020	\$ (269,841)	\$ (190,349)	\$ (460,190)
Original Budget Request for PY 2021	\$ (1,165,948)	\$ (227,299)	\$ (1,393,247)
Revised Budget Request for PY 2021	\$ 798,227	\$ 242,531	\$ 1,040,758
Revised Budget Request for PY 2022	\$ 1,973,011	\$ 379,481	\$ 2,352,492
TOTAL PY 2022	\$1,335,448	\$ 204,364	\$1,539,812

⁹ D.20-12-038, Decision Adopting Pacific Gas and Electric Company's 2021 Energy Resource Recovery Account Forecast, Generation Non-Bypassable Charges Forecast, Greenhouse Gas Forecast Revenue Return and Reconciliation, and Related Calculations and Rate Proposals, at 26.