



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, September 22, 2016**

San Mateo County Office of Education, Corte Madera Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30 p.m.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation (including auxiliary aids or services) to participate in this meeting, or who have a disability and wish to request an alternative format for the agenda, meeting notice, agenda packet or other writings that may be distributed at the meeting, should contact Anne Bartoletti, Board Clerk, at least 2 working days before the meeting at abartoletti@peninsulacleanenergy.com. Notification in advance of the meeting will enable the PCEA to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it. Attendees to this meeting are reminded that other attendees may be sensitive to various chemical based products.

If you wish to speak to the Board, please fill out a speaker's slip located on the tables as you enter the Board meeting room. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of PCEA staff who will distribute the information to the Board members and other staff.

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

This item is reserved for persons wishing to address the Board on any PCEA-related matters that are as follows: 1) Not otherwise on this meeting agenda; 2) Listed on the Consent Agenda and/or Closed Session Agenda; 3) Chief Executive Officer's or Staff Report on the Regular Agenda; or 4) Board Members' Reports on the Regular Agenda. Public comments on matters not listed above shall be heard at the time the matter is called.

As with all public comment, members of the public who wish to address the Board are requested to complete a speaker's slip and provide it to PCEA staff. Speakers are customarily limited to two minutes, but an extension can be provided to you at the discretion of the Board Chair.

ACTION TO SET AGENDA and TO APPROVE CONSENT AGENDA ITEMS

This item is to set the final consent and regular agenda, and for the approval of the items listed on the consent agenda. All items on the consent agenda are approved by one action.

REGULAR AGENDA

1. Chair Report (Discussion)
2. CEO Report (Discussion)
3. Resource Adequacy (Action)
 - a. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement with Shell Energy North America for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017 (Action)
 - b. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement and a Master Agreement with Silicon Valley Power for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017 (Action)
4. Marketing and Outreach (Discussion)

PCEA Staff will Provide an Update on Recent Community Outreach and Marketing Efforts
5.
 - a. Request approval of Citizen's Advisory Committee (CAC) Extension and Meeting Schedule for 2016 (Action)
 - b. Provide Direction on Future Role and Membership of CAC (Action)
6. Regulatory Update (Discussion)

Provide an Update on Current Regulatory Proceedings Effecting PCEA's operations
7. Corrected Rates (Action)

PCE staff seek the Board's approval of two Corrected Rate Calculations and the Rate Schedule updated to reflect those corrections
8. Board Members' Reports (Discussion)

CLOSED SESSION

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: 800 El Camino Real, Menlo Park

Agency Negotiators: Jan Pepper, David Silberman and Nirit Eriksson

Negotiating Party: Longitude Capital Management Co.

Under Negotiation: price and terms of usage

CONSENT AGENDA

10. Approval of the Minutes for the August 11th, 2016 Meeting (Action)

11. Approve a Resolution Authorizing An Amendment To The Agreement with PIN Presort to Provide Mailing and Presorting Services by Increasing the Amount by \$601,000 To An Amount Not To Exceed \$700,000 for a Term Ending July 26, 2017 (Action)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Office of Sustainability, located at 455 County Center, 4th Floor, Redwood City, CA 94063, for the purpose of making those public records available for inspection. The documents are also available on the PCEA's Internet Web site. The website is located at: <http://www.peninsulacleanenergy.com>.



PENINSULA CLEAN ENERGY
JPA Board Correspondence
General Counsel

DATE: September 16, 2016
BOARD MEETING DATE: September 22, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority

TO: Honorable PCE Joint Powers Board

FROM: David A. Silberman, General Counsel
Nirit Eriksson, Associate General Counsel

SUBJECT: Approval of Resource Adequacy Confirmations

RECOMMENDATION:

- a. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement with Shell Energy North America for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017 (Action)
- b. Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement and a Master Agreement with Silicon Valley Power for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017 (Action)

BACKGROUND:

On June 23, 2016 the Board authorized the CEO to execute various agreements related to purchase of power.

On June 29, 2016 the three short-listed energy service providers provided final pricing and Janis Pepper, in consultation with members of this Board (Dave Pine, Pradeep Gupta, Jeff Aalfs, Carole Groom, John Keener, Donna Colson and Rick DeGolia), PEA (John Dalessi, Brian Goldstein and Kirby Dusel), Jim Eggemeyer and Steve Hall, selected Direct Energy to serve as the Phase 1 Energy Service provider for a term of 51

months.

On July 14, 2016 the Board approved its first purchase of “Resource Adequacy” (described below) from Direct Energy. As we explained then:

“[B]ecause [] regulatory requirements evolve over time, it has been recommended that we not contract for the entirety of Phase I. Accordingly, these confirmations only cover regulatory requirements through December 31, 2017 and only portions of Phase I volumes.”

This purchase with Direct Energy was for “Local”, “System” and “Flexible” volumes, three separate Resource Adequacy requirements.

DISCUSSION:

Once it launches, Peninsula Clean Energy will be required to provide what is called “Resource Adequacy”. The CPUC has explained Resource Adequacy as follows:

The CPUC adopted a Resource Adequacy (RA) policy framework (PU Code section 380) in 2004 to in order to ensure the reliability of electric service in California. The CPUC established RA obligations applicable to all Load Serving Entities (LSEs) within the CPUC’s jurisdiction, including investor owned utilities (IOUs), energy service providers (ESPs), and community choice aggregators (CCAs). The Commission’s RA policy framework – implemented as the RA program -- guides resource procurement and promotes infrastructure investment by requiring that LSEs procure capacity so that capacity is available to the CAISO when and where needed. The CPUC’s RA program now contains three distinct requirements: System RA requirements (effective June 1, 2006), Local RA requirements (effective January 1, 2007) and Flexible RA requirements (effective January 1, 2015). System requirements are determined based on the each LSEs CEC adjusted forecast plus a 15% planning reserve margin. Local requirements are determined based on an annual CAISO study using a 1-10 weather year and an N-1-1 contingency. Flexible Requirements are based on an annual CAISO study that currently looks at the largest three hour ramp for each month needed to run the system reliably. There are two types of filings; Annual filings (filed on or around October 31st) and monthly filings (filed 45 calendar days prior to the compliance month).

For the annual filings, LSEs are required to make an annual System, Local, and Flexible compliance showing for the coming year. For the System showing, LSEs are required to demonstrate that they have procured 90% of their System RA obligation for the five summer months the coming compliance year. Additionally each LSE must demonstrate that they meet 90% of its Flexible requirements and 100% of its local requirements for each

month of the coming compliance year. For the monthly filings LSEs must demonstrate they have procured 100% of their monthly System and Flexible RA obligation. Additionally, on a monthly basis from May through December, LSEs must demonstrate they have met their revised (due to load migration) local obligation.

This is a regulatory requirement. PCEA is not purchasing actual energy. It is paying what might be loosely analogized to a “tax” to ensure that there is enough generation on the grid to ensure reliability.

As noted above, PCEA will need to (seemingly) continuously make purchases of Resource Adequacy to satisfy regulatory requirements (another purchase will be required prior to the end-of-October and then additional purchases after PCEA purchases more power). When the purchase was made in July, PCEA did not purchase all of the “Local” Resource Adequacy requirements. So in August it asked the three short-listed ESPs for prices on additional volumes of “Bay Area” and “PG&E Other”—two different components of Local Resource Adequacy. At the same time, the CEO became aware that Silicon Valley Power would be selling excess volumes of these products. Ultimately Shell provided the best price for the PG&E Other product and Silicon Valley Power accepted a bid from PCEA on the Bay Area product that was more favorable than that offered by any of the short-listed ESPs.

PCEA has already negotiated and executed an EEI Master Agreement with Shell pursuant to the June 2016 power purchase and, accordingly, the Board need only authorize approval of a Confirmation Agreement in order to effectuate the Resource Adequacy purchase. The General Counsel has reviewed and approved the accompanying Confirmation Agreement as to form.

With respect to the Silicon Valley Power purchase, PCEA has opted to use the Western System Power Pool form Master Agreement. This template agreement is an industry standard agreement that has not been modified. The Board is being asked to approve execution of that agreement as well as a separate Confirmation Agreement with Silicon Valley Power. The General Counsel has reviewed and approved both accompanying agreements as to form.

RESOLUTION NO. _____

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA**

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**A. RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONFIRMATION AGREEMENT WITH SHELL ENERGY NORTH
AMERICA FOR RESOURCE ADEQUACY WITH TERMS CONSISTENT WITH THOSE
PRESENTED, IN A FORM APPROVED BY THE GENERAL COUNSEL AND FOR A
TERM ENDING DECEMBER 31, 2017**

**B. RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONFIRMATION AGREEMENT AND MASTER AGREEMENT WITH
SILICON VALLEY POWER FOR RESOURCE ADEQUACY WITH TERMS
CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE
GENERAL COUNSEL AND FOR A TERM ENDING DECEMBER 31, 2017**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San
Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority ("Peninsula Clean Energy")
was formed on February 29, 2016; and

WHEREAS, launch of service is planned for October 2016; and

WHEREAS, Peninsula Clean Energy is in the process of purchasing power to supply Phase I of its launch; and

WHEREAS, this Spring, Peninsula Clean Energy administered a competitive process to select a Contractor capable of providing energy that is much cleaner and much more renewable than that provided by the incumbent utility and at competitive prices; and

WHEREAS, at the conclusion of that process, three Energy Service Providers (“ESP”)s were identified by the selection panel as the proposers with the most competitive proposals and indicated their ability to meet the aforementioned goals and each ESP also proposed Resource Adequacy products;

WHEREAS, on June 29, 2016 the three short-listed Energy Service Providers provided final pricing and Janis Pepper selected Direct Energy to serve as the Phase 1 Energy Service provider for a term of 51 months;

WHEREAS, in July 2016 PCEA purchased some of its Resource Adequacy requirements from Direct Energy because at the time it offered the most competitive price;

WHEREAS, in August 2016 PCEA requested prices on additional volumes for Resource Adequacy from the three short-listed ESPs and contemporaneously bid on additional volumes being sold by Silicon Valley Power; ultimately, Shell provided the most competitive price for PG&E Other volumes and Silicon Valley Power provides the most competitively priced option for Bay Area Volumes;

WHEREAS, PCEA has negotiated Confirmation agreements with Silicon Valley Power and Shell for the necessary volumes;

WHEREAS, PCEA does not have a Master Agreement with Silicon Valley Power and both parties are agreeable with using the Western System Power Pool ("WSPP") model master agreement for this purchase;

WHEREAS, draft forms of the Confirmation agreements negotiated as well as a form of the WSPP Master Agreement have been provided to the Board for its review, reference to which should be made for further particulars;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board (a) delegates authority to the Chief Executive Officer to execute a Confirmation Agreement with Shell Energy North America for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017; and (b) delegates authority to the Chief Executive Officer to execute a Confirmation Agreement and a Master Agreement with Silicon Valley Power for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term ending December 31, 2017

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**DRAFT MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
SHELL ENERGY NORTH AMERICA (US), L.P.
PENINSULA CLEAN ENERGY AUTHORITY**

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **Peninsula Clean Energy Authority** ("Buyer"), and each individually a "Party" and together the "Parties", dated as of August __, 2016 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 24, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner. For purposes of Section 1.51 of the Master Agreement, "Capacity Replacement Price" shall be deemed to be the "Replacement Price."
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.

- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.
- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Master Agreement" has the meaning specified in the introductory paragraph hereof.

- 1.29 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.42 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

- 1.47 “Supply Plan” means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 “Tariff” means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.49 “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.51 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Name	COLGATE HYDRO UNIT 2
Location	Yuba City, CA
CAISO Resource ID	COLGAT_7_UNIT 2
Unit SCID	YCWA
Unit NQC	Varies by Month
Unit EFC	TBD
Resource Type	Hydro
Resource Category (1, 2, 3 or 4)	████
Flexible RAR Category (1, 2 or 3)	████
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	████
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	████
Run Hour Restrictions	████

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

Seller shall provide Buyer with the Designated RA Capacity of RA Attributes, LAR Attributes and, if Section 3.3 is selected, Flexible RA Attributes from each Unit, as measured in MWs, in accordance with the terms and conditions of this Agreement.

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines. The Product is a Contingent Firm RA Product, and with respect to this Contingent Firm RA Product, "Contingent Firm" shall have the same meaning as "Unit Firm" in the Master Agreement.

3.3 [REDACTED] Flexible RA Product

Seller shall provide Buyer with Designated RA Capacity of Flexible RA Attributes from the Unit(s) in the amount of the applicable Contract Quantity.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2017, through December 31, 2017, inclusive.

4.2 Delivery Point

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

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Contract Month	RAR or LAR Contract Quantity (MWs)	RAR or LAR with Flexible RAR Contract Quantity (MWs)
January 2017	████	████
February 2017	████	████
March 2017	████	████
April 2017	████	████
May 2017	████	████
June 2017	████	████
July 2017	████	████
August 2017	████	████
September 2017	████	████
October 2017	████	████
November 2017	████	████
December 2017	████	████

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.
- (b) **Invoice Adjustment:** In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) **Reductions in Unit NQC and/or Unit EFC:** Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity.

4.5 Notification Deadline and Replacement Units

- (a) The "**Notification Deadline**" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no additional cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer

in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the relevant deadlines for submission of the Supply Plans applicable to that Showing Month (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, LAR Attributes and, if applicable, Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer at the time set forth in Section 4.1 of the Master Agreement, the following damages in lieu of damages specified in Section 4.1 of the Master Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to Article Six of the Master Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;

- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of Article Six of the Master Agreement, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, in arrears, after the applicable Showing Month. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month	RA Capacity Price (\$/kW-month)
January 2017	████
February 2017	████
March 2017	████
April 2017	████
May 2017	████
June 2017	████
July 2017	████
August 2017	████
September 2017	████
October 2017	████
November 2017	████
December 2017	████

4.10 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any

Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation and Article Six of the Master Agreement, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Buyer does not receive, and Seller shall pay such revenues to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues pursuant to Article Six of the Master Agreement against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner, or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC, or any other Governmental Body responsible for administering the applicable RAR, LAR, and Flexible RAR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity and Designated RA Capacity. Such actions shall include, without limitation, providing information requested by the CPUC, the CAISO, a LRA of competent jurisdiction, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, to demonstrate that the Contract Quantity can be delivered to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, pursuant to the "deliverability" standards established by the CAISO or other Governmental Body of competent jurisdiction.
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR,

LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

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

7.3 No Recourse Against Buyer's Member Agencies

The Parties acknowledge and agree that Buyer is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by Buyer in connection with the Agreement are undertaken solely by Buyer and are not debts, liabilities, or obligations of its member agencies. Seller waives any recourse against Buyer's member agencies.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in Section 10.11 of the Master Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

SHELL ENERGY NORTH AMERICA (US), L.P.

PENINSULA CLEAN ENERGY AUTHORITY

By: DRAFT – NOT FOR EXECUTION

By: DRAFT – NOT FOR EXECUTION

Name: _____

Name: _____

Title: _____

Title: _____

WSPP Agreement Effective March 31, 2016

This version includes all revisions approved by the Federal Energy Regulatory Commission (FERC) in orders issued through May 20, 2016. The most recent changes are revisions to the list of WSPP members contained in the Agreement per the unpublished letter order dated May 20, 2016 (Docket No. ER16-1339-000).

This version of the WSPP Agreement is prepared for the convenience of WSPP Members. The WSPP Agreement as filed with the FERC is available at www.FERC.gov and specifically <http://etariff.ferc.gov/TariffList.aspx>.

This explanatory page is not part of the WSPP Agreement and is not filed with the FERC.

WSPP AGREEMENT

WSPP INC.
FIRST REVISED RATE SCHEDULE FERC NO. 6
Superseding
Rate Schedule FERC No. 6

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LIST OF MEMBERS

1. PARTIES:

The Parties to this WSPP Agreement (hereinafter referred to as "Agreement") are those entities that have executed this Agreement, hereinafter sometimes referred to individually as "Party" and collectively as "Parties," but excluding any such entity that withdraws its participation in the Agreement. An entity shall become a Party on the date specified in Section 16.6.

2. RECITALS

- 2.1 Through this Agreement, the WSPP administers a multi-lateral, standardized agreement applicable to capacity and/or energy transactions between members and is available to entities (which qualify for membership under Section 16) throughout the entire continental United States, Canada, and Mexico.
- 2.2 This Agreement serves two functions. First, it sets out the rules applicable to the operation of the WSPP. Second, it sets out the terms for the standardized agreement used for capacity and/or energy transactions between members.
- 2.3 This Agreement facilitates physical transactions in capacity and/or energy under a FERC accepted or approved rate schedule (this Rate Schedule FERC No. 6).
- 2.4 Through the standardization of terms for transactions in capacity and/or energy which facilitates such transactions, the public interest has been and will continue to be served.

3. AGREEMENT:

In consideration of the mutual covenants and promises herein set forth, the Parties agree as follows:

4. DEFINITIONS:

The following terms, when used herein with initial capitalization, whether in the singular or in the plural, shall have the meanings specified:

Agreement: This WSPP Agreement, including the Service Schedules and Exhibits attached hereto, as amended; provided, however, that Confirmation(s) are not included within this definition.

Administrative Committee: A sub-committee of the Executive Committee in accordance with Section 8.1.2.

Broker: An entity or person that arranges trades or brings together Purchasers and Sellers without taking title to the power.

Business Day(s): Any day other than a Saturday or Sunday or a national (United States or Canadian, whichever is applicable) holiday. United States holidays shall be holidays observed by Federal Reserve member banks in New York City. Where both the Seller and the Purchaser have their principal place of business in the United States, Canadian holidays shall not apply. Similarly, where both the Seller and the Purchaser have their principal places of business in Canada, Canadian holidays shall apply and United States holidays shall not apply. In situations where one Party has its principal place of business within the United States and the other Party's principal place of business is within Canada, both United States and Canadian holidays shall apply.

California ISO: The California Independent System Operator Corporation or any successor organization.

Confirmation(s): The confirmations for transactions developed and made effective in accordance with Section 32 or Electronic Platform Confirmations.

Contract Price: The price agreed to between the Seller and the Purchaser for a transaction under the Agreement and Confirmation.

Contract Quantity: The amount of capacity and/or energy to be supplied for a transaction under the Agreement.

Control Area: An electric system capable of regulating its generation in order to maintain its interchange schedule with other electric systems and to contribute its frequency bias obligation to the interconnection as specified in the North American Electric Reliability Council (NERC) Operating Guidelines.

Costs: As defined in Section 22.3 of this Agreement.

Damages Settlement Transaction: A transaction where, after non-performance under a Confirmation, the Parties enter into a second transaction for the purpose of finally settling damages incurred by the Performing Party due to non-performance of such Confirmation.

Dealer: An entity or person that buys or sells power and takes title to the power at some point.

Defaulting Party: As defined in Section 22.1 of this Agreement.

Determination Period: As defined in Section 38.2 of this Agreement.

Documentary Writing: A document which is physically delivered by courier or U.S. mail, or a copy of which is transmitted by telefacsimile or other electronic means.

Economy Energy Service: Non-firm energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange energy that is

subject to immediate interruption upon notification, in accordance with the Agreement, including Service Schedule A, and any applicable Confirmation.

Electric Utility: An entity or lawful association which (i) is a public utility, Independent Power Producer, or Power Marketer regulated under applicable state law or the Federal Power Act, or (ii) is exempted from such regulation under the Federal Power Act because it is the United States, a State or any political subdivision thereof or an agency of any of the foregoing, or a Rural Utilities Service cooperative, or (iii) is a public utility, Independent Power Producer, or Power Marketer located in Canada or Mexico that is similarly regulated.

Electronic Platform Confirmation: agreed terms and conditions of a transaction, which agreement (a) was made through electronic entry of information and terms on, and in a manner that complies with the procedures of, the applicable electronic trading platform or exchange, (b) includes, at a minimum, the Standard Confirmation Provisions, and (c) is available to either Party for retrieval from the applicable electronic trading platform or exchange in printable or electronic form.

Electronic Writing:

- (1) Recorded oral conversation; or
- (2) electronic communications, including but not limited to e-mail, if the Parties to the transaction use such method to create an electronic writing for the Confirmation for such transaction and, except with respect to e-mail, specifically agree to the method of electronic communication.

Electronic Writings shall not include the transmittal of a copy of a document by electronic means, which is considered a Documentary Writing.

ERCOT: Electric Reliability Council of Texas, Inc., and any successor organization.

Event of Default: As defined in Section 22.1 of this Agreement.

Executive Committee: The committee established pursuant to Section 8 of this Agreement.

FERC: The Federal Energy Regulatory Commission or its regulatory successor.

Firm Capacity/Energy Sale or Exchange Service: Firm capacity and/or energy transaction whereby the Seller has agreed to sell or exchange and the Purchaser has agreed to buy or exchange for a specified period available capacity with or without associated energy which may include a Physically-Settled Option and a capacity transaction in accordance with the Agreement, including Service Schedule C, and any applicable Confirmation.

First Party: As defined in Section 27 of this Agreement.

Floating Price: As defined in Section 38.1 of this Agreement.

Gains: As defined in Section 22.3 of this Agreement.

Guarantee Agreement: An agreement providing a guarantee issued by a parent company or another entity guaranteeing responsibility for obligations arising under this Agreement and Confirmation. A sample form of Guarantee Agreement is provided in Exhibit B.

Guarantor: The entity providing a guarantee pursuant to a Guarantee Agreement.

Hub: An electronic communication center that functions as a central point to electronically receive and assemble data for offers to buy or sell power or transmission service from each Party and make that data electronically available concurrently to all Parties.

Incremental Cost: The forecasted expense incurred by the Seller in providing an additional increment of energy or capacity during a given hour.

Independent Power Producer: An entity which is a non-traditional public utility that produces and sells electricity but which does not have a retail service franchise.

Letter of Credit: An irrevocable, transferable, standby letter of credit, issued by an issuer acceptable to the Party requiring the Letter of Credit.

Losses: As defined in Section 22.3 of this Agreement.

Market Disruption Event: As defined in Section 38.2 of this Agreement.

NERC: North American Electric Reliability Council or any successor organization.

Non-Defaulting Party: As defined in Section 22.1(a) of this Agreement.

Non-Performing Party: As defined in Section 21.3(a) of this Agreement.

Non-Standard Confirmation Provisions: Provisions other than Standard Confirmation Provisions.

NYMEX: New York Mercantile Exchange and any successor organization.

Operating Agent: An agent of the WSPP as may be designated by the Executive Committee from time to time.

Operating Committee: That committee established pursuant to Section 8 of this Agreement.

Party or Parties: As defined in Section 1 of this Agreement.

Performing Party: As defined in Section 21.3(a) of this Agreement.

Power Marketer: An entity which buys, sells, and takes title to electric energy, transmission and/or other services from traditional utilities and other suppliers.

Physically-Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying power product as defined under Service Schedules B or C according to the price and exercise terms set forth in the Confirmation.

Premium: The amount paid by the Purchaser of a Physically-Settled Option to the Seller of such option by the date agreed to by the Parties in the Confirmation.

Present Value Rate: As defined in Section 22.3(b) of this Agreement.

Purchaser: Any Party which agrees to buy or receive from one or more of the other Parties any service pursuant to the Agreement and any applicable Confirmation.

Qualifying Facility: A facility which is a qualifying small power production facility or a qualifying cogeneration facility as these terms are defined in Federal Power Act Sections 3(17)(A), 3(17)(C), 3(18)(A), and 3(18)(B); which meets the requirements set forth in 18 C.F.R. §§ 292.203-292.209; or a facility in Canada or Mexico that complies with similar requirements.

Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute capacity and/or energy in place of the capacity and/or energy not delivered (for energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for

such quantity of capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, at the delivery point specified for the transaction in the Confirmation.

Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of capacity and/or energy, as determined by the Seller in a commercially reasonable manner at the delivery point specified for the transaction in a Confirmation.

Retail Entity: A retail aggregator or supplier or retail customer; provided, however, only those Retail Entities eligible for transmission service under the FERC's pro forma open access transmission tariff are eligible to become members of the WSPP.

Second Party: As defined in Section 27 of this Agreement.

Seller: Any Party which agrees to sell or provide to one or more of the other Parties any service pursuant to the Agreement and the applicable Confirmation.

Service Schedule: A schedule of services established pursuant to Section 6 of this Agreement on file with FERC as part of this Agreement.

Standard Confirmation Provisions: Provisions setting forth: Seller, Purchaser, period of delivery, schedule, delivery rate, delivery points, type of service (e.g. Service Schedule A, B, C or other), contract quantity, price, transmission path (if any), date, and certain additional information for physically settled options (option type, option style, exercise date or period, premium, premium payout date, and method for providing notice of exercise).

Successor in Operation: The successor entity which takes over the wholesale electric trading operations of the first entity either through a merger or restructuring. A Successor in Operation shall not include an entity which merely acquires power sales contracts from the first entity either through a purchase or other means without taking over the wholesale electric trading operations of the first entity.

Terminated Transaction: As defined in Section 22.2 of this Agreement.

Termination Payment: As defined in Section 22.2 of this Agreement.

Trading Day: As defined in Section 38.2 of this Agreement.

Uncontrollable Forces: As defined in Section 10 of this Agreement or in a Confirmation.

Unit Commitment Service: A capacity and/or associated scheduled energy transaction or a Physically-Settled Option under which the Seller has agreed to sell and the Purchaser has agreed to buy from a specified unit(s) for a specified period, in accordance with the Agreement, including Service Schedule B, and any applicable Confirmation.

WSPP: WSPP Inc., a corporation organized in 1995 and duly existing under the Utah Revised Nonprofit Corporation Act.

WSPP Default Transmission Tariff: The transmission tariff filed on behalf of WSPP members with FERC as it may be amended from time to time.

WSPP Homepage: WSPP's internet web site, www.wspp.org.

5. TERM, TERMINATION AND WITHDRAWAL:

- 5.1 This Agreement shall remain in effect until the Executive Committee, consistent with the voting provisions of Section 8.3, votes to terminate this Agreement and FERC accepts that termination, or FERC otherwise terminates the Agreement.
- 5.2 Any Party may withdraw its participation as a member of the WSPP and as a Party to this Agreement by providing thirty (30) days prior written notice to the Operating Agent and to the WSPP Homepage, and to all of its counterparties to outstanding transactions. As of the effective date of any withdrawal, the withdrawing Party shall have no further rights or obligations under this Agreement or as a member of the WSPP, except with respect to each outstanding Confirmation, all outstanding rights and obligations arising under any such Confirmation and this Agreement shall remain in full force and effect as if the withdrawal had not occurred. No Party shall oppose, before any court or regulatory agencies having jurisdiction, any other Party's withdrawal as provided in this Section.
- 5.3 Except as provided for in Section 5.2, after termination, or withdrawal with respect to the withdrawing Party, all rights to services provided under this Agreement shall cease, and no Party shall claim or assert any continuing right to such services thereunder. Except as provided in Section 5.2, no Party shall be required to provide services based in whole or in part on the existence of this Agreement or on the provision of services under this Agreement beyond the termination date, or date of withdrawal with respect to the withdrawing Party. If the Parties have entered into a master confirmation agreement only for WSPP

transactions as that term is defined in Section 32.10, the withdrawing Party shall have no further rights under that master confirmation agreement except for transactions that were outstanding at the time of the withdrawal.

- 5.4 The Parties subject to FERC jurisdiction under the Federal Power Act shall have the right to terminate their participation as a Member of the WSPP and as Party to this Agreement and any Confirmation without the necessity of filing with or approval by FERC, provided that such Parties comply with the requirements of Section 5.2.

6. SERVICE SCHEDULES AND WSPP DEFAULT TRANSMISSION TARIFF:

6.1 The Parties contemplate that they may, from time to time, add or remove Service Schedules under this Agreement. The attached Service Schedules A through E for Economy Energy Service, Unit Commitment Service, Firm Capacity/Energy Sale or Exchange Service, Operating Reserve – Spinning and Operating Reserve – Supplemental, and Energy Imbalance and Generator Imbalance Power, and Service Schedule R for Renewable Energy Certificate Transactions With And Without Energy, are incorporated into and made a part of this Agreement. Nothing contained herein shall be construed as affecting in any way the right of the Parties to jointly make application to FERC for a change in the rates and charges, classification, service, terms, or conditions affecting WSPP transactions under Section 205 of the Federal Power Act and pursuant to FERC rules and regulations promulgated thereunder. Additional Service Schedules or amendments to existing Service Schedules, if any, shall be adopted only by amendment of this Agreement approved by the Executive Committee pursuant to Section 8.3 and shall become effective on the effective date allowed or accepted by FERC consistent with Section 39.

6.2 **[RESERVED]**

6.3 When the WSPP Default Transmission Tariff applies as specified in the preamble to such Default Transmission Tariff, Transmission Service under it shall be available both to Parties and non-Parties under this Agreement; provided, however, each Party or non-Party must be an eligible customer under the WSPP Default Transmission Tariff in order to receive service.

7. ADMINISTRATION:

- 7.1 The WSPP shall perform the administrative tasks necessary and appropriate to implement this Agreement. All authority to direct, manage and administer the WSPP shall reside in the Executive Committee. All duties assigned under this Agreement, or otherwise, to the Operating Committee, sub-committees, officers, Administrative Committee, or Operating Agent, are delegated powers of the Executive Committee and are subject to the Executive Committee's direction and control. The WSPP may engage the services of an Operating Agent, from time to time, to perform tasks in furtherance of this Agreement.
- 7.2 At least sixty (60) days prior to each calendar year that this Agreement is in effect, the Administrative Committee shall submit a budget for said year of operation to the Operating Committee for review. The proposed budget shall then be submitted, with the Operating Committee's recommendations, to the Executive Committee. The Executive Committee may approve the budget as submitted or with revisions. The Administrative Committee, Operating Committee, and Executive Committee shall address any appropriate revisions of the budget in the same manner.
- 7.3 The WSPP shall, as necessary, bill the Parties for costs incurred under this Agreement on an estimated basis reasonably in advance of when due, and such billings shall be paid by the Parties when due. Such billings shall be adjusted in the following month(s) to reflect recorded costs. Billing and payment of WSPP costs shall otherwise be implemented in accordance with the provisions of Section 9.

- 7.4 The WSPP shall maintain the WSPP Homepage and, as it deems appropriate, may engage a contractor for this purpose.
- 7.5 Each Party shall maintain a link to the WSPP Homepage and shall be responsible for expenses related thereto.
- 7.6 The WSPP, at reasonable times and places, shall make available its books of account, and records and documentation supporting expenditures under this Agreement, for the inspection of any Party for a period of time not to exceed two (2) years from the time such expenditures were incurred. A Party requesting review of the WSPP's records shall give the WSPP sufficient notice of its intent, but in no event less than thirty (30) days. The requesting Party may perform this review using personnel from its own staff or designate a certified public accounting firm for the purpose of this review. All costs incurred to perform this review shall be at the requesting Party's own expense. The Party performing the review shall not voluntarily release the WSPP's records or disclose any information contained therein to any third party unless the written consent of the WSPP and the Executive Committee has been obtained, except as required by law.
- 7.7 Upon the termination of this Agreement, in accordance with applicable law, the WSPP shall dispose of any and all of its assets and wind up its affairs as the Executive Committee may direct.

8. EXECUTIVE AND OPERATING COMMITTEES:

As a means of securing effective and timely cooperation within the activities hereunder and as a means of dealing on a prompt and orderly basis with various problems which may arise in connection with system coordination and operation under changing conditions, the Parties hereby establish an Executive Committee and an Operating Committee.

8.1 Executive Committee:

The Executive Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5 herein. The responsibilities of the Executive Committee are as follows:

- 8.1.1 To establish and amend bylaws of the WSPP consistent with this Agreement and to serve as the Board of Directors of the WSPP in accordance with applicable law.
- 8.1.2 To establish standing or ad hoc sub-committees as it may from time to time deem necessary or appropriate and appoint or elect members thereto. Such sub-committees shall include an Administrative Committee, as a standing committee, to administer the affairs of the WSPP as the Executive Committee may direct or approve. The Administrative Committee shall be comprised of the Chairman, Vice-Chairman, Secretary and Treasurer of the WSPP and the Chairman, and Vice-Chairman, and Secretary of the Operating Committee.
- 8.1.3 To review at least annually the service activities hereunder to ensure that such activities are consistent with the spirit and intent of this Agreement.

- 8.1.4 To review any unresolved issues which may arise hereunder and endeavor to resolve the issues.
- 8.1.5 To review and approve the WSPP's annual budget under this Agreement, and any revision thereto, in accordance with Section 7.2 of this Agreement or otherwise as the Executive Committee deems necessary or appropriate.
- 8.1.6 To amend this Agreement, from time to time, provided that no such amendment or restatement shall be effective unless approved or accepted by the FERC and subject to terms and conditions of such approval or acceptance. The effectiveness of any amendment also shall be consistent with Section 39.
- 8.1.7 To review and act on the application of an entity to become a Party to this Agreement, or to delegate such authority as the Executive Committee deems appropriate.
- 8.1.8 To do such other things and carry out such duties as specifically required or authorized by this Agreement.
- 8.1.9 To notify any Party of the rescission of its interest in this Agreement due to its failure to continue to meet the requirements of Section 16.1, or to delegate such authority to the Chairman of the Executive Committee, the Chairman of the Operating Committee, or the Administrative Committee.
- 8.1.10 To arrange for legal representation of the WSPP.

8.2 Operating Committee:

The Operating Committee shall consist of one representative and an alternate from each Party designated pursuant to Section 8.5. The responsibilities of the Operating Committee are as follows:

- 8.2.1 To establish, review, approve, or modify procedures and standard practices, consistent with the provisions hereof, for the guidance of operating employees in the Parties' electric systems as to matters affecting transactions under this Agreement.
- 8.2.2 To submit to the Executive Committee any proposed revisions to the Service Schedules or proposed additional Service Schedules.
- 8.2.3 To submit to the Executive Committee proposed amendments to this Agreement, provided that the Operating Committee shall have no authority to amend this Agreement, and further provided that the Executive Committee may amend this Agreement under Section 8.1.6 without having first received recommendations from the Operating Committee.
- 8.2.4 To establish, review, approve, or modify any scheduling or operating procedures required in connection with transactions under this Agreement.
- 8.2.5 To review and make recommendations to the Executive Committee for approval of the annual budget of the WSPP under this Agreement, including any proposed revisions thereto.
- 8.2.6 To review and recommend as necessary the types and arrangement of equipment for intersystem communication facilities to enhance transactions and benefits under this Agreement.
- 8.2.7 To monitor the administration and costs of the WSPP Homepage.
- 8.2.8 If the Executive Committee so directs, to review new member applications for membership in the WSPP under this Agreement and make

recommendations on said applications to the Executive Committee, or to delegate such authority as the Operating Committee deems appropriate.

8.2.9 To establish standing or ad hoc sub-committees and appoint or elect members of the Operating Committee thereto, provided that such sub-committees shall make recommendations to the Operating Committee and shall not be authorized to take any action or exercise any power reserved to the Operating Committee. Each sub-committee may elect a chairman, vice chairman, and secretary as it deems appropriate.

8.2.10 To do such other things and carry out such duties as specifically required or authorized by this Agreement or as directed by the Executive Committee; provided, however, that the Operating Committee shall have no authority to amend this Agreement.

8.3 All matters which require Operating Committee or Executive Committee approval as provided in this Agreement shall be by no less than ninety percent (90%) affirmative agreement of the committee members present or voting by proxy.

8.4 Unless otherwise agreed by all committee members of the Executive Committee or Operating Committee, as applicable, the Chairman of the Executive Committee and the Chairman of the Operating Committee shall cause all members of the applicable committee to receive notice of a committee meeting at least ten (10) Business Days prior to the date of the meeting. Such notice shall include an agenda of matters to be discussed and voted on at the meeting. All material issues to be submitted to a vote of the committee shall appear on the agenda.

- 8.5 In accordance with Section 16.5.1, each Party shall give notice to the WSPP of the name of its designated representative and alternate representative (to act in the absence of the designated representative) on each of the Executive Committee and Operating Committee, and of any changes thereto, and WSPP shall publish a listing of all such representatives on the WSPP Homepage. Each Party's designated representatives shall be authorized to act on its behalf with respect to votes taken of members of each committee and other activities of the committee.
- 8.6 The Executive Committee shall meet no less than once annually and otherwise as determined by its Chairman in his discretion. The Operating Committee shall meet as necessary, as determined by its Chairman in his discretion. A Chairman shall call a meeting of such committee upon the written request of not less than ten (10) members of the applicable committee.
- 8.7 The Executive Committee shall elect a Chairman, Vice-Chairman, Secretary and Treasurer. The Operating Committee shall elect a Chairman, Vice-Chairman, and Secretary. These officers shall serve terms of two-years duration, which terms shall commence on January 1 of the year following the election and expire on December 31 of the subsequent year, provided, that despite the expiration of an officer's term, the officer shall continue to serve until the officer's successor is elected and commences to serve, and further provided that with or without cause, the Executive Committee or Operating Committee, as applicable, may elect a substitute officer prior to the expiration of a term.
- 8.7.1 The Chairman of the Executive Committee shall be the Chairman of the WSPP. The Chairman shall preside over meetings of the Executive

Committee and, when the Executive Committee is not in session, exercise day to day management and control of the business and affairs of the WSPP, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.2 The Vice-Chairman of the Executive Committee shall be the Vice-Chairman of the WSPP. The Vice-Chairman, in the absence or disability of the Chairman, shall exercise the powers and perform the duties of the Chairman and such other duties as the Executive Committee or the Chairman may prescribe, subject at all times to this Agreement and the direction of the Executive Committee.

8.7.3 The Secretary of the Executive Committee shall be the Secretary of the WSPP. The Secretary, or his designee, shall record minutes of meetings and actions of the Executive Committee, perform the customary duties of a secretary of a non-profit corporation, and attend to the giving and serving of all notices required by law or under this Agreement as the Chairman may direct.

8.7.4 The Treasurer of the Executive Committee shall be the Treasurer of the WSPP. The Treasurer shall have custody of all funds, securities, and evidences of indebtedness of the Corporation. The Treasurer shall receive and give receipts for moneys paid in on account of the Corporation and shall pay out of the funds on hand any bills, payrolls and other just debts of the Corporation of whatever nature upon maturity. The Treasurer shall maintain full and accurate accounts of all moneys received and paid out on account of

the Corporation. The Treasurer shall deposit all moneys and other valuables in the name and to the credit of the Corporation in such depositories as may be designated by the Executive Committee. The Treasurer shall adhere to budgets determined by the Executive Committee, including the annual budget under section 8.1.4 of this Agreement, and shall perform such other duties as are customary for a treasurer of a non-profit corporation.

- 8.7.5. The Chairman of the Operating Committee shall preside over Operating Committee meetings. The Vice Chairman of the Operating Committee shall serve in the absence of the Chairman and perform such other duties as the Operating Committee may assign. The Secretary of the Operating Committee, or his designee, shall record minutes of meetings and actions of the Operating Committee, and shall give notice of meetings as the Chairman may direct.

9. PAYMENTS:

- 9.1 The accounting and billing period for transactions under this Agreement shall be one (1) calendar month. Bills sent to any Party shall be sent to the appropriate billing address as set forth on the WSPP homepage or as otherwise specified by such Party.
- 9.2 Payments for amounts billed under this Agreement and any Confirmation shall be received by the Party to be paid on the 20th day of the month in which the invoice was received or the tenth (10) day after receipt of the bill, whichever is later. Notwithstanding the foregoing, Premiums shall be paid within three (3) Business Days of receipt of the invoice. Payment shall be made at the location designated by the Party to which payment is due. Payment shall be considered received when payment is received by the Party to which Payment is due at the location designated by that Party. If the due date falls on a non-Business Day of either Party, then the payment shall be due on the next following Business Day.
- 9.3 Amounts not paid on or before the due date shall be payable with interest calculated daily, at a rate equal to 200 basis points above the per annum Prime Rate reported daily in the Wall Street Journal for the period beginning on the day after the due date and ending on the day of payment, provided that such interest shall not exceed the amount permitted by law.
- 9.4 In order to dispute a bill in whole or in part, a Party must provide written notice of the dispute to the other Party to the transaction. Such written notice shall specify the amount in dispute and state the basis for the dispute. In case any portion of any bill is in dispute, the entire bill shall be paid when due. Any excess amount

of bills which, through inadvertent errors or as a result of a dispute, may have been overpaid shall be returned by the owing Party upon determination of the correct amount, with interest calculated in the manner set forth in Section 9.3. A Party shall have the right to dispute the accuracy of any bill or payment only for a period of two (2) years from the date on which the bill was initially delivered.

9.5 If a Party's records reveal that a bill was not delivered, then the Party may deliver to the appropriate Party a bill within two (2) years from the date on which the bill would have been delivered under Section 9.1 of this Agreement. The right to payment is waived with respect to any amounts not billed within such two (2) year period.

9.6 Each Party, or any third party representative of a Party, shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates, or statements of charges submitted hereunder for a period of two (2) years from the date the bill was delivered under this Agreement and/or Confirmation.

Within a two (2) year period from the date on which the bill was initially delivered, any Party to the applicable transaction may request in writing copies of the records of the other Party for that transaction to the extent reasonably necessary to verify the accuracy of any statement or charge. The Party from which documents or data has been requested shall provide all reasonably requested documents and data within a reasonable time period.

10. UNCONTROLLABLE FORCES:

No Party shall be considered to be in breach of this Agreement or any applicable Confirmation to the extent that a failure to perform its obligations under this Agreement or any such Confirmation is due to an Uncontrollable Force. The term "Uncontrollable Force" means an event or circumstance which prevents one Party from performing its obligations under one or more transactions, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or nonaction by, or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority.

The following shall not be considered "Uncontrollable Forces": (i) Seller's cost of obtaining capacity and/or energy; or (ii) Purchaser's inability due to the price of the capacity and/or energy, to use or resell such capacity and/or energy. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to removable or remediable causes which it fails to remove or remedy within a reasonable time period. Nothing contained herein shall be construed to require a Party to settle any strike or labor dispute in which it may be involved. Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall give prompt notice of such fact and shall

exercise due diligence, as provided above, to remove such inability within a reasonable time period. If oral notice is provided, it shall be promptly followed by written notice.

Where the entity providing transmission services for transactions under this Agreement and Confirmation interrupts such transmission service, the interruption in transmission service shall be considered an Uncontrollable Force under this Section 10 only in the following two sets of circumstances:

- (1) An interruption in transmission service shall be considered an Uncontrollable Force if (a) the Parties agreed on a transmission path for that transaction in the Confirmation (b) firm transmission involving that transmission path was obtained pursuant to a transmission tariff or contract to effectuate the transaction under this Agreement and Confirmation, and (c) the entity providing transmission service curtailed or interrupted such firm transmission pursuant to the applicable transmission tariff or contract. There shall be no due diligence obligation associated with interruptions under this subparagraph (1).
- (2) If the Parties did not agree on the transmission path for a transaction in the Confirmation, an interruption in transmission service shall be considered an Uncontrollable Force only if (a) the Party contracting for transmission services shall have made arrangements with the entity providing transmission service for firm transmission to effectuate the transaction under the Agreement and Confirmation, (b) the entity providing transmission service curtailed or interrupted such transmission service, and (c) the Party which contracted for such firm transmission services could not obtain alternate energy at the delivery point,

alternate transmission services, or alternate means of delivering energy after exercising due diligence.

No Party shall be relieved by operation of this Section 10 of any liability to pay for power delivered to the Purchaser or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Uncontrollable Force.

11. WAIVERS:

Any waiver at any time by any Party of its rights with respect to a default under this Agreement or any Confirmation, or any other matter under this Agreement, shall not be deemed a waiver with respect to any subsequent default of the same or any other matter.

12. NOTICES:

12.1 Except for the oral notice provided for in Section 10 of this Agreement, any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person, or sent by either registered or certified mail (postage prepaid), prepaid telegram, fax, or overnight delivery (with record of receipt).

12.2 Notices and requests of a routine nature applicable to delivery or receipt of capacity and/or energy shall be given in such manner as the Parties to a transaction shall prescribe in a Confirmation or otherwise; provided, however, if the Parties have not prescribed a method of providing such routine notices, then the procedures in Section 12.1 shall apply.

13. EFFECT OF APPROVALS:

- 13.1 This Agreement and all Confirmations are subject to valid laws, orders, rules and regulations of duly constituted authorities having jurisdiction. Nothing contained in this Agreement or any Confirmation shall give FERC jurisdiction over those Parties not otherwise subject to such jurisdiction or be construed as a grant of jurisdiction over any Party by any state or federal agency not otherwise having jurisdiction by law.
- 13.2 Nothing in this Agreement or any Confirmation is intended to restrict the authority of the Bonneville Power Administration (BPA) pursuant to applicable statutory authority to use its existing wholesale power and transmission rates or to adopt new rates, rate schedules, or general rate schedule provisions for application under this Agreement and obtain interim or final approval of those rates from FERC pursuant to Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Sec. 839e, provided such rates do not exceed the maximum rates in the applicable Service Schedule and are consistent with the terms and conditions of said Service Schedule.
- 13.3 Nothing contained in this Agreement or any Confirmation shall be construed to establish any precedent for any other agreement or to grant any rights to or impose any obligations on any Party beyond the scope and term of this Agreement or any Confirmation.

14. TRANSFER OF INTEREST IN AGREEMENT:

No Party shall voluntarily transfer its membership in the WSPP under this Agreement without the written consent and approval of all other Parties except to a Successor in Operation of such Party. With regard to the transfer of the rights and obligations of any Party associated with transactions under this Agreement and Confirmation(s), neither Party to such transactions may assign such rights or obligations unless (a) the other Party provides its prior written consent which shall not be unreasonably withheld; or (b) the assignment is to a Successor in Operation which provides reasonable creditworthiness assurances (see Section 27 for examples of such assurances) if required by the non-assigning Party based upon its reasonably exercised discretion. Any successor or assignee of the rights of any Party, whether by voluntary transfer, judicial or foreclosure sale or otherwise, shall be subject to all the provisions and conditions of this Agreement and Confirmation(s) (where applicable) to the same extent as though such successor or assignee were the original Party under this Agreement or the Confirmation(s), and no assignment or transfer of any rights under this Agreement or any Confirmation(s) shall be effective unless and until the assignee or transferee agrees in writing to assume all of the obligations of the assignor or transferor and to be bound by all of the provisions and conditions of this Agreement and any Confirmation(s) (where applicable). The execution of a mortgage or trust deed or a judicial or foreclosure sale made thereunder shall not be deemed a voluntary transfer within the meaning of this Section 14.

15. SEVERABILITY:

In the event that any of the terms, covenants or conditions of this Agreement or any Confirmation, or the application of any such term, covenant or condition, shall be held invalid as to any person or circumstance by any court, regulatory agency, or other regulatory body having jurisdiction, all other terms, covenants or conditions of this Agreement and the Confirmation and their application shall not be affected thereby, but shall remain in force and effect unless a court, regulatory agency, or other regulatory body holds that the provisions are not separable from all other provisions of this Agreement or such Confirmation(s).

16. MEMBERSHIP:

- 16.1 Any Electric Utility, Retail Entity or Qualifying Facility may become a Party to this Agreement. The Executive Committee shall notify such Electric Utility, Retail Entity or Qualifying Facility of its decision within sixty (60) days of a request to become a Party to this Agreement, and any acceptable entity shall become a Party hereto by the execution of this Agreement or a counterpart hereof, payment of costs pursuant to Section 16.4, and concluding any necessary acceptance or approval referred to in Section 13. Any such Party, if it is subject to the ratemaking jurisdiction of FERC, shall be responsible for any FERC filing necessary for it to implement its performance under this Agreement.
- 16.2 Each Party shall continue to meet the requirements of Section 16.1 in order to remain a Party to this Agreement
- 16.3 Being a Party to this Agreement shall not serve as a substitute for contractual arrangements that may be needed between any Party which operates a Control Area and any other Party which operates within that Control Area.
- 16.4 Any entity that becomes a Party to this Agreement which was not a party to the experimental Western Systems Power Pool Agreement shall pay a one time fee of \$25,000 under this Agreement in recognition of prior efforts and costs incurred by the parties to the experimental Western Systems Power Pool Agreement, which efforts greatly facilitated development of this Agreement. Such fee shall be credited to future costs of the WSPP incurred hereunder.

16.5 In addition to requirements set forth elsewhere in this Agreement imposed on Parties as part of their membership in the WSPP, each Party shall abide by the following requirements:

16.5.1 Each Party shall maintain updated information regarding its Executive Committee and Operating Committee representatives on the WSPP Homepage and shall submit changes within a reasonable time period.

16.5.2 With regard to disputes involving transactions under this Agreement or other agreements, no Party shall seek to conduct discovery of the WSPP or issue or seek to obtain the issuance of any subpoena to the WSPP or WSPP officers acting in their capacities as officers of the WSPP or of the WSPP's attorneys or consultants with regard to their work for the WSPP or their opinions regarding the construction or interpretation of any clause of the Agreement, provided that the foregoing prohibition shall not apply in proceedings brought against the WSPP. In the event a Party seeks to compel discovery or testimony in violation of this Section, that Party shall be deemed to have consented to the quashing of the subpoena or other process providing therefor. Notwithstanding any other provision in this Agreement, a Party that seeks to conduct discovery or issue or seek to obtain the issuance of any subpoena in breach of this provision shall compensate the WSPP and its officers, attorneys, and consultants, as applicable, for all out-of-pocket costs incurred.

16.6 An entity shall become a Party to this Agreement and a member of the WSPP upon satisfaction of the requirements in this Section 16 and on the date allowed

by FERC if it is a FERC public utility or upon the date of satisfaction of the requirements in this Section 16 if it is not a FERC public utility.

17. RELATIONSHIP OF PARTIES:

- 17.1 Nothing contained in this Agreement or in any Confirmation shall be construed to create an association, joint venture, trust, or partnership, or agency relationship between or among the Parties, or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement and under any applicable Confirmation.
- 17.2 All rights and obligations of the Parties under this Agreement are several and are not joint.

18. NO DEDICATION OF FACILITIES:

Any undertaking by one Party to another Party under any provision of this Agreement shall not constitute the dedication of the electric system or any portion thereof of the undertaking Party to the public or to the other Party, and it is understood and agreed that any such undertaking under any provision of this Agreement by a Party shall cease upon the termination of such Party's obligations under this Agreement.

19. NO RETAIL SERVICES:

Nothing contained in this Agreement shall grant any rights to or obligate any Party to provide any services hereunder directly to or for retail customers of any Party.

20. THIRD PARTY BENEFICIARIES:

This Agreement shall not be construed to create rights, in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, obligation or undertaking established herein except as provided for in Section 14.

21. LIABILITY AND DAMAGES:

21.1 This Agreement contains express remedies and measures of damages in Sections 21.3 and 22 for non-performance or default. This Agreement also contains additional remedies to enforce payment of monies due and to enforce terms of the Agreement and applicable Confirmations in Section 21.2.

ALL OTHER DAMAGES OR REMEDIES ARE HEREBY WAIVED.

Therefore, except as provided in Sections 21.3 and 22, no Party or its directors, members of its governing bodies, officers or employees shall be liable to any other Party or Parties for any loss or damage to property, loss of earnings, or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement (including any applicable Confirmation), including any negligence arising hereunder. Any liability or damages incurred by an officer or employee of a Federal agency or by that agency that would result from the operation of this provision shall not be inconsistent with Federal law.

21.2 Any Party due monies under this Agreement, the amounts of which are not in dispute or if disputed have been the subject of a decision awarding monies, (i) shall have the right to seek payment of such monies in any forum having competent jurisdiction and (ii) shall possess the right to seek relief directly from that forum without first utilizing the mediation or arbitration provisions of this Agreement and without exercising termination and liquidation rights under Section 22.

In addition, each Party shall possess the right to seek specific performance (injunctive relief) of the non-delivery related terms of this Agreement and any Confirmation in any forum having competent jurisdiction. In seeking to enforce the terms of this Agreement, however, consistent with Section 21.1, no Party is entitled to receive or recover monetary damages except as provided in Sections 21.3 and 22.

21.3 The following damages provision shall apply to all transactions under this Agreement. For transactions under Service Schedule A, however, this damages provision or some other damages provision will apply only if such a damages provision is agreed to through a Confirmation. The damages under this Section 21.3 apply to a Party's failure to deliver or receive (or make available in the case of capacity) capacity and/or energy in violation of the terms of the Agreement and any Confirmation. The Contract Quantity and Contract Price referred to in this Section 21.3 are part of the agreement between the Parties for which damages are being calculated under this Section.

(a) If either Party fails to deliver or receive (or make available in the case of capacity), as the case may be, the quantities of capacity and/or energy due under the Agreement and any Confirmation (thereby becoming a "Non-Performing Party" for the purposes of this Section 21.3), the other party (the "Performing Party") shall be entitled to receive from the Non-Performing Party an amount calculated as follows (unless performance is excused by Uncontrollable Forces as provided in Section 10, the applicable Service Schedule, or by the Performing Party):

- (1) If the amount the Purchaser scheduled or received in any hour is less than the applicable hourly Contract Quantity, then the Purchaser shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Contract Price differed from the Resale Price (Contract Price - Resale Price) and the amount by which the quantity provided to the Purchaser was less than the hourly Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which the Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Purchaser's schedule or receipt of electric energy (based on Seller's reasonable commercial efforts to achieve such reduction). If the total amounts for all hours calculated under this paragraph (1) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(1).
- (2) If the amount the Seller scheduled or delivered (or made available in the case of capacity) in any hour is less than the applicable hourly Contract Quantity, then the Seller shall be liable for (a) the product of the amount (whether positive or negative), if any, by which the Replacement Price differed from the Contract Price (Replacement Price - Contract Price) and the amount by which the quantity provided by the Seller was less than the hourly Contract

Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which the Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in the Seller's schedule or delivery (based on Purchaser's reasonable commercial effort to achieve such reduction). If the total amounts for all hours calculated under this paragraph (2) are negative, then neither the Purchaser nor the Seller shall pay any amount under this Section 21.3(a)(2).

- (3) The Non-Performing Party also shall reimburse the Performing Party for any charges imposed on the Performing Party under open access transmission or FERC accepted or approved tariffs for regional organizations due to the non-performance.
- (4) The Non-Performing Party shall pay any amount due from it under this section within the billing period as specified in Section 9 of this Agreement or agreed to in the applicable Confirmation if the Parties agreed to revise the billing period in Section 9.
- (5) In the event (a) two Parties entered into two or more Confirmations in which the same Party is the Purchaser and the other Party is the Seller, (b) deliveries under two or more of such Confirmations are to occur, in whole or in part, on the same date and hour, and at the same delivery point, and (c) as to such date, hour, and delivery point, and with respect to one or more of such Confirmations, a

Party is a Non-Performing Party (for purposes of this Section 21.3(a)(5), each such instance of non-performance, a “non-performed transaction”), then, as set out in this Section 21.3(a)(5), each non-performed transaction shall be identified to a Confirmation, and the Contract Price of the Confirmation to which the non-performed transaction is identified, and the Contract Quantity of the non-performed transaction, shall be applied to the calculation of amounts due under Section 21.3(a)(1) through (3), as applicable.

The Parties in good faith shall seek to agree to the identification of each non-performed transaction to a Confirmation.

Each non-performed transaction not identified to a Confirmation by agreement, and any megawatt hours that are not fully accounted for by such identification, shall be identified to Confirmation(s) as follows:

- (i) The Performing Party in good faith shall determine whether each Confirmation is real-time, day-ahead, or forward; all Confirmations that are not real-time or day-ahead shall be deemed forward Confirmations.
- (ii) The Performing Party in good faith shall determine whether each non-performed transaction is real-time, day-ahead, or forward; all non-performed transactions that are not real-time or day-ahead shall be deemed forward non-performed transactions.

- (iii) The Performing Party shall:
 - (x) identify real-time non-performed transactions to real-time Confirmations, provided, that if the megawatt hours of real-time non-performed transactions exceed the megawatt hours of real-time Confirmations, then such excess megawatt hours shall be identified to day-ahead Confirmations and any excess megawatt hours remaining after such identification to day-ahead Confirmations shall be identified to forward Confirmations.
 - (y) identify day-ahead non-performed transactions to day-ahead Confirmations, provided, that if the megawatt hours of day-ahead non-performed transactions exceed the megawatt hours of day-ahead Confirmations, then such excess megawatt hours shall be identified to forward Confirmations.
 - (z) identify all remaining non-performed transactions to forward Confirmations.

The Performing Party, in its billing for amounts due under Section 21.3(a)(1) through (3), shall set out a detailed explanation of each applicable determination under parts (i), (ii), and (iii) of this Section 21.3(a)(5), and state the resulting Contract Quantity and Contract Price, and any amounts associated with each such determination under Section 21.3(a)(3).

- (b) The Parties agree that the amounts recoverable under this Section 21.3 are a reasonable estimate of loss and not a penalty, and represent the sole and exclusive remedy for the Performing Party. Such amounts are payable for the loss of bargain and the loss of protection against future risks.
- (c) Each Party agrees that it has a duty to mitigate damages in a commercially reasonable manner to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.
- (d) In the event the Non-Performing Party disputes the calculation of the damages under this Section 21.3, the Non-Performing Party shall pay the full amount of the damages as required by Section 9 of this Agreement to the Performing Party. After informal dispute resolution as required by Section 34.1, any remaining dispute involving the calculation of the damages shall be referred to binding dispute resolution as provided by Section 34.2 of this Agreement. If resolution or agreement results in refunds or the need for refunds to the Non-Performing Party, such refunds shall be calculated in accordance with Section 9.4 of this Agreement.
- (e) In the event non-performance of a transaction is accounted for by means of a Damages Settlement Transaction and the Damages Settlement Transaction is performed, then no damages shall be calculated or due under § 21.3(a) with respect to the non-performed transaction. Neither Party shall be required to enter into a Damages Settlement Transaction.

22. DEFAULT OF TRANSACTIONS UNDER THIS AGREEMENT AND CONFIRMATIONS:

22.1 EVENTS OF DEFAULT

An "Event of Default" shall mean with respect to a Party ("Defaulting Party"):

- (a) the failure by the Defaulting Party to make, when due, any payment required pursuant to this Agreement or Confirmation if such failure is not remedied within two (2) Business Days after written notice of such failure is given to the Defaulting Party by the other Party ("the Non-Defaulting Party"). The Non-Defaulting Party shall provide the notice by facsimile to the designated contact person for the Defaulting Party and also shall send the notice by overnight delivery to such contact person; or
- (b) the failure by the Defaulting Party to provide clear and good title as required by Section 33.3, or to have made accurate representations and warranties as required by Section 37 and such failure is not cured within five (5) Business Days after written notice thereof to the Defaulting Party; or
- (c) The institution, with respect to the Defaulting Party, by the Defaulting Party or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
- (d) The failure by the Defaulting Party to provide adequate assurances of its ability to perform all of its outstanding material obligations to the Non-

Defaulting Party under the Agreement or any Confirmation pursuant to Section 27 of this Agreement or any substitute or modified provision in any Confirmation.

- (e) With respect to its Guarantor, if any:
 - (i) if a material representation or warranty made by a Guarantor in connection with this Agreement, or any transaction entered into hereunder, is false or misleading in any material respect when made or when deemed made or repeated; or
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guarantee made in connection with this Agreement, including any transaction entered into hereunder, and such failure shall not be remedied within three (3) Business Days after written notice; or
 - (iii) the institution, with respect to the Guarantor, by the Guarantor or by another person or entity of a bankruptcy, reorganization, moratorium, liquidation or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor's rights or a petition is presented or instituted for its winding-up or liquidation; or
 - (iv) the failure, without written consent of the other Party, of a Guarantor's guarantee to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to

the satisfaction of all obligations of such Party under each transaction to which such guarantee shall relate; or

- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, any guarantee.

22.2 REMEDIES FOR EVENTS OF DEFAULT

22.2(a) If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance of transactions under this Agreement; provided, however, (i) in no event shall any such suspension continue for longer than ten (10) Business Days; (ii) such suspension must include all transactions under this Agreement in effect as of the date of the suspension between the Defaulting Party and the Non-Defaulting Party; and (iii) such suspension is available only once for each default. This ten (10) day suspension period shall not affect in any way the thirty (30) day period for exercising a right of termination under Section 22.2(b). The Non-Defaulting Party shall have the unilateral right to exercise its rights under this Agreement including its termination rights at any time within the suspension period. The Defaulting Party shall have no suspension rights. In no event shall the suspension continue beyond the cure of or waiver by the Non-Defaulting Party of the applicable Event of Default. If the Non-Defaulting Party seeks to terminate the suspension period such that the suspension shall be terminated prior to the end of the ten (10) Business Day period specified above, it may do so only by providing at least

twenty-four (24) hours written notice to the Defaulting Party before the suspension may be terminated.

22.2(b) If an Event of Default occurs, the Non-Defaulting Party shall possess the right to terminate all transactions between the Parties under this Agreement upon written notice (by facsimile or other reasonable means) to the Defaulting Party, such notice of termination to be effective immediately upon receipt. If the Non-Defaulting Party fails to exercise this right of termination within thirty (30) days following the time when the Event of Default becomes known (or more than thirty days if the Non-Defaulting and Defaulting Parties agree to an extension), then such right of termination shall no longer be available to the Non-Defaulting Party as a remedy for the Event(s) of Default; provided, however, this thirty day requirement for exercising termination rights shall not apply to defaults pursuant to Sections 22.1(c) and 22.1(e)(iii). The Non-Defaulting Party terminating transaction(s) under this Section 22.2 may do so without making a filing at FERC.

If the Non-Defaulting Party elects to terminate under this Section, it shall be required to terminate all transactions between the Parties under the Agreement at the same time. Upon termination, the Non-Defaulting Party shall liquidate all transactions as soon as practicable, provided that in no event will the Non-Defaulting Party be allowed to liquidate Service Schedule A transactions. The payment associated with termination ("Termination Payment") shall be calculated in accordance with this

Section 22.2 and Section 22.3. The Termination Payment shall be the sole and exclusive remedy for the Non-Defaulting Party for each terminated transaction ("Terminated Transaction") for the time period beginning at the time notice of termination under this Section 22 is received. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it under Section 21.3 of this Agreement or Confirmation(s), and any other remedies available to it at law or otherwise.

Upon termination, the Non-Defaulting Party may withhold any payments it owes the Defaulting Party for any obligations incurred prior to termination under this Agreement or Confirmation(s) until the Defaulting Party pays the Termination Payment to the Non-Defaulting Party. The Non-Defaulting Party shall possess the right to set-off the amount due it under this Section 22 by any such payments due the Defaulting Party as provided in Section 22.3(d).

22.3 LIQUIDATION CALCULATION OPTIONS

The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) The Gains and Losses shall be determined by comparing the value of the remaining term, transaction quantities, and transaction prices under each Terminated Transaction had it not been terminated to the equivalent quantities and relevant market prices for the remaining term either quoted by a bona fide third-party offer or which are reasonably expected to be available in the market under a replacement contract for each Terminated

Transaction. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from Dealers in energy contracts, any or all of the settlement prices of the NYMEX power futures contracts (or NYMEX power options contracts in the case of Physically-Settled Options) and other bona fide third party offers, all adjusted for the length of the remaining term and differences in transmission. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into replacement transactions in order to determine the Termination Payment.

- (b) The Gains and Losses calculated under paragraph (a) shall be discounted to present value using the Present Value Rate as of the time of termination (to take account to the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of the Terminated Transactions; and
- (c) The Non-Defaulting Party shall set off or aggregate, as appropriate, the Gains and Losses (as calculated in Section 22.3(a)) and Costs and notify

the Defaulting Party. If the Non-Defaulting Party's aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party shall, within three (3) Business Days of receipt of such notice, pay the Termination Payment to the Non-Defaulting Party, which amount shall bear interest at the Present Value rate from the time notice of termination was received until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Non-Defaulting Party, after any set-off as provided in paragraph (d), shall pay the remaining amount to the Defaulting Party within three (3) Business Days of the date notice of termination was received including interest at the Present Value from the time notice of termination was received until the Defaulting Party receives payment.

- (d) The Non-Defaulting Party shall aggregate or set off, as appropriate, at its election, any or all other amounts owing between the Parties (discounted at the Present Value Rate) under this Agreement and any Confirmation against the Termination Payment so that all such amounts are aggregated and/or netted to a single liquidated amount. The net amount due from any such liquidation shall be paid within three (3) Business Days following the date notice of termination is received.
- (e)
 - (i) If the Non-Defaulting Party owes the Defaulting Party monies under this Section 22.3, then notwithstanding the three Business Day payment requirement detailed above, the Non-Defaulting Party may elect to pay the Defaulting Party the monies owed under this Section 22.3 over the remaining life of the contract(s) being

terminated. The Non-Defaulting Party may make this election by providing written notice to the Defaulting Party within three Business Days of the notice being provided to terminate and liquidate under this Section 22.3. The Non-Defaulting Party shall provide the Defaulting Party with the details on the method for recovering the monies owed over the remaining life of the contract(s). That method shall ensure that the Defaulting Party receives a payment each month through the end of the term of each contract which allows it to receive the monies which would have been due it under Sections 22.3(c) and (d) in total (to be recovered over the term of the contract(s) to replicate as closely as possible the payment streams under such contract(s)) provided that the discounting using the Present Value Rate referenced in Section 22.3 (b) shall not be reflected in determining the amounts to be recovered under this provision. Any disputes as to the methodology shall be resolved pursuant to the dispute resolution procedures in Section 34, with binding arbitration pursuant to Section 34.2 required for disputes as to the methodology if mediation is unsuccessful.

- (ii) This Section 22.3(e) and the rights and obligations under it shall survive termination of any applicable transactions or agreements.
- (iii) The Party owed monies under this Section 22.3(e) shall have the right to request credit assurances consistent with Section 27 even

after termination of any contract or transaction.

- (iv) If the Party owing money defaults on its payment obligations consistent with Section 22.1(a) or defaults with regard to providing credit assurances consistent with Section 22.1(d), then the other Party shall have the right (by written notice) at any time after the Party owing money defaults to require that Party to pay all monies owed under all of the contracts subject to this Section 22.3(e) within three Business Days of receipt of the written notice. The monies to be paid under this accelerated payment provision shall be the remaining amounts to be paid under the contract(s) reflecting a discount using the Present Value Rate from the date of the written notice.
- (f) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal dispute resolution as provided in Section 34.1 of this Agreement and thereafter binding dispute resolution pursuant to Section 34.2 if the informal dispute resolution does not succeed in resolving the dispute. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party within three (3) Business Days (except if the option under 22.3(e) has been invoked in which case the payment times in that provision would apply) of receipt of notice as set forth in Sections 22.3(c) and (d) subject to the Non-Defaulting Party

refunding, with interest, pursuant to Section 9.4, any amounts determined to have been overpaid.

(g) For purposes of this Section 22.3:

- (i) "Gains" means the economic benefit (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (ii) "Losses" means the economic loss (exclusive of Costs), if any, resulting from the termination of the Terminated Transactions, determined in a commercially reasonable manner as calculated in accordance with this Section 22.3;
- (iii) "Costs" means brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any specifically related arrangements which replace a Terminated Transaction, transmission and ancillary service costs associated with Terminated Transactions, and reasonable attorneys' fees, if any, incurred in connection with the Non-Defaulting Party enforcing its rights with regard to the Terminated Transactions. The Non-Defaulting Party shall use reasonable efforts to mitigate or eliminate these Costs.
- (iv) In no event, however, shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

22A. DEFAULT IN PAYMENT OF WSPP OPERATING COSTS:

22A.1 A Party shall be deemed to be in default in payment of its share of WSPP operating costs pursuant to Section 7 of this Agreement, if any, when payment is not received within ten (10) days after receipt of written notice. A default by any Party in such payment obligations shall be cured by payment of all overdue amounts together with interest accrued at the rate of one percent (1%) per month, or the maximum interest rate permitted by law, if any, whichever is less, prorated by days from the due date to the date the payment curing the default is made unless and until the Executive Committee shall determine another rate.

22A.2 A defaulting Party, which is in default under Section 22.A1, shall be liable for all costs, including costs of collection and reasonable attorney fees, plus interest as provided in Section 22.A1 hereof.

22A.3 The rights under this Agreement of a Party which is in default of its obligation to pay operating costs under this Agreement for a period of three (3) months or more may be revoked by a vote of the non-defaulting Parties' representatives on the Executive Committee consistent with Section 8.3. The defaulting Party's rights shall not be revoked, however, unless said Party has received at least thirty (30) days written notice of the non-defaulting Parties' intent to revoke such rights. Said notice shall state the date on which the revocation of rights shall become effective if the default is not cured and shall state all actions which must be taken or amounts which must be paid to cure the default. This provision allowing the non-defaulting Parties to revoke such rights is in addition to any other remedies provided in this Agreement or at law and shall in no way limit the non-defaulting

Parties' ability to seek judicial enforcement of the defaulting Party's obligations to pay its share of the operating costs under this Agreement. Upon the effective date of such revocation of rights, the defaulting party shall not be allowed to enter into any new transactions under this Agreement. The defaulting party under the Agreement and Confirmation(s) shall be required to carry out all obligations that existed prior to the effective date of such revocation. If a defaulting Party's rights under this Agreement have been revoked, the Executive Committee may restore that Party's rights upon the defaulting Party paying all amounts due and owing under this Agreement.

22A.4 Upon revocation of the rights of a defaulting Party under this Agreement, costs of the WSPP hereunder shall be equally shared among the remaining Parties. Cost allocation adjustments shall be retroactive to the date of the default.

23. OTHER AGREEMENTS:

No provision of this Agreement shall preclude any Party from entering into other agreements or conducting transactions under existing agreements with other Parties or third parties. This Agreement shall not be deemed to modify or change any rights or obligations under any prior contracts or agreements between or among any of the Parties.

24. GOVERNING LAW:

This Agreement and any Confirmation shall be governed by and construed in accordance with the laws of the State of Utah, without regard to the conflicts of laws rules thereof. The foregoing notwithstanding, (1) if both the Seller and Purchaser are organized under the laws of Canada, then the laws of the province of the Seller shall govern, or (2) if the Seller or Purchaser is an agency of or part of the United States Government, then the laws of the United States of America shall govern.

25. JUDGMENTS AND DETERMINATIONS:

Whenever it is provided in this Agreement that a Party shall be the sole judge of whether, to what extent, or under what conditions it will provide a given service, its exercise of its judgment shall be final and not subject to challenge. Whenever it is provided that (i) a service under a given transaction may be curtailed under certain conditions or circumstances, the existence of which are determined by or in the judgment of a Party, or (ii) the existence of qualifications for membership shall be determined by the Executive Committee pursuant to Section 16, that Party's or the Executive Committee's determination or exercise of judgment shall be final and not subject to challenge if it is made in good faith and not made arbitrarily or capriciously.

26. COMPLETE AGREEMENT:

This Agreement and the Confirmation(s), shall constitute the full and complete agreement of the Parties with respect to a transaction, except as provided under Section 32.4.

27. CREDITWORTHINESS:

Should a Party's creditworthiness, financial responsibility, or performance viability become unsatisfactory to the other Party in such other Party's reasonably exercised discretion with regard to any transaction pursuant to this Agreement and any Confirmation, the dissatisfied Party (the "First Party") may require the other Party (the "Second Party") to provide, at the Second Party's option (but subject to the First Party's acceptance based upon reasonably exercised discretion), either (1) the posting of a Letter of Credit, (2) a cash prepayment, (3) the posting of other acceptable collateral or security by the Second Party, (4) a Guarantee Agreement executed by a creditworthy entity; or (5) some other mutually agreeable method of satisfying the First Party. The Second Party's obligations under this Section 27 shall be limited to a reasonable estimate of the damages to the First Party (consistent with Section 22.3 of this Agreement) if the Second Party were to fail to perform its obligations. Events which may trigger the First Party questioning the Second Party's creditworthiness, financial responsibility, or performance viability include, but are not limited to, the following:

- (1) The First Party has knowledge that the Second Party (or its Guarantor if applicable) are failing to perform or defaulting under other contracts.
- (2) The Second Party has exceeded any credit or trading limit set out in any Confirmation or other agreement between the Parties.
- (3) The Second Party or its Guarantor has debt which is rated as investment grade and that debt falls below the investment grade rating by at least one rating agency or is below investment grade and the rating of that debt is downgraded further by at least one rating agency.

- (4) Other material adverse changes in the Second Party's financial condition occur.
- (5) Substantial changes in market prices which materially and adversely impact the Second Party's ability to perform under this Agreement or any Confirmation occur.

If the Second Party fails to provide such reasonably satisfactory assurances of its ability to perform a transaction hereunder within three (3) Business Days of demand therefore, that will be considered an Event of Default under Section 22 of this Agreement and the First Party shall have the right to exercise any of the remedies provided for under that Section 22. Nothing contained in this Section 27 shall affect any credit agreement or arrangement, if any, between the Parties.

28. NETTING:

- 28.1 Parties shall net payments (associated with transactions under this Agreement and Confirmation(s)) in accordance with Exhibit A, if such Parties have executed the form attached as Exhibit A. The Parties' obligations to net shall include the netting of all payments received by the Parties in the same calendar month. Parties that have executed Exhibit A shall provide a signed copy of Exhibit A to a representative of the WSPP and to any Party that requests a copy and indicate on the WSPP Homepage that they have executed Exhibit A. If a Party indicated its election to net payments on the WSPP Homepage and that Party desires to withdraw its agreement to net, that Party shall provide at least 30 days notice on the WSPP Homepage of the change in its election to net and also shall provide, concurrent with its withdrawal notice, written notice to all Parties with which it has ongoing transactions or with which it has committed to future transactions under the Agreement at the time of the notice. Any such changes in netting status shall apply beginning at least 30 days after notice required by this Section 28.2 is provided and only shall apply to transactions agreed to beginning on or after the date the change in netting status becomes effective.
- 28.2 The Parties may by separate agreement either through a Confirmation or some other agreement set out specific terms relating to the implementation of the netting in addition to or in lieu of Exhibit A.
- 28.3 Each Party reserves to itself all rights, set offs, counterclaims, and other remedies and defenses (to the extent not expressly herein waived or denied) which such

Party has or may be entitled to arising from or out of this Agreement and any applicable Confirmation.

29. TAXES:

The Contract Price for all transactions under this Agreement shall include full reimbursement for, and the Seller is liable for and shall pay, or cause to be paid, or reimburse the Purchaser for if the Purchaser has paid, all taxes applicable to a transaction that arise prior to the delivery point. If the Purchaser is required to remit such tax, the amount shall be deducted from any sums due to the Seller. The Seller shall indemnify, defend, and hold harmless the Purchaser from any claims for such taxes. The Contract Price does not include reimbursement for, and the Purchaser is liable for and shall pay, cause to be paid, or reimburse the Seller for if the Seller has paid, all taxes applicable to a transaction arising at and from the delivery point, including any taxes imposed or collected by a taxing authority with jurisdiction over the Purchaser. The Purchaser shall indemnify, defend, and hold harmless the Seller from any claims for such taxes. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if either Party is exempt from taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any tax. Taxes are any amounts imposed by a taxing authority associated with the transaction.

30. CONFIDENTIALITY:

30.1 The terms of any transaction under this Agreement or any other information exchanged by the Purchaser and Seller relating to the transaction shall not be disclosed to any person not employed or retained by the Purchaser or the Seller or their affiliates, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of any litigation or dispute, (3) otherwise permitted by consent of the other Party, which consent shall not be unreasonably withheld, (4) required to be made in connection with regulatory proceedings (including proceedings relating to FERC, the United States Securities and Exchange Commission or any other federal, state or provincial regulatory agency); (5) required to comply with North American Electric Reliability Organization, regional reliability council, or successor organization requirements; (6) necessary to obtain transmission service; or (7) to a developer of an index of electric power prices in accordance with Section 30.2. In the event disclosure is made pursuant to this provision, the Parties shall use reasonable efforts to minimize the scope of any disclosure and have the recipients maintain the confidentiality of any documents or confidential information covered by this provision, including, if appropriate, seeking a protective order or similar mechanism in connection with any disclosure. This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a breach of this provision).

30.2 A Party may disclose the terms of transactions under this Agreement, excluding the identities of parties, to any developer of any index of electric power prices without violation of the confidentiality obligations under Section 30.1 if: (1) the disclosing Party and the index developer have entered into a written agreement, prior to the disclosure, under which the developer has agreed to use the information solely for the development of an index of electric power prices for publication and not for any other purpose; and (2) the index with respect to which disclosure is made is an aggregation of terms of transactions and does not identify terms of single transactions or the identities of parties to transactions.

31. TRANSMISSION TARIFF:

Pursuant to FERC Order No. 888, issued on April 24, 1996, and FERC orders where applicable, the WSPP Default Transmission Tariff has been filed and has become effective. The Parties agree to be bound by the terms of that Tariff for so long as they are WSPP members.

32. TRANSACTION SPECIFIC TERMS AND ORAL AGREEMENTS:

32.1 General

32.1.1 A Confirmation shall include, at a minimum, the Standard Confirmation Provisions. (See Exhibit C for a sample). Subject to the limitations in Section 32.2 (Standard Confirmation Provisions) and Section 32.3 (Non-Standard Confirmation Provisions), the Confirmation shall be made in writing by a Documentary Writing or an Electronic Writing, or shall be an Electronic Platform Confirmation.

32.1.2 Pursuant to the provisions of this Section 32, the Parties to a transaction under this Agreement may agree to modify any term of this Agreement (other than provisions regarding the operation of the WSPP as an organization including Sections 7 and 8) which applies to such transaction, such agreement to be stated in a Confirmation or Confirmations.

32.1.3 Sections 32.2 and 32.3 shall not apply to an Electronic Platform Confirmation. Parties may amend an Electronic Platform Confirmation in accordance with the procedures, if any, of the applicable platform or exchange or in any other manner this Agreement permits. Each Electronic Platform Confirmation between WSPP members shall be subject to this Agreement, unless the transaction specified in the Electronic Platform Confirmation is subject to another agreement between the Parties other than a master Confirmation applicable to the Parties' WSPP Confirmations.

32.2 Process For Confirming Standard Confirmation Provisions.

32.2.1 Confirmation of Standard Confirmation Provisions For Transactions of Less Than One Week in Duration.

Confirmation for Standard Confirmation Provisions applicable to transactions of less than one week in duration may be through:

- (i) a Documentary Writing (including a Confirmation which is not executed by both Parties but which is binding under Section 32.2.3) or
- (ii) an Electronic Writing.

Notwithstanding the foregoing sentence, with respect to a transaction of less than one week in duration as agreed in an Electronic Writing and that is to commence within one week of that agreement, a subsequent proposed confirming Documentary Writing under Section 32.2.3 shall not vary the terms of the Electronic Writing unless the Documentary Writing is executed by both Parties.

32.2.2 Standard Confirmation Provisions For Transactions of One Week or More in Duration.

Written confirmation shall be required for all Standard Confirmation Provisions for transactions of one week or more in duration. Such written confirmation may be made by a Documentary Writing executed by both Parties or a Documentary Writing not executed by both Parties but which is binding under Section 32.2.3.

32.2.3 Written Confirmation Process for Standard Confirmation Provisions.

The Seller shall provide a proposed Documentary Writing containing the proposed Standard Confirmation Provisions which must be received by the Purchaser within five Business Days of the date of the agreement to the transaction. The Purchaser shall have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Purchaser does not respond within that time period, the Seller's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation. If the Seller fails to provide a proposed Documentary Writing within the five Business Days period, then, within the immediately subsequent five Business Days, the Purchaser may submit a proposed Documentary Writing to the Seller. The Seller shall then have five Business Days from date of receipt to accept or propose modifications to the proposed Documentary Writing. If the Seller does not respond within that time period, the Purchaser's proposed Documentary Writing shall be considered as accepted and shall be the final Confirmation.

32.3 Process for Confirming Non-Standard Confirmation Provisions.

32.3.1 Non-Standard Confirmation Provisions for Transactions of Less Than One Week in Duration. Confirmation for Non-Standard Confirmation Provisions for a transaction of less than one week in duration only may be through: (i) an Electronic Writing; or (ii) in a Documentary Writing executed by both Parties.

32.3.2 Non-Standard Confirmation Provisions for Transactions of One Week or More in Duration. Confirmation for Non-Standard Confirmation Provisions for transactions of one week or more only shall be through a Documentary Writing executed by both Parties.

32.3.3 WSPP Agreement is a Default Agreement.

If the Parties to a transaction (i) do not reach agreement on any proposed Non-Standard Confirmation Provision and (ii) do not confirm it under Section 32.3.1 or 32.3.2, as applicable, then the term or terms of the Agreement, which the Parties could not reach agreement to modify or change or which are not considered modified pursuant to this Section 32.3, shall apply to the transaction.

32.4 Prior Discussions And Statements

32.4.1 A Confirmation under Section 32.2 and/or 32.3, shall, together with this Agreement, be an integrated contract with respect to the transaction, shall supersede all discussions and negotiations with respect thereto, and are intended by the Parties as a final expression of their agreement with respect to such terms as are included therein and may not be contradicted by evidence of any prior agreement unless there is clear and convincing evidence of a mutual mistake in the Confirmation.

32.4.2 Notwithstanding any provision in this Agreement (including Sections 32.3.2 and 32.4.1), until the Confirmation has become final in accordance with Sections 32.2 and/or 32.3 for a transaction, any oral agreement or

electronic communication establishing agreement of the Parties relating to such transaction shall remain valid and binding.

- 32.5 The Parties agree not to contest, or assert any defense with respect to, the validity or enforceability of any agreement to the terms concerning a specific transaction, on the basis that documentation of such terms fails to comply with the requirements of any statute that agreements be written or signed. Each Party consents to the recording by the other Party, without any further notice, of telephone conversations between representatives of the Parties, which contain agreements to or discussion concerning the terms of a specific transaction. All such recordings may be introduced and admitted into evidence for the purpose of proving agreements to terms, and any objection to such introduction or admission for such purpose is hereby expressly waived.
- 32.6 In the event of a conflict between a binding and effective Confirmation and this Agreement, the Confirmation shall govern.
- 32.7 The Seller shall not be required to file any Confirmation with FERC except as provided in the Service Schedules.
- 32.8 Other Products and Service Levels: The Parties may apply this Agreement and make a Confirmation with respect to a product/service level defined under any other document or form of agreement (e.g., the California ISO tariff, the ERCOT agreement or the EEI agreement). The confirmation process set forth in Section 32.3 shall apply to any such Confirmation. Unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply to any such transaction consistent with Section 32.3, the transaction shall be subject to

all the terms of this Agreement, except that (1) all service level/product definitions, (2) force majeure/uncontrollable force definitions, and (3) other terms as mutually agreed shall have the meaning ascribed to them in the different agreement or in the applicable Confirmation.

32.9 Reserved.

32.10 The Parties may agree to modify terms of this Agreement for more than one transaction pursuant to a separate written agreement (a “master confirmation agreement”), which agreement shall be considered part of each Confirmation between the Parties and shall apply to all transactions entered into between the two Parties unless the Parties specifically agree to override such changes for a particular transaction consistent with the procedure in Section 32.2 or 32.3, whichever is applicable.

33. PERFORMANCE, TITLE, AND WARRANTIES FOR TRANSACTIONS UNDER SERVICE SCHEDULES:

33.1 Performance

33.1.1 The Seller shall deliver to the delivery point(s) as agreed to in the applicable Confirmation and sell to the Purchaser in accordance with the terms of the Agreement and such Confirmation.

33.1.2 The Purchaser shall receive and purchase the Contract Quantity, as agreed to by the Parties in the applicable Confirmation, at the delivery point(s) and purchase from the Seller in accordance with the terms of the Agreement and such Confirmation.

33.2 Title and Risk of Loss

Title to and risk of loss of the electric energy shall pass from the Seller to the Purchaser at the delivery point agreed to in the Confirmation; provided, however, with regard to federal agencies or parts of the United States Government, title to and risk of loss shall pass to Purchaser to the extent permitted by and consistent with applicable law.

33.3 Warranties

The Seller warrants that it will transfer to the Purchaser good title to the electric energy sold under the Agreement and any Confirmation, free and clear of all liens, claims, and encumbrances arising or attaching prior to the delivery point and that Seller's sale is in compliance with all applicable laws and regulations.

THE SELLER HEREBY DISCLAIMS ALL OTHER WARRANTIES,

**EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF
MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

34. DISPUTE RESOLUTION:

34.1 INFORMAL DISPUTE RESOLUTION

Before binding dispute resolution or any other form of litigation may proceed, any dispute between the Parties to a transaction under this Agreement first shall be referred to nonbinding mediation except for actions taken pursuant to Section 21.2. The Parties shall attempt to agree upon a mediator from a list of ten (10) candidates provided by the Chairman of the WSPP Operating Committee or his or her designee. If the Parties are unable to agree, then the Chairman or the designee shall appoint a mediator for the dispute. Neither the mediator nor the person involved on behalf of the WSPP in developing a list of mediators for the Parties to choose from or in selecting the mediator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the mediation. The WSPP shall establish procedures for the appointment of mediators and the conduct of mediation and those procedures shall apply to the mediation.

34.2 BINDING DISPUTE RESOLUTION

The Parties to a dispute may elect binding dispute resolution using the following process unless binding arbitration of certain disputes is required under this Agreement in which event the Parties shall use the process set forth in this Section 34.2 to resolve such disputes, unless the Parties otherwise agree:

- (a) **WSPP Dispute Resolution:** A Party to a dispute (if binding dispute resolution is required) or all Parties to a dispute (if agreement of the Parties is required for binding dispute resolution) may initiate binding

dispute resolution under WSPP procedures by notifying the Chairman of the WSPP Operating Committee or his or her designee. The Chairman or his or her designee shall provide the Parties with a list of ten (10) eligible arbitrators. Within ten (10) days of receiving the list, the Parties shall agree on a single arbitrator from the list to conduct the arbitration, or notify the Chairman of the Operating Committee or the designee of their inability to reach agreement. If notified of the Parties inability to reach agreement, then the Chairman or the designee shall choose the arbitrator from the list within five (5) days. Neither the arbitrator nor the person involved on behalf of the WSPP in developing a list of arbitrators for the Parties to choose from or in selecting the arbitrator (if the Parties are unable to do so) shall possess a direct or indirect interest in either Party or the subject matter of the arbitration. The Procedures to be used for this arbitration shall follow the arbitration procedures which shall be developed and maintained by the WSPP and the procedures will be generally consistent with the commercial arbitration rules of the American Arbitration Association though not involving the Association.

If the Parties agree to binding dispute resolution under this Section 34.2, each Party understands that it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by this arbitration provision. Notwithstanding the foregoing, nothing herein is intended to waive any provision of the Federal Arbitration Act, 9 U.S.C. § 1, et. seq., or any right under state

statute or common law to challenge an arbitration award or to prevent any action to enforce any arbitration award.

A Party's liability and damages under any arbitration award resulting from the process set forth in this Section 34.2 shall be limited as provided in this Agreement or in any Confirmation.

34.3 COSTS

Each Party shall be responsible for its own costs and those of its counsel and representatives. The Parties shall equally divide the costs of the arbitrator or mediator and the hearing.

34.4 CONFIDENTIALITY

Any arbitration or mediation under this Section 34 shall be conducted on a confidential basis and not disclosed, including any documents or results which shall be considered confidential, unless the Parties otherwise agree or such disclosure is required by law.

35. FORWARD CONTRACTS:

The Parties acknowledge and agree that all transactions under the Agreement and Confirmation(s) are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code. The Parties acknowledge and agree that all of their transactions, together with this Agreement and the related Confirmation(s) form a single, integrated agreement, and agreements and transactions are entered into in reliance on the fact that the agreements and each transaction form a single agreement between the Parties.

36. TRADE OPTION EXEMPTION

The Parties intend that any Physically Settled Option under this Agreement shall qualify under the trade option exemption, 17 C.F.R. § 32.3. Accordingly, each Party buying or selling a Physically Settled Option agrees and warrants that any such option shall be offered only to a provider, user, or merchant and that the entities entering into the options are doing so solely for purposes related to their business.

37. ADDITIONAL REPRESENTATIONS AND WARRANTIES:

Each Party warrants and represents to the other(s) that it possesses the necessary corporate, governmental and legal authority, right and power to enter into and agree to the applicable Confirmation for a transaction or transactions and to perform each and every duty imposed, and that the Parties' agreement to buy and sell power under this Agreement and the Confirmation represents a contract. Each Party also warrants and represents to the other(s) that each of its representatives executing or agreeing through a Confirmation to a transaction under this Agreement is authorized to act on its behalf.

Each Party further warrants and represents that entering into this Agreement and any applicable Confirmation does not violate or conflict with its Charter, By-laws or comparable constituent document, any law applicable to it, any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement and applicable Confirmation, constitute a legal, valid and binding obligation enforceable against such Party in accordance with the terms of such agreements.

Each Party also represents that it is solvent and that on each delivery this representation shall be deemed renewed unless notice to the contrary is given in writing by the Purchaser to the Seller before delivery.

38. FLOATING PRICES:

- 38.1 In the event the Parties intend that the price for a transaction is to be based on an index, exchange or any other kind of variable reference price (such price being a “Floating Price”), the Parties shall specify the “Floating Price” to be used to calculate the amounts in a Confirmation due Seller for that transaction.
- 38.2 Market Disruption. If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined as follows. The Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price) for the affected Trading Day. If the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by the Parties based upon (1) quotes from Dealers in energy contracts; and/or (2) quotes from Brokers in energy contracts. Each Party may obtain up to a maximum of four quotes which must be provided to the other Party no later than twenty-two Business Days following the first Business Day on which the Market Disruption Event occurred or existed. These quotes shall reflect transacted prices. The Floating Price for the affected Trading Day shall equal a simple average of the quotes obtained and provided by the Parties consistent with the provisions of this Section 38. Each Party providing quote(s) to the other Party also shall identify to that other Party the Dealer(s) and/or the Broker(s) who provided each of the quotes to allow verification.

“Determination Period” means each calendar month during the term of the relevant transaction; provided that if the term of the transaction is less than one calendar month the Determination Period shall be the term of the transaction.

“Market Disruption Event” means, with respect to an index, any of the following events (the existence of which shall be determined in good faith by the Parties):

(a) the failure of the index to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the exchange or market acting as the index; (c) the temporary or permanent discontinuance or unavailability of the index; (d) the temporary or permanent closing of any exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

“Trading Day” means a day in respect of which the relevant price source published the relevant price or would have published the relevant price but for the Market Disruption Event.

38.3 Calculation of Floating Price. For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4th) decimal number is five (5) or greater, then the third (3rd) decimal number shall be increased by one (1), and if the fourth (4th) decimal number is less than five (5), then the third (3rd) decimal number shall remain unchanged.

38.4 Corrections. For the purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to

determine the relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will pay such amount consistent with the provisions of this Section 38.4. The amount that is payable as a result of the correction shall be included in the billing cycle in which the notice of the correction is provided.

39. AMENDMENT:

- 39.1 This Agreement may be amended upon the submission to FERC and acceptance by FERC of that amendment. The effective date of the amendment shall be the date on which FERC allows the amendment to become effective; provided, however, if the FERC orders a hearing on a filing under Section 205 of the Federal Power Act proposing an amendment to this Agreement, the amendment as it may be revised by the FERC shall not become effective until the FERC issues its final order (i.e. its order on rehearing before any judicial review) on the amendment. The Parties through the Executive Committee shall direct the filing of any amendments. The Parties to this Agreement agree to bound by this Agreement as it may be amended, provided that the Parties possess the right to challenge any amendments at FERC and to exercise any applicable withdrawal rights under this Agreement.
- 39.2 Unless otherwise stated in the amendment, all amendments shall apply only to new transactions entered into or agreed to on or after the effective date of the amendment. Preexisting agreements and transactions shall operate under the version of the WSPP Agreement effective at the time of the agreement for the transaction unless the Parties to a transaction or transactions mutually agree otherwise.
- 39.3 An agreement modifying this Agreement or a Confirmation for a transaction needs no consideration to be binding.

40. EXECUTION BY COUNTERPARTS:

This Agreement may be executed in any number of counterparts, and upon execution by all Parties, each executed counterpart shall have the same force and effect as an original instrument and as if all Parties had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages.

41. WITNESS:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the 27th day of July, 1991 (or as of the date of execution of this Agreement by each Party's duly authorized representation, in the case of any Party that becomes a signatory to this Agreement subsequent to July 27, 1991).

By:_____

Name of signing official:

Title:

Name of Member:

Date:

EXHIBIT A

NETTING

Each Party that executes this Exhibit A to the Agreement agrees to net payments for transactions under the WSPP Agreement and the applicable Confirmation(s) with any other Party or Parties which also have agreed to net payments by executing a copy of this Exhibit A. The Party executing this Exhibit A shall indicate below when it desires that its agreement to net becomes effective. A Party agreeing to net under this Exhibit A shall comply with the provisions of Section 28.2 of the Agreement. Defined terms used herein are as defined in the WSPP Agreement. Netting shall be done in accordance with the following provision:

If the Purchaser and Seller are each required to pay an amount on the payment due date in the same month for transactions under the Agreement and Confirmation(s), then such amounts with respect to each Party will be aggregated and the Parties will discharge their obligations to pay through netting, in which case the Party owing the greater aggregate amount will pay to the other party the difference between the amounts owed consistent with the payment times in Section 9.2 of the Agreement, unless the Parties have otherwise agreed to a different payment time as allowed by the Agreement. Each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of the Agreement. All outstanding payments between the Parties which are to be netted pursuant to this Exhibit A for transactions under WSPP Agreement and the applicable Confirmation(s) shall be offset against each other or set off or recouped therefrom.

Name of Authorized Representative

Effective Date for Netting

Name of WSPP Member

Signature of Authorized
Representative

Date of Execution

[WSPP SAMPLE FORM – PARTIES ARE FREE TO USE THIS OR DISREGARD IT.]

EXHIBIT B

FORM OF COUNTERPARTY GUARANTEE AGREEMENT

This Guarantee Agreement (this “Guarantee”), dated, as of [____], 199[___], is made and entered into by [____], a [____] corporation (“Guarantor”).

WITNESSETH:

WHEREAS, [____] (the “Company”) may enter into transactions involving power sales under the WSPP Agreement (“WSPP Agreement”) and related Confirmation(s)¹ (collectively “Agreements”) with [Company Name] (“Guaranteed Party”); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreements.

NOW THEREFORE, in consideration of the Guaranteed Party agreeing to conduct business with Company, Guarantor hereby covenants and agrees as follows:

1. **GUARANTY.** Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the timely payment when due of the obligations of Company (the “Obligations”) to the Guaranteed Party in accordance with the Agreements. If Company fails to pay any Obligations, Guarantor shall promptly pay to the Guaranteed Party no later than the next Business Day (as defined in the WSPP Agreement), after notification, the amount due in the same currency and manner provided for in the Agreements. This Guarantee shall constitute a guarantee of payment and not of collection. Guarantor shall have no right of subrogation with respect to any payments it makes under this Guarantee until all of the Obligations of Company to the Guaranteed Party are paid in full. The liability of Guarantor under the Guarantee shall be subject to the following:

(a) Guarantor’s liability hereunder shall be and is specifically limited to payments expressly required to be made in accordance with the Agreements (even if such payments are deemed to be damages) and, except to the extent specifically provided in the Agreements, in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive, tort, or any other even if such fees together with the payments exceed the cap in Section 1(b), damages, costs, except that Guarantor shall be required to pay reasonable attorney fees.

(b) The aggregate liability of the Guarantor shall not exceed [____] Million U.S. Dollars [____].

2. **DEMANDS AND NOTICE.** If Company fails or refuses to pay any Obligations, the Guaranteed Party may make a demand upon Guarantor (hereinafter referred to as a “Payment

Demand”). A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Company has failed to pay and an explanation of why such payment is due, with a specific statement that the Guaranteed Party is calling upon Guarantor to pay under this Guarantee. A Payment Demand satisfying the foregoing requirements shall be deemed sufficient notice to Guarantor that it must pay the Obligations. A single written Payment Demand shall be effective as to any specific default during the continuance of such default, until Company or Guarantor has cured such default, and additional Payment Demands concerning such default shall not be required until such default is cured.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

(a) it is a corporation duly organized and validly existing under the laws of the State of [_____] and has the corporate power and authority to execute, deliver and carry out the terms and provisions of this Guarantee;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guarantee; and

(c) this Guarantee constitutes a valid and legally binding agreement of Guarantor enforceable against Guarantor in accordance with its terms, except as the enforceability of this Guarantee may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

4. EFFECT OF BANKRUPTCY BY COMPANY. The Guarantor’s obligation to pay under this Guarantee shall not be affected in any way by the institution with respect to the Company of a bankruptcy, reorganization, moratorium or similar insolvency proceeding or other relief under any bankruptcy or insolvency law affecting creditor’s rights or a petition for the Company’s winding-up or liquidation.

5. AMENDMENT. No term or provision of this Guarantee shall be amended, modified, altered, waived, or supplemented except in a writing signed by the Guarantor and Guaranteed Party hereto.

6. WAIVERS. Guarantor hereby waives (a) notice of acceptance of this Guarantee; (b) presentment and demand concerning the liabilities of Guarantor, except as expressly hereinabove set forth; and (c) any right to require that any action or proceeding be brought against Company or any other person, or except as expressly hereinabove set forth, to require that the Guaranteed Party seek enforcement of any performance against Company or any other person, prior to any action against Guarantor under the terms hereof.

Except as to applicable statutes of limitation, no delay of the Guaranteed Party in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes in the time of payment of or other changes in the terms of the Obligations, or any part thereof or any changes or modifications to the terms of the Agreements.

Guarantor may terminate this Guarantee by providing written notice of such termination to the Guaranteed Party and upon the effectiveness of such termination, Guarantor shall have no further liability hereunder, except as provided in the last sentence of this paragraph. No such termination shall be effective until fifteen (15) Business Days after receipt by the Guaranteed Party of such termination notice. No such termination shall affect Guarantor's liability with respect to any obligations arising under any transaction entered into prior to the time the termination is effective, which transaction shall remain guaranteed pursuant to the terms of this Guarantee.

7. ASSIGNMENT. The Guarantor shall not assign this Guarantee without the express written consent of the Guaranteed Party. The Guaranteed Party shall be entitled to assign its rights under this Agreement in its sole discretion.

8. NOTICE. Any Payment Demand, to the Guaranteed Party or the Guarantor notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or telecopier, as follows:

To [Name of Guaranteed Party] _____

Attn: _____

Fax No.: (____) _____

To Guarantor: _____

Attn: _____

Fax No.: (____) _____

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram or telecopier shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. All Notices by telegram or telecopier shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice as provided above of such change of address.

8. MISCELLANEOUS. THIS GUARANTEE SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF [State], WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. This Guarantee shall be binding upon Guarantor, its successors and assigns and inure to the benefit of and be enforceable by the Guaranteed Party, its successors and assigns. The Guarantee embodies the entire agreement and understanding between Guarantor and the Guaranteed Party and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guarantee are for purposes of reference only, and shall not affect the meaning hereof. This Guarantee may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

EXECUTED as of the day and year first above written.

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT C
SAMPLE FORM FOR CONFIRMATION

1. Transaction Specific Agreements

The undersigned Parties agree to sell and purchase electric energy, or a Physically-Settled Option, pursuant to the WSPP Agreement as it is supplemented and modified below:

- (a) Seller: _____
- (b) Purchaser: _____
- (c) Period of Delivery: From ______ To ______
- (d) Schedule (Days and Hours): _____
- (e) Delivery Rate: _____
- (f) Delivery Point(s): _____
- (g) Type of Service (Check as Applicable)
 - Service Schedule A _____
 - Service Schedule B _____
 - Service Schedule C _____
 - Physically-Settled Option Service Schedule B _____
 - Physically-Settled Option Service Schedule C _____
 - Other products per Section 32.6 _____ **[Describe Product]**
- (h) Contract Quantity: _____ Total MWhrs.
- (i) Contract or Strike Price: _____
- (j) Transmission Path for the Transaction (If Applicable): _____
- (k) Date of Agreement if different: _____
- (l) Additional Information for Physically-Settled Options
 - (i) Option Type: *Put* _____ *Call* _____
 - (ii) Option Style: _____
 - (iii) Exercise Date or Period: _____
 - (iv) Premium: _____
 - (v) Premium Payment Date: _____
 - (vi) Method for providing notice of exercise _____
- (m) Special Terms and Exceptions:
See Attachment A

[Special Terms and Exceptions shall be shown on an Attachment to this Confirmation.]

Name of Trader for Purchaser

Name of Trader for Seller

Authorized Signature
for Purchaser

Authorized Signature
for Seller

Date

Date

EXHIBIT D

WSPP MEDIATION AND ARBITRATION PROCEDURES

I. MEDIATION

- A. **Informal Mediation.** WSPP members with a dispute or a potential dispute involving transactions under the WSPP Agreement may request non-binding, informal mediation by contacting the WSPP's General Counsel and by providing a brief explanation in writing of the dispute and the remedy being sought. All parties to the dispute must request this Informal Mediation for it to become effective. After this contact, a telephonic conference call will be arranged among the affected WSPP members and the WSPP's General Counsel, the Chairman of the Operating Committee, and/or some other independent and knowledgeable person requested by the Chairman of the Operating Committee to participate. The purpose of the conference call will be to discuss the issues and to have an independent person or persons state their views. Best efforts will be made to set up this conference call within five Business Days after the WSPP's General Counsel is contacted subject to accommodating the schedules of all involved. This Informal Mediation shall be considered as satisfying the Mediation requirements of Section 34.1 of the WSPP Agreement.
- B. **Initiating Formal Mediation.** A WSPP member which believes that it possesses a claim against another WSPP member relating to a WSPP transaction, which is unable to resolve the dispute through agreement with the other member to the transaction, and which desires to pursue that claim shall initiate non-binding formal mediation pursuant to Section 34.1 of the WSPP Agreement. The member

initiating such mediation shall do so by Serving written notice to the Chairman of the WSPP Operating Committee, the WSPP's General Counsel, and the other members against which the claim is directed. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.

- C. **Response to Document Initiating Formal Mediation.** Within eight days, the member or members against which the claim is directed may provide a response to the notice which shall be Served on the member which initiated the Mediation, the Chairman of the WSPP's Operating Committee, and the WSPP's General Counsel.
- D. **Choosing the Mediator.** The Mediator shall be chosen in accordance with the procedures set forth in Section 34.1 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Mediators to be presented to the Parties provided that these suggested persons shall be provided to the WSPP Representative together with relevant personal histories within two Business Days of the date by which time the list of Mediators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of Mediators. A brief personal history of each person on the list of potential mediators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Mediators within five days of receipt of notice of the dispute. The Parties then shall have five days in which to reach agreement on a Mediator or inform the WSPP Representative that they were unable to reach agreement in which event the WSPP

Representative shall appoint the Mediator consistent with Section 34.1 of the WSPP Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to expedite this process.

- E. **Location for the Formal Mediation.** The Parties shall agree on a location for the Mediation. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Mediator.
- F. **Time for the Formal Mediation.** The Parties shall agree on the time for the Mediation after consultation with the Mediator if one has been appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than twenty-one days after the notice initiating the Mediation is received after consultation with the Parties and any Mediator.
- G. **Conduct of the Formal Mediation.** The Mediator shall have the ability to conduct the Mediation in any manner which the Mediator believes is appropriate to facilitate resolution of the dispute. Each Party shall have at least one representative with the authority to settle the dispute present at the Mediation. The Mediation shall be private and confidential and the Mediator shall have the authority to exclude any person not directly involved unless the Parties agree otherwise in writing. At the Mediation, each Party shall have the right to make a brief presentation of its case and to question the other Party. Each Party also may be represented by counsel.
- H. **Replacement of the Mediator.** If the Mediator resigns, withdraws or is no longer able to serve, then the Parties shall have two Business Days in which to

agree on a new Mediator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Mediator from the list used to select the first Mediator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

II. ARBITRATION

- A. **Initiating Arbitration.** A WSPP member which initiates Arbitration pursuant to Section 34.2 of the WSPP Agreement shall do so by Serving the Chairman of the WSPP Operating Committee, the WSPP General Counsel and the members against which the claim is directed with written notice of its demand for arbitration. Such notice shall state the nature of the dispute, the remedy sought, and support the claim.
- B. **Response.** Within ten days of receipt of the notice, any member or members against which the claim is directed may provide a response to the notice. Such response must include any counterclaims which the member believes are appropriate. If a counterclaim is submitted, then the member which submitted the notice may respond to the counterclaim within ten days of receipt. All such responses shall be Served on the Parties, the Chairman of the WSPP Operating Committee, and the WSPP General Counsel.
- C. **Choosing the Arbitrator.** The Arbitrator shall be chosen in accordance with the procedures set forth in Section 34.2 of the WSPP Agreement. Each Party may suggest persons to be included on the list of Arbitrators to be presented to the

Parties provided that these suggested persons are provided to the WSPP Representative together with relevant personal histories within two business days of the date by which time the list of Arbitrators is to be sent out. The WSPP Representative shall allow at least one person suggested by each Party to be added to the list of potential Arbitrators. A brief personal history of each person on the list of potential Arbitrators shall be provided to the Parties, with that history showing the person's employment over the last five years and any other relevant facts. The WSPP Representative shall provide the Parties with the list of Arbitrators within seven days of receipt of notice of the request for Arbitration. The Parties then shall have ten days in which to reach agreement on the Arbitrator or to inform the WSPP Representative that they were unable to reach agreement in which event the WSPP Representative shall appoint the Arbitrator consistent with Section 34.2 of the Agreement. Upon request of the Parties for expedition, the WSPP Representative shall use best efforts to cause this process to be expedited.

- D. **Location for the Arbitration.** The Parties shall agree on a location for the Arbitration. If the Parties fail to reach agreement, then the WSPP Representative shall set the location which shall be convenient for the Parties and the Arbitrator.
- E. **Time for the Arbitration.** The Parties shall agree on the time for the Arbitration and coordinate that time with the Arbitrator if one has been agreed to or appointed. If the Parties fail to reach agreement, then the WSPP Representative shall set the time which shall not be more than 60 days after the notice is received.

The WSPP Representative shall set a time after consultation with the Parties and the Arbitrator to check their schedules.

- F. **Discovery.** After appointment of the Arbitrator, each Party shall be entitled to obtain relevant documents from the other Parties and to take depositions. Each Party shall respond to such a document request within seven days of receipt of the request and make its employees or consultants available for depositions to the extent that the employee or consultant possesses knowledge and information relevant to the dispute. Each Party shall disclose documents that are confidential or commercially sensitive subject to a reasonable protective order. Any disputes concerning discovery shall be promptly referred to the Arbitrator who shall have authority to resolve such disputes, including the authority to require attendance of witnesses at depositions. The Federal Rules of Civil Procedure shall apply to discovery under these procedures.
- G. **Conduct of Arbitration if the Parties Agree to Waive an Oral Hearing.** If the Parties agree to waive an oral hearing, then the Parties shall Serve Initial Briefs no later than 35 days after the notice is received or notify the Arbitrator that they do not wish to submit any additional documents. Parties shall Serve any Reply Briefs no later than ten days after the date for Service of Initial Briefs.
- H. **Conduct of the Arbitration Hearing.** No later than fifteen days before any hearing, any Party may Serve an Initial Brief or notify the Arbitrator that they do not wish to submit any additional documents. A Party shall Serve any Reply Brief no later than five Business Days before any hearing. The Arbitrator shall preside over any hearing and rule on all objections including objections as to the

admissibility of evidence or whether the questioning is proper. All testimony shall be submitted under oath. The Arbitrator is not bound to follow any particular rules governing the conduct of the proceeding. The Arbitrator may rely on legal advice provided through the WSPP. The Arbitrator may require any person employed by a Party to attend and testify at the hearing. Each Party shall possess the right to present evidence, including witnesses, and to cross-examine other Parties' witnesses. The Arbitration shall be private and the Arbitrator shall have the authority to exclude any person not directly involved unless the Parties otherwise agree. Each Party may be represented by counsel. A stenographic record of the Arbitration shall be kept.

- I. **Decision.** Within ten Business Days after the end of the Arbitration hearing, the Arbitrator shall issue his award in writing. If the Parties waived the right to an oral hearing, then the Arbitrator shall issue the award within ten Business Days of the last date Briefs were to be submitted. The Arbitrator is not limited in the remedies he may order so long as any arbitration award is consistent with the provisions and limitations of the WSPP Agreement and any applicable Confirmation with respect to the liability and damages of any Party; provided, however, upon agreement of the Parties to the dispute, the Arbitrator's choice of remedies may be limited.
- J. **Replacement of the Arbitrator.** If the Arbitrator resigns, withdraws, or is no longer able to serve then the Parties shall have two Business Days in which to agree on a new Arbitrator. If the Parties are unable to agree within such time, the WSPP Representative shall appoint a replacement Arbitrator from the list used to

select the first Arbitrator within two Business Days after being notified that the Parties are unable to agree. The dates and deadlines in this section may require modification if the mediator is replaced. Any extensions shall be as limited as possible.

III. MISCELLANEOUS

- A. **Confidentiality.** Any Arbitration or Mediation shall be confidential as provided in Section 34.4 of the WSPP Agreement.
- B. **Costs.** Costs shall be borne by Parties as provided in Section 34.3 of the WSPP Agreement.
- C. **Restrictions on Lawsuits.** Each Party shall be subject to the restrictions provided in Section 34.2 of the WSPP Agreement.
- D. **Attorney-Client/Attorney Workproduct.** The Arbitrator or Mediator shall not take any action which would result in disclosure of information in violation of the attorney-client privilege or attorney workproduct doctrine.

IV. DEFINITIONS

- A. **Arbitrator or Arbitration.** The Arbitrator appointed pursuant to these procedures and Section 34.2 of the WSPP Agreement and the Arbitration pursuant to these procedures and the WSPP Agreement.
- B. **Initial or Reply Briefs.** Written documents submitted by the Parties to support their positions and respond to each others positions. Such documents shall be limited to 25 pages.
- C. **Business Days.** Defined as in the WSPP Agreement.

- D. **Mediator or Mediation.** The Mediator appointed pursuant to these procedures and Section 34.1 of the WSPP Agreement and the Mediation pursuant to these procedures and the WSPP Agreement.
- E. **Parties.** The WSPP members involved in the Mediation or Arbitration which have a direct interest in the dispute.
- F. **Service, Serving, or Served.** The method of service shall be by fax, unless impracticable because of the size of the document. In all events, the document should be delivered to the Party by overnight mail. Parties also should attempt to send the document out by email if possible. Service will be accomplished to a Party if sent to the Party's contact person for the disputed transaction. If there are multiple contact persons for one Party, service to one such person shall suffice. Service shall be to those individuals or entities specified in this procedures, but must include service to the Parties, the Mediator or Arbitrator (if either has been appointed), and to the WSPP General Counsel.
- G. **WSPP Representative.** The Chairman of the WSPP Operating Committee or his or her designee for the purposes of the Arbitration or Mediation.

SERVICE SCHEDULE A
ECONOMY ENERGY SERVICE

A-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

A-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms and conditions for requesting and providing Economy Energy Service.

A-3 TERMS:

A-3.1 A Party may schedule Economy Energy Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation.

A-3.2 Scheduling of Economy Energy Service hereunder shall be a responsibility of the Parties involved.

A-3.3 Each Seller/Purchaser may prepare a daily estimate of the amount of Economy Energy Service that it is willing and able to sell/buy each hour and the associated hourly sale/purchase price for the next Business Day, plus the weekend and holidays, and communicate this information to all other Parties via the Hub.

A-3.4 Purchasers shall arrange purchases directly with Sellers, and shall be responsible for transmission arrangements.

A-3.5 Unless otherwise mutually agreed between the Purchaser and the Seller, all Economy Energy Service transactions shall be pre-scheduled, and billings shall be

based on amounts and prices agreed to in advance by schedulers, subject to Paragraphs A-3.6 and 3.7 and subject to change by mutual agreement between dispatchers or schedulers due to system changes.

A-3.6 The price for Economy Energy Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section A-3.7 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

A-3.7 Except as provided for in Section A-3.6, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/ month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/ day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. In lieu of payment, such Parties may mutually agree to exchange economy energy at a ratio not to exceed that ratio provided for in Section C-3.6 of Service Schedule C. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary services charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including the exchange of economy energy. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. Any such transmission services (and ancillary service provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

A-3.8 Unless otherwise agreed, the Purchaser shall be responsible for maintaining operating reserve requirements as back-up for Economy Energy Service purchased and the Seller shall not be required to maintain such operating reserve.

A-3.9 Each Party that is a FERC regulated public utility as defined in A-3.6 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with

FERC under an applicable FERC accepted market based rate schedule.

SERVICE SCHEDULE B
UNIT COMMITMENT SERVICE

B-1 PARTIES:

This Service Schedule is agreed upon as part of this Agreement by the Parties.

B-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Unit Commitment Service.

B-3 TERMS:

B-3.1 A Party may schedule Unit Commitment Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Unit Commitment Service becomes a firm commitment, for both Parties, for the agreed capacity and terms.

B-3.2 Unless otherwise mutually agreed by the Parties involved in a Unit Commitment Service transaction, the terms set forth in this Service Schedule B shall govern such transaction.

B-3.3 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers, for a specified unit for a specified period of time.

B-3.4 Purchasers shall arrange purchases directly with Sellers.

B-3.5 The price for Unit Commitment Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in

Section B-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

B-3.6 Except as provided for in Section B-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser. The transmission and ancillary service rate ceilings shall be available through the WSPP's Hub or homepage. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has

filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule “Q” hereof (such incorporation to occur upon Seller’s request without approval of the WSPP Executive Committee).

B-3.7 Start-up costs and no-load costs if included by the Seller shall be stated separately in the price.

B-3.8 Energy schedules for the Purchaser's share of a unit may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the change is to take place, unless otherwise mutually agreed or unforeseen system operating conditions occur.

B-3.9 Unit Commitment Service is intended to have assured availability; however, scheduled energy deliveries may be interrupted or curtailed as follows:

- (a) By the Seller by giving proper recall notice to the Purchaser if the Seller and the Purchaser have mutually agreed to recall provisions,
- (b) By the Seller when all or a portion of the output of the unit is unavailable, by an amount in proportion to the amount of the reduction in the output of the unit, unless otherwise agreed by the schedulers,
- (c) By the Seller to prevent system separation during an emergency, provided the Seller has exercised all prudent operating alternatives prior to the interruption or curtailment,
- (d) Where applicable, by the Seller to meet its public utility or statutory obligations to its customers, or
- (e) By either the Seller or the Purchaser due to the unavailability of transmission

capacity necessary for the delivery of scheduled energy.

B-3.10 Each Party that is a FERC regulated public utility as defined above in B-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

B-4 BILLING AND PAYMENT PROVISIONS:

B-4.1 Except as provided in Sections B-4.2 and B-5, billing for Unit Commitment Service shall be computed based upon the agreed upon prices.

B-4.2 In the event the Seller requests recall of Unit Commitment Service in a shorter time frame than was mutually agreed pursuant to Section B-3.9(a) and the Purchaser agrees to allow such recall, the Purchaser shall be relieved of any obligation to pay start-up costs.

B-5 TERMINATION PROVISION:

In the event Unit Commitment Service is curtailed or interrupted except as provided in Section B-3.9(a), the Purchaser shall have the option to cancel the Unit Commitment Service at any time by paying the Seller for (i) all energy deliveries scheduled up to the notice of termination and (ii) all separately stated start-up and no-load costs.

SERVICE SCHEDULE C
FIRM CAPACITY/ENERGY SALE OR EXCHANGE SERVICE

C-1 PARTIES:

This Service Schedule is agreed upon as a part of this Agreement by the Parties.

C-2 PURPOSE:

The purpose of this Service Schedule is to define additional specific procedures, terms, and conditions for requesting and providing Firm Capacity/Energy Sale or Exchange Service.

C-3 TERMS:

C-3.1 A Party may schedule Firm Capacity/Energy Sale or Exchange Service from another Party by mutual agreement; provided, however, that each Party shall be the sole judge as to the extent to and the conditions under which it is willing to provide or receive such service hereunder consistent with statutory requirements and contractual commitments including the Agreement and any applicable Confirmation. Once an agreement is reached, then the obligation for Firm Capacity/Energy Sale or Exchange Service becomes a firm commitment, for both Parties, for the agreed service and terms.

C-3.2 Unless otherwise agreed between the Purchaser and the Seller, all transactions shall be prescheduled, subject to any conditions agreed to by schedulers.

C-3.3 Firm capacity transactions shall include buying, selling, or exchanging capacity between Parties with or without associated energy. A firm capacity sale or exchange is a commitment, in accordance with the terms and conditions specified in the Confirmation, of capacity resources.

C-3.4 Firm energy transactions shall include buying, selling, or exchanging firm energy between Parties in accordance with the terms and conditions specified in the Confirmation.

C-3.5 The price for Firm Capacity/Energy Sale or Exchange Service shall be mutually agreed to in advance between Seller and Purchaser and shall not be subject to the rate caps specified in Section C-3.6 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

C-3.6 Except as provided for in Section C-3.5, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any

transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

C-3.7 Firm Capacity/Energy Sale or Exchange Service shall be interruptible only if the interruption is: (a) within any recall time or allowed by other applicable provisions governing interruptions of service under this Service Schedule, as may be mutually agreed to by the Seller and the Purchaser, (b) due to an Uncontrollable Force as provided in Section 10 of this Agreement; or (c) where applicable, to meet Seller's public utility or statutory obligations to its customers; provided, however, this paragraph (c) shall not be used to allow interruptions for reasons other than

reliability of service to native load. If service under this Service Schedule is interrupted under Section C-3.7(a) or (b), neither Seller nor Purchaser shall be obligated to pay any damages under this Agreement or Confirmation. If service under this Service Schedule is interrupted for any reason other than pursuant to Section C-3.7(a) or (b), the Non-Performing Party shall be responsible for payment of damages as provided in Section 21.3 of this Agreement or in any Confirmation.

C-3.8 Each Party that is a FERC regulated public utility as defined in Section C-3.5 shall file the Confirmation with FERC for each transaction under this Service Schedule with a term in excess of one year no later than 30 days after service begins if that Party would have been required to file such Confirmation or similar agreements with FERC under an applicable FERC accepted market based rate schedule.

C-3.9 Seller shall be responsible for ensuring that Service Schedule C transactions are scheduled as firm power consistent with the most recent rules adopted by the applicable NERC regional reliability council.

SERVICE SCHEDULE D

OPERATING RESERVE – SPINNING

AND

OPERATING RESERVE –SUPPLEMENTAL

D-1 PURPOSE

This Service Schedule specifies procedures, terms and conditions pursuant to which the Seller provides Operating Reserve – Spinning and/or Operating Reserve – Supplemental, as specified in the Confirmation, to enable the Designated Authority to meet a reserve obligation or to resell as ancillary services under an OATT.

D-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

D-2.1 Terms used in this Service Schedule with initial capitalization which are not defined in the Agreement or this Service Schedule shall have the meanings given to them in the NERC Glossary and Applicable Standards. In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule.

D-2.1.1 “Applicable Standards” means the NERC Reliability Standards and the respective reliability standards and criteria of NERC, and of any Regional Reliability Organization, Balancing Authority, and Reserve Sharing Group applicable to the Seller’s provision and the Designated Authority’s use of Operating Reserve – Spinning or Operating Reserve – Supplemental, in force as of the date of the Confirmation.

D-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

D-2.1.3 “Designated Authority” means the Regional Reliability Organization, Balancing

Authority, Reserve Sharing Group or other entity designated in the Confirmation, which shall have a right to apply the applicable Reserve to the quantity of Reserve it is required to maintain, and to use such Reserve in accordance with the Applicable Standards. The Designated Authority and the Purchaser may be the same entity or two different entities. If the Designated Authority and the Purchaser are the same entity, then the Designated Authority shall also be the Purchaser for all purposes under the Agreement.

D-2.1.4 “Good Utility Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the applicable time period in the applicable region, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision in question was made, could have been expected to accomplish the desired result in a manner that: (a) is consistent with the Applicable Standards; (b) gives due consideration to reliability, safety and protection of equipment and the public welfare; and (c) is consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act, or the exclusion of all other practices, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.

D-2.1.5 “NERC Glossary” means the NERC Glossary of Terms Used in Reliability Standards.

D-2.1.6 “Non-Performance” with respect to Seller shall have the meaning given in Section D-4.1, and with respect to Purchaser, the meaning given in Section D-

4.2.

D-2.1.7 “OATT” refers to the Open Access Transmission Tariff of the Designated Authority or, if the Designated Authority has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

D-2.1.8 “OATT Schedule” refers to schedule 5 or 6 of the OATT for sale of ancillary services, or any other schedule under an OATT for sale of Operating Reserve – Spinning or Operating Reserve – Supplemental.

D-2.1.9 “Operating Reserve – Spinning” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 5 or similar schedule under an OATT.

D-2.1.10 “Operating Reserve – Supplemental” shall have the meaning given in the NERC Glossary of Terms and the Applicable Standards, and is the product transacted under schedule 6 or similar schedule under an OATT.

D-2.2 The following rules apply to this Service Schedule.

D-2.2.1 In the event of inconsistency between the definition in the NERC Glossary of Terms and the Applicable Standards, the Applicable Standards shall control.

D-2.2.2 No product sold or transferred under this Service Schedule D shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

D-2.2.3 The OATT, OATT Schedules, regulations of the FERC, the NERC Glossary, and Applicable Standards shall be applied in their forms as of the date of the Confirmation.

D-3 TERMS OF SERVICE

D-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Operating Reserve – Spinning and/or Operating Reserve – Supplemental, to which the Confirmation applies;
- (b) Identification of the Designated Authority and if the Designated Authority is not a Regional Reliability Organization, the Regional Reliability Organization within which the Designated Authority is electrically located;
- (c) The Standard Confirmation Provisions, as applicable;
- (d) Any additional attributes of the Operating Reserve – Spinning or Operating Reserve – Supplemental, as the Parties may agree;
- (e) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (f) Any conditions to the effectiveness of the Confirmation, including, for example, the completion of any arrangements or agreements between the Seller and the Designated Authority or among the Seller, Designated Authority, and Purchaser.

D-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

D-3.3 Seller shall provide Operating Reserve – Spinning or Operating Reserve – Supplemental, as applicable, to the Designated Authority in conformity with the Applicable Standards and any additional attributes specified in the Confirmation as are consistent with the Applicable Standards. Seller shall provide such service from one or more generation resources or Demand Response Resources. Such resources must be physically and

operationally available to respond within the time periods, and in conformance with other technical and operational criteria, prescribed by, the Applicable Standards for the applicable service, and as required to conform to any additional attributes stated in the Confirmation.

D-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

D-3.4.1 Seller shall provide capacity and deliver energy associated with Operating Reserve – Spinning or Operating Reserve – Supplemental, in quantities up to the applicable capacity(ies) specified in the Confirmation for the applicable hour(s), as and when the Designated Authority requests such delivery in the manner of request specified in the Confirmation and in accordance with Section D-3.4.2.

D-3.4.2 The Designated Authority shall use the capacity and energy provided by Seller under this Service Schedule for the sole purpose of satisfying the Designated Authority's own obligations pertaining to Operating Reserve – Spinning and Operating Reserve – Supplemental, as specified in the Applicable Standards or the Confirmation. Purchaser shall ensure that the Designated Authority shall not require Seller to deliver energy under this Service Schedule except as and when the Designated Authority determines, in its good faith discretion reasonably exercised in accordance with Good Utility Practice or such other criteria as may be stated in the Confirmation, that such energy is required to enable it to respond to a contingency or other event for which the service specified in the Confirmation is permitted to be utilized under the Applicable Standards or as otherwise stated in the Confirmation.

D-3.5 Inspection and Audit. The Purchaser and Designated Authority shall have the right, to

conduct such inspections and audits of Seller's records as are reasonable to assure that the Seller's provision of services under this Service Schedule and Confirmation conforms to the Applicable Standards and the Confirmation. The Seller shall have the right to conduct inspections and audits of the Designated Authority's records as reasonably required to assure that any use by the Designated Authority of the services under this Service Schedule and Confirmation conformed to Section D-3.4.2 and the Confirmation. The Parties may state further details and conditions in the Confirmation concerning these rights, including, for example, provisions concerning confidentiality or limiting inspection to an agreed third-party auditor.

D-3.6 Regulatory Matters – Rate Caps

D-3.6.1 The price for Operating Reserve – Spinning or Operating Reserve – Supplemental shall not be subject to the rate caps specified in Section D-3.6.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

D-3.6.2 Except as provided for in Section D-3.6.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted

Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive

Committee).

D-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

D-4.1 Seller Non-Performance. “Non-Performance” with respect to Seller means Seller’s failure to provide capacity or deliver energy to the Designated Authority as this Service Schedule and the Confirmation require.

D-4.1.1 Purchaser Entitlement to Damages. In the event of Non-Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

D-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller’s Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided, that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.1.2 shall not diminish the performing Party’s rights to collect damages for such Non-Performance under Section D-4.1.1, or to avail itself of remedies for other Events of Default.

D-4.2 Purchaser Non-Performance. “Non-Performance” with respect to the Purchaser means the Designated Authority’s failure to receive capacity and/or energy, or the Designated Authority’s use of capacity and/or energy under this Service Schedule which use does not conform to Section D-3.4.2 (such capacity and/or energy, the “unauthorized energy”).

D-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall compensate Seller in an amount equal to the quantity of

unauthorized energy Seller was required to deliver during each hour, multiplied by the energy charge for the applicable hour.

D-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section D-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (but not Section 22.2(a)), provided that the right to terminate all transactions for such Non-Performance shall be limited to transactions under this Service Schedule D. Exercise of the termination option under this Section D-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section D-4.2.1, or to avail itself of remedies for other Events of Default under the Agreement.

D-4.3 Termination under Section D-4.1.2 or D-4.4.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section D-4.1.2 or D-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

D-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE E

ENERGY IMBALANCE AND GENERATOR IMBALANCE POWER

E-1 PURPOSE

This Service Schedule states procedures, terms and conditions pursuant to which the Seller provides Energy Imbalance Power and Generation Imbalance Power to the Purchaser, as specified in the Confirmation, and the Purchaser receives such service to meet a reliability obligation or to resell as ancillary services under an OATT.

E-2 DEFINITIONS AND RULES ABOUT THIS SERVICE SCHEDULE

E-2.1 In addition to the definitions specified in Section 4 of the Agreement, the following definitions apply to this Service Schedule E.

E-2.1.1 “Balancing Power” means a service or product that can be resold as Energy Imbalance Power or Generator Imbalance Power under Schedules 4 and 9, respectively, of the OATT or other schedule under an OATT for sale of imbalance power.

E-2.1.2 “Demand Response Resource(s)” has the meaning given in 18 C.F.R. §35.28(b)(5).

E-2.1.3 “Non-Performance” with respect to Seller shall have the meaning given in Section E-4.1 and with respect to Purchaser the meaning given in Section E-4.2.

E-2.1.4 “OATT” refers to the Purchaser’s Open Access Transmission Tariff approved by the FERC or, if the Purchaser has no OATT, the pro forma Open Access Transmission Tariff of the FERC.

E-2.1.5 “OATT Schedule” refers to schedule 4 or 9 of the OATT for sale of ancillary services, or any other schedule for sale of imbalance power under an OATT.

E-2.2 The following rules apply to this Service Schedule.

E-2.2.1 No product sold or transferred under this Service Schedule E shall include reactive supply and voltage control service, or Regulation and Frequency Response service.

E-2.2.2 The OATT and OATT Schedules shall be applied in their forms as of the date of the Confirmation.

E-3 TERMS OF SERVICE

E-3.1 Each Confirmation entered into under this Service Schedule shall contain the following information, and may contain other terms and conditions to which the Parties agree:

- (a) A prominent designation of the service, Energy Imbalance and Generator Imbalance Power, to which the Confirmation applies;
- (b) The Standard Confirmation Provisions, as applicable;
- (c) Any additional attributes of the Balancing Power, as the Parties may agree;
- (d) The means by which requests for energy required to be delivered under the Service Schedule shall be communicated; and
- (e) Any conditions to the effectiveness of the Confirmation.

E-3.2 Contract Price. The Contract Price may include separately stated charges for capacity and energy, and any agreements concerning transmission arrangements and payment obligations.

E-3.3 Seller shall provide Balancing Power from one or more generation resources or Demand Response Resources. Such resources must be physically and operationally available to respond within the time periods, and in conformance with other technical and operational criteria, as may be stated in the Confirmation.

E-3.4 Obligations Concerning Capacity and Requests for and Delivery of Energy

E-3.4.1 Upon the requests of the Purchaser, Seller shall provide capacity and deliver energy associated with Balancing Power to the Purchaser at any rate of flow up to and including the applicable capacity(ies) and at such intervals as are specified in the Confirmation for the applicable hour(s).

E-3.4.2 Transmission must be available intra-hour, and may be arranged and scheduled in any manner that meets the requirements of the Parties.

E-3.5 Regulatory Matters – Rate Caps

E-3.5.1 The price for Balancing Power shall not be subject to the rate caps specified in Section E-3.5.2 in either of the following two circumstances:

- (1) where the Seller is a FERC regulated public utility and that Seller has been authorized to sell power like that provided for under this Service Schedule at market-based rates; or
- (2) where the Seller is not a FERC regulated public utility.

A Party is a FERC regulated public utility if it is a "public utility" as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e).

E-3.5.2 Except as provided for in Section E-3.5.1, the price shall not exceed the Seller's forecasted Incremental Cost plus up to: \$7.32/kW/month; \$1.68/kW/week; 33.78¢/kW/day; 14.07 mills/kWh; or 21.11 mills/kWh for service of sixteen (16) hours or less per day. The hourly rate is capped at the Seller's forecasted Incremental Cost plus 33.78¢/kW/day. The total demand charge revenues in any consecutive seven-day period shall not exceed the product of the weekly rate and the highest demand experienced on any day in the seven-day period. Exchange

ratios among such Parties shall be as mutually agreed between the Purchaser and the Seller, but shall not exceed the ratio of 1.5 to 1.0. The Seller's forecasted Incremental Cost discussed above also may include any transmission and/or ancillary service costs associated with the sale, including the cost of any transmission and/or ancillary services that the Seller must take on its own system. Any such transmission and/or ancillary service charges shall be separately identified by the Seller to the Purchaser for transactions under this Schedule including exchanges. The transmission and ancillary service rate ceiling shall be available through the WSPP's Hub or homepage. Any such transmission service (and ancillary services provided in conjunction with such transmission service) by Seller shall be provided pursuant to any applicable transmission tariff or agreement, and the rates therefore shall be consistent with such tariff or agreement. The foregoing hourly rate caps (i) are subject to the submission of cost justification by the applicable Seller to the FERC, and acceptance by FERC thereof, under Western Systems Power Pool, 122 FERC ¶ 61,139 (2008), or (ii) are inapplicable, in the event that the Seller has filed with FERC, and FERC has accepted, a rate schedule applicable solely to such Seller, which rate schedule has been, upon the request of the applicable Seller, incorporated into this Agreement at Schedule "Q" hereof (such incorporation to occur upon Seller's request without approval of the WSPP Executive Committee).

E-4 NON-PERFORMANCE, DAMAGES AND TERMINATION

E-4.1 Seller Non-Performance. "Non-Performance" with respect to Seller means Seller's

failure to provide capacity or deliver energy to the Purchaser as this Service Schedule and the Confirmation require.

E-4.1.1 Purchaser Entitlement to Damages. In the event of Non- Performance by Seller, Seller shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.1.2 Purchaser Option to Terminate. Purchaser shall have an option to declare any instance of Seller's Non-Performance under Section E-4.1 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.1.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.1.1, or to avail itself of remedies for other Events of Default.

E-4.2 Purchaser Non-Performance. "Non-Performance" with respect to Purchaser means Purchaser's failure to receive energy that it had scheduled for receipt under this Service Schedule and the Confirmation.

E-4.2.1 Seller Entitlement to Damages. In the event of Non-Performance by Purchaser, Purchaser shall pay damages to Purchaser calculated in accordance with Section 21.3 of the Agreement.

E-4.2.2 Seller Option to Terminate. Seller shall have an option to declare any instance of Purchaser's Non-Performance under Section E-4.2 an Event of Default under the Agreement and the remedies for an Event of Default under Section 22.2(b) of the

Agreement shall apply (excluding Section 22.2(a)), provided that the right to terminate transactions for such Non-Performance shall be limited to transactions under this Service Schedule E. Exercise of the termination option under this Section E-4.2.2 shall not diminish the performing Party's rights to collect damages for such Non-Performance under Section E-4.2.1, or to avail itself of remedies for other Events of Default.

E-4.3 Termination under Section E-4.1.2 or E-4.2.2 shall become effective immediately upon receipt by the non-performing Party of the Performing Party's written notice thereof, which notice shall specify the Non-Performance. If the Performing Party fails to exercise its termination option arising from an instance of Non-Performance under Section E-4.1.2 or E-4.2.2 within thirty (30) days following the date the option to terminate arose, then solely with respect to that instance of Non-Performance, the termination option shall cease to be available to the Performing Party.

E-4.4 Nothing in this Service Schedule shall restrict the right of either Party to avail itself of other remedies provided in the Agreement.

SERVICE SCHEDULE R
RENEWABLE ENERGY CERTIFICATE TRANSACTIONS
WITH AND WITHOUT ENERGY

R-1 Introduction; Transaction Documentation; and Rules of Construction. This Service Schedule R states terms and conditions applicable to REC Transactions entered into by Parties under the Agreement.

R-1.1 Documentation. Each REC Transaction shall be documented in a Confirmation.

Annex 2 is a Confirmation template, which the Parties may modify and make subject to any other agreement between them. A Confirmation for a REC Transaction will be given legal effect only if a Documentary Writing.

R-1.2 Contract Documents. The Agreement, Service Schedule R, and the fully executed Confirmation comprise a contract for a REC Transaction. Any conflicts between or among the Agreement, Service Schedule R, and the Confirmation shall be resolved in the following order of control: first, the Confirmation; second, Service Schedule R; and third, the Agreement.

R-1.3 Definitions. Definitions contained in the Agreement and Annex 1 apply to this Service Schedule R. Any conflicts among definitions contained in these documents shall be resolved in accordance with Section R-1.2.

R-1.4 Rules of Construction.

R-1.4.1 The Annexes of Service Schedule R are incorporated into and made a part of this Service Schedule R, as though set forth fully herein.

R-1.4.2 The word “including” shall mean “including but not limited to.” Unless otherwise specified, the word “Section” refers to a section of this Service Schedule R and includes all subparts of the specified section.

R-1.4.3 Subject to any legal restrictions applicable to a Party, the Parties to a REC Transaction may vary any term or condition of this Service Schedule R for that REC Transaction. Provisions in this Service Schedule R concerning such variance of terms, such as “unless otherwise agreed,” shall not prejudice the generality of the preceding sentence, provided, that the Parties shall not vary Section C-3.6 of Service Schedule C, Section B-3.6 of Service Schedule B, and Section A-3.7 of Service Schedule A.

R-1.4.4 An Applicable Program shall be applicable to a REC Transaction only if designated expressly in the Confirmation. No rule of contract construction or interpretation, and no inference or implication, shall cause an Applicable Program that is not designated expressly in the Confirmation to be applicable to a REC Transaction.

R-2 Confirmations; REC Products.

R-2.1 REC Transaction. A “REC Transaction” is a purchase and sale of a REC separately from or bundled with Energy. A REC Transaction may be for the purchase and sale of any REC Product defined in Section R-2.3 or another REC Product the Parties may define.

R-2.2 Confirmations. In addition to other terms and conditions to which the Parties may agree, the Confirmation:

R-2.2.1 must include the following terms: REC Product, Contract Quantity, Contract Price, Vintage, and Transfer Date, and whether the Environmental Attributes covered by the REC are All Attributes, Program Attributes, or other coverage the Parties may specify;

- R-2.2.2** for a bundled REC Transaction (Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC), may include a single Contract Price which may be allocated between the REC and the Energy;
- R-2.2.3** must identify the Renewable Energy Facility or Renewable Energy Source if the REC Transaction is All Attributes (Section R-2.4.1) or Program Attributes (Section R-2.4.2), if a designated Applicable Program requires such identification, or if the REC Product is Resource Contingent Bundled REC or Facility As-Run Bundled REC;
- R-2.2.4** must designate an Applicable Program if the REC Transaction is Program Attributes, the Seller is to assure compliance with an Applicable Program (Sections R-5.2.1, 6.3, and 6.4), or to recover penalties and alternative compliance payments (Section R-9.1), and if the REC Transaction is All Attributes, may designate an Applicable Program (Section 2.4.1).

R-2.3 REC Products. A “REC Product” is any of the following defined products or other product specified in the Confirmation.

- R-2.3.1 Firm REC.** A “Firm REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of energy. The Seller has a firm obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force.

R-2.3.2 Firm Bundled REC. A “Firm Bundled REC” is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a firm obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent of Uncontrollable Force. The terms and conditions of Service Schedule C apply to the purchase and sale of Energy associated with a Firm Bundled REC as the Parties may modify such terms and conditions in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section C-3.6 of Service Schedule C shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule C at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price.

R-2.3.3 Resource Contingent REC. A “Resource Contingent REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller has a resource contingent obligation to Deliver the REC pursuant to the Confirmation. A remedy for non-

performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties may have agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.4 Resource Contingent Bundled REC.

- (a) A "Resource Contingent Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has a resource contingent obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent: (i) of Uncontrollable

Force; (ii) the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery, due to Forced Outage, Scheduled Maintenance, or Fuel Impediment; or (iii) of the occurrence of such other circumstances to which the Parties agreed in the Confirmation, resulting in a reduction of output or unavailability to produce energy required for the REC or Delivery. In the event and to the extent of an outage under (ii) or, if applicable, (iii), the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.

- (b) The terms and conditions of Service Schedule B apply to the purchase and sale of Energy associated with a Resource Contingent Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section B-3.6 of Service Schedule B shall apply, except (1) where the

Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule B at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule B Section B-3.8 is modified to state the following:

Energy schedules for the Purchaser's share of a Renewable Energy Facility may be modified by the Purchaser with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is

to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions. Seller shall timely notify the Purchaser of Scheduled Maintenance.

The following is added at the end of Section B-3.9:

(f) By the Seller when all or a portion of the unit is unavailable due to Fuel Impediment, unless otherwise agreed by the schedulers.

R-2.3.5 Facility As-Run REC. A “Facility As-Run REC” is a REC purchased and sold in a transaction that does not include the sale or purchase of Energy. The Seller is obligated to Deliver the REC pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in

accordance with such purchasers' contract quantities under contracts with Seller.

R-2.3.6 Facility As-Run Bundled REC.

- (a) A "Facility As-Run Bundled REC" is a REC purchased and sold in a transaction that includes the purchase and sale of Energy. The Seller has an obligation to Deliver the REC and Energy pursuant to the Confirmation. A remedy for non-performance is available under Section R-9, except in the event and to the extent that, for any reason or no reason, the Renewable Energy Facility identified in the Confirmation was not on line to produce energy required for the REC or Delivery. If the Renewable Energy Facility designated in the Confirmation is not operated, the resulting reduction in output for the applicable hour shall be allocated among all purchasers of RECs and energy from the Renewable Energy Facility who are identified in the Confirmation (including purchasers identified under any provisions in the Confirmation allowing for subsequent identification) in accordance with any priorities or shares stated in the Confirmation, and if no priorities or shares are stated in the Confirmation, then proportionately in accordance with such purchasers' contract quantities under contracts with Seller.
- (b) The terms and conditions of Service Schedule A apply to the purchase and sale of Energy associated with a Facility As-Run

Bundled REC as modified herein and as may be modified in the Confirmation, subject to the proviso stated in Section R-1.4.3. The hourly rate caps identified in Section A-3.7 of Service Schedule A shall apply, except (1) where the Seller is a FERC regulated “public utility” as defined in Section 201(e) of the Federal Power Act, 16 U.S.C. § 824(e), and that Seller has been authorized to sell power like that provided for in Service Schedule A at market-based rates; or (2) where the Seller is not such a FERC regulated “public utility.” When such hourly rate caps apply, (a) if the Contract Price is allocated between the REC and the Energy, the hourly rate caps shall apply to the Contract Price for the Energy and not the REC; and (b) if the Contract Price is not allocated between the REC and the Energy, the hourly rate caps shall apply to the bundled Contract Price. Service Schedule A Section A-3.3 is modified to state the following:

Energy schedules may be modified by the Purchaser or Seller with not less than a thirty (30) minute notice before the hour in which the modification is to occur, unless otherwise agreed or unforeseen system operating conditions occur, or as otherwise required by, or pursuant to customary practice in, the applicable regional reliability council. A reduction in the energy schedule shall be made commensurately for the REC

requirement for the applicable hour. Seller shall notify Purchaser of volumes to be delivered no later than thirty (30) minutes before the hour in which delivery is to occur unless otherwise agreed or such notification is infeasible due to unforeseen system operating conditions.

R-2.4 Environmental Attributes Contained In The REC. The Confirmation may describe the Environmental Attributes covered by the REC as All Attributes, Program Attributes, or as the Parties otherwise may agree. If the Confirmation does not designate a REC Transaction as Program Attributes or otherwise limit the Environmental Attributes conveyed, and if a Renewable Energy Facility or Renewable Energy Source is specified, the REC Transaction shall be All Attributes. A designation of All Attributes will not be effective unless a Renewable Energy Facility or Renewable Energy Source is designated in the Confirmation.

R-2.4.1 All Attributes. An “All Attributes” REC conveys all of the Environmental Attributes the Renewable Energy Facility or Renewable Energy Source designated in the Confirmation is capable of producing, whether known or unknown on the Effective Date, including, at a minimum, all Environmental Attributes required by any Applicable Program designated in the Confirmation. Seller disclaims any warranty that Environmental Attributes other than those required by an Applicable Program designated in the Confirmation fulfill the requirements of any other Applicable Program. To establish the

Environmental Attributes conveyed, the Confirmation may include a specification thereof.

R-2.4.2 Program Attributes. A “Program Attributes” REC conveys the Environmental Attributes required by an Applicable Program designated in the Confirmation. It conveys no other Environmental Attributes, the rights to which are retained by the Seller. The Parties should verify that a designated Tracking System will recognize a Program Attributes REC. (Note, WREGIS does not recognize a Program Attributes limitation upon conveyed Environmental Attributes.)

R-3 Delivery and Title.

R-3.1 Unbundled REC Transactions. This Section R-3.1 applies if the REC Product is a Firm REC, Resource Contingent REC, or Facility As-Run REC.

R-3.1.1 Delivery. “Deliver(y)(ed)” occurs upon completion of Seller’s transfer of the Contract Quantity to Purchaser. If a Tracking System is designated in the Confirmation, Seller shall cause transfer in accordance with the rules and procedures of the Tracking System. If the Tracking System does not state such rules or procedures, then Delivery shall occur upon the Tracking System’s transfer of the REC into Purchaser’s account. If a Tracking System is not designated in the Confirmation, Delivery is completed upon Seller’s delivery to Purchaser of an Attestation.

R-3.1.2 Acceptance. “Accept(ance)(ed)” means Purchaser’s receipt of Delivery of the REC from Seller, without Purchaser’s rejection. If a

Tracking System is designated in the Confirmation, Purchaser shall receive a transfer in accordance with the rules and procedures of the Tracking System, and Acceptance (or rejection) shall be made within five (5) Business Days following the date the Tracking System gives electronic notice to Purchaser that it has initiated transfer (this deadline applies regardless of any different period stated in the Tracking System's rules and procedures) and if timely rejection is not made, then the Delivery is Accepted. If a Tracking System is not designated in the Confirmation, Acceptance occurs upon Purchaser's Acceptance, without rejection within five (5) Business Days of delivery, of the Attestation delivered by Seller.

R-3.1.3 Passage of Title. Title to the REC shall pass from Seller to Purchaser upon Delivery and Acceptance.

R-3.2 Bundled REC Transactions. This Section R-3.2 applies if the REC Product is a Firm Bundled REC, Resource Contingent Bundled REC, or Facility As-Run Bundled REC.

R-3.2.1 Delivery. "Delivery(y)(ed)" occurs upon completion of Seller's transfer to Purchaser of the Contract Quantity of the REC and the Contract Quantity of the Energy. Delivery of the REC shall be completed in accordance with Section R-3.1.1. Delivery of Energy shall be completed in accordance with the terms and conditions of the Confirmation and the Agreement.

R-3.2.2 Acceptance. “Acceptance” of the REC occurs in the manner specified in Section R-3.1.2, and of the Energy upon receipt at the delivery point in accordance with the Confirmation.

R-3.2.3 Passage of Title. If the Vintage of the REC is prior to the Effective Date, title to the REC passes from Seller to Purchaser on the Effective Date or other date to which the Parties agree. If the REC is to be generated on or after the Effective Date, title to the REC passes upon the generation of each megawatt hour of energy required for production of the REC, and Seller shall hold the REC in trust for Purchaser until Delivery. Passage of title to Energy occurs pursuant to the Agreement.

R-3.3 Actions Required of Parties to Assure Delivery.

R-3.3.1 Provision of Generation Information; Required Actions. No less than monthly, Seller shall provide Purchaser with a written statement setting forth for applicable periods the quantities of Seller’s generation of energy for production of the REC. Seller shall promptly take all actions and do all things necessary and appropriate to cause the designated Tracking System, if any, to transfer the REC to Purchaser, including promptly providing all required information and documents in the required forms, and paying any and all fees the Tracking System imposes on Seller. If the Confirmation provides for a designated Tracking System to expedite issuance of certificates (for example, forward transfer certificates in WREGIS), Seller shall promptly take all actions required to cause such expedition. If no Tracking System is

designated in the Confirmation, then upon creation of the REC Seller shall promptly deliver the Attestation to Purchaser.

R-3.3.2 Failure to Issue REC. Seller is responsible for transfer and issuance of RECs by the Tracking System; Purchaser's sole responsibilities are maintenance of an account with the Tracking System and Acceptance of conforming RECs pursuant to Section R-3.1.2. Without prejudice to the immediately preceding sentence, in the event a Tracking System designated in the Confirmation declines to issue an electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of a REC, each Party will provide the other Party with all documents, communications, and information sent to or received from the Tracking System that pertain thereto. The Parties will cooperate, and each Party will complete any uncompleted items for which it is responsible, each at its own expense. If following such efforts, and due to no failure of Seller to take all required actions, the Tracking System does not issue the electronic credit or physical certificate to document the attempted transfer, Delivery, or Acceptance of the REC, Seller may, upon Purchaser's agreement (which Purchaser may decline in its discretion), provide an Attestation to Purchaser to effect Delivery. The obligations under this Section R-3.3.2 shall not be construed to diminish the Seller or the Purchaser's respective rights and obligations under the Agreement, Service Schedule R, and the Confirmation.

R-3.4 Conveyance and Transfer. As of both Delivery and passage of title, Seller shall transfer and convey to Purchaser all right, title, and interest in and to the REC and all Environmental Attributes underlying the REC pursuant to the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and the Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-4 Charges; Credit. The charge shall be an amount equal to the Contract Price multiplied by the Delivered and Accepted quantity, without prejudice to the right to recover damages owed in accordance with Section R-9. The Parties may state any credit terms and conditions to which they agree in the Confirmation; Section 27 of the Agreement applies unless otherwise agreed.

R-5 Governing Law; Change in Law.

R-5.1 Governing Law. Section 24 of the Agreement applies except as follows. If an Applicable Program is designated in the Confirmation, all performance obligations pursuant to the REC Transaction concerning the creation, issuance, transfer, tracking and retirement of the REC shall be governed as follows:

R-5.1.1 If the Applicable Program was created by the laws of a Governmental Authority, then by the laws, rules, regulations, orders, and judicial precedent of such Governmental Authority;

R-5.1.2 If the Applicable Program was not created by the laws of a Governmental Authority, but is a voluntary program, then Section 24 of the Agreement applies without modification, and the Parties shall be bound contractually to comply with the standards and criteria of the voluntary Applicable Program.

R-5.2 Change in Law.

R-5.2.1 Applicability. Section R-5.2 applies only to REC Transactions for which an Applicable Program is designated in the Confirmation. In a REC Transaction for which no Applicable Program is designated, Seller makes no representation or warranty concerning compliance with any particular Applicable Program and any such representation or warranty is expressly disclaimed.

R-5.2.2 Definitions.

- (a) “Change in Law” means any addition or amendment, by a Governmental Authority, to any laws, rules, regulations, orders, or judicial precedent, that applies to an Applicable Program designated in the Confirmation, that is enacted or issued after the Effective Date and nullifies compliance of the REC with the Applicable Program. An addition or amendment that is enacted or issued before the Effective Date but effective on or after the Effective Date is not a Change in Law.
- (b) “Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date and the Transfer Date, including requirements modified or added by a Change in Law.
- (c) “Not Regulatorily Continuing” means a REC Transaction in which the REC and Environmental Attributes conform to the

requirements of an Applicable Program designated in the Confirmation as such requirements exist on the Effective Date only, and the REC and Environmental Attributes are not required to conform to requirements modified or added by a Change in Law.

R-5.2.3 Default Designation as Regulatorily Continuing. A REC Transaction as to which an Applicable Program is designated in the Confirmation shall be Regulatorily Continuing unless the Parties specify in the Confirmation that the REC Transaction is Not Regulatorily Continuing.

R-5.2.4 Effect of Change In Law in Regulatorily Continuing REC Transaction.

- (a) If a Change in Law occurs in a Regulatorily Continuing REC Transaction, Seller shall be obligated to make reasonable efforts to attain compliance with the designated Applicable Program, the costs of which shall not be required to exceed any cost cap specified in the Confirmation. If despite such efforts to attain compliance, including reasonable expenditures, Seller cannot obtain compliance and Purchaser refuses to accept Delivery of the REC due to the Change in Law, Seller shall not be liable for damages under Section R-9.
- (b) In the event Purchaser refuses to accept Delivery of the REC under Section 5.2.4(a), and Seller has Delivered energy to Purchaser in the REC Transaction, Purchaser shall not be

relieved of its obligation to pay for such energy, which payment shall be either at the price allocated to energy in the Confirmation, if any, and if no allocation is made, then at an amount equal to the Replacement Price.

R-5.2.5 Amendment to Address Change In Law. Nothing in this Section R-5.2 shall be construed to preclude the Parties from agreeing to amend the Confirmation to permit a Seller to perform its obligations in a REC Transaction as to which a Change in Law has occurred.

R-6 Seller Representations and Warranties. In each REC Transaction, Seller represents and warrants to Purchaser the following:

R-6.1 As of both Delivery and passage of title, Seller has and conveys to Purchaser all right, title, interest in and to the REC and all Environmental Attributes underlying the REC as required by the Confirmation, and the exclusive right to any and all Reporting Rights Seller may have in or to the REC and Environmental Attributes, free and clear of any liens, security interests, or other encumbrances.

R-6.2 As of both Delivery and passage of title, the REC and Environmental Attributes conform to the requirements of the REC Transaction.

R-6.3 If the REC Transaction is Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), subject to any limits upon Seller's obligations under Section R-5.2.4, as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date and the Transfer Date.

R-6.4 If the REC Transaction is Not Regulatorily Continuing (and an Applicable Program is designated in the Confirmation), as of both Delivery and passage of title, that the REC and Environmental Attributes conform to the requirements of the designated Applicable Program as such requirements exist on the Effective Date.

R-6.5 With respect to deliveries of Energy in REC Transactions for Firm Bundled REC, Contingent Resource Bundled REC, and Facility As-Run Bundled REC, that Seller has complied with the representations and warranties stated in Section 33 of the Agreement.

SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

R-7 Records; Confidentiality

R-7.1 Correction of Records. If any statement, charge or computation concerning a REC Transaction is inaccurate, the Parties promptly shall make any adjustments to records as reasonably necessary to correct such inaccuracy, and make any adjustment of payments required to correspond to the corrected records, provided, that Purchaser shall not be required to pay a higher Contract Price or accept a lower Contract Quantity than the Confirmation requires.

R-7.2 Exception to Confidentiality. Purchaser has the right to disclose to any Governmental Authority having jurisdiction over Purchaser, or to any voluntary Applicable Program and the person or entity specified by the rules of procedures of the voluntary Applicable Program to perform certification, any information necessary to demonstrate Purchaser's compliance with an Applicable Program

(whether or not designated in the Confirmation); provided, however, that Purchaser shall use reasonable efforts to minimize the scope of any such disclosure and shall require, as may be feasible, that the recipient maintain the confidentiality of any documents or confidential information governed by the provisions of Section 30.1 of the Agreement, including, if permitted under applicable procedures of the Governmental Authority or such administrator, and subject to any applicable public records laws, seeking a protective order or similar protective mechanism in connection with any disclosure. With respect to a REC, Purchaser also has the right to disclose the following to any customer or affiliate of Purchaser that is participating in any voluntary or mandatory Applicable Program: the Renewable Energy Source, the location of any Renewable Energy Facility designated in the Confirmation, and monthly generation quantities of energy underlying the REC.

R-8 Uncontrollable Force. The following is substituted for the first sentence of the second paragraph of Section 10 of the Agreement:

The following shall not be considered “Uncontrollable Forces”: (i) Seller’s cost of producing or obtaining the REC or energy (or ability to sell the REC or energy at a price exceeding the Contract Price); (ii) the loss or failure of Seller’s supply, including materials or equipment; or (iii) Purchaser’s inability economically to use or resell the REC or energy.

The following is added at the end of the second paragraph of Section 10 of the Agreement:

If production of energy at a Renewable Energy Facility designated in the Confirmation is curtailed due to an Uncontrollable Force, any production during

the period of such curtailment shall be allocated as follows: first, among all purchasers of Firm RECs, Firm Bundled RECs, Resource Contingent RECs, Resource Contingent Bundled RECs, and energy purchased under Service Schedules B and C, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation, and second, to all purchasers of Facility As-Run RECs, Facility As-Run Bundled RECs and energy purchased under Service Schedule A, proportionately to such purchasers' contract quantities under contracts with Seller during such period and subject to any priorities or shares stated in the Confirmation.

R-9 Remedies for Non-Performance.

R-9.1 Damages. Section 21.3 of the Agreement, as modified in this Section 9, applies to REC Transactions.

R-9.1.1 Failure to Receive or Deliver in Unbundled REC Transactions.

This Section R-9.1.1 applies to REC Transactions for Firm REC, Resource Contingent REC, and Facility As-Run REC. Section 21.3(a)(3) and (5) of the Agreement are inapplicable. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery of RECs Delivered by Seller in accordance with the Confirmation, then Purchaser shall be liable to Seller for the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price and (ii) is the amount by which the quantity of

RECs Purchaser refused to Accept was less than the Contract Quantity, subject to any limitations stated in the Confirmation.

21.3(a)(2) is modified as follows:

If Seller fails to Deliver RECs to Purchaser in accordance with the Confirmation, then Seller shall be liable to Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Replacement Price exceeded the Contract Price and (ii) is the amount by which the quantity of RECs Seller Delivered was less than the Contract Quantity; plus (b) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations stated in the Confirmation.

R-9.1.2 Failure to Receive or Deliver in Bundled REC Transactions.

(a) **Price Not Allocated between REC and Energy.** This Section R-9.1.2(a) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run Bundled REC, and in which the Confirmation does not allocate the Contract Price between the REC and Energy. Section 21.3(a)(1) of the Agreement is modified as follows:

If Purchaser refuses to Accept Delivery from Seller in accordance with the Confirmation, then Purchaser shall be

liable to Seller for: (a) the product of (i) and (ii) where (i) is the amount, if any, by which the Contract Price exceeded the Resale Price, and (ii) is the amount by which the quantity of RECs and Energy Purchaser refused to Accept was less than the Contract Quantity, plus (b) the amount of transmission charge(s), if any, for firm transmission service upstream of the delivery point, which Seller incurred to achieve the Resale Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Purchaser's schedule or receipt of Energy (based on Seller's commercially reasonable efforts to achieve such reduction), subject to any limitations stated in the Confirmation. If the Purchaser refused to Accept Delivery of RECs but Accepted Delivery of Energy, then Purchaser shall pay Seller for such received Energy at the Resale Price of the Energy; if the Purchaser refused to Accept Delivery of Energy but Accepted Delivery of RECs, the Purchaser shall pay Seller for Accepted RECs at an amount equal to the Contract Price less the Resale Price of the Energy.

Section 21.3(a)(2) of the Agreement is modified as follows:

If Seller fails to Deliver to Purchaser in accordance with the Confirmation, then Seller shall be liable to the Purchaser for: (a) the product of (i) and (ii) where (i) is the amount, if

any, by which the Replacement Price exceeded the Contract Price, and (ii) is the amount by which the quantity of RECs and Energy Delivered was less than the Contract Quantity; plus (b) the amount of transmission charge(s), if any, for firm transmission service downstream of the delivery point, which Purchaser incurred to achieve the Replacement Price, less the reduction, if any, in transmission charge(s) achieved as a result of the reduction in Seller's schedule or delivery of Energy (based on Purchaser's commercially reasonable efforts to achieve such reduction), plus (c) if an Applicable Program is specified, the amount, if any, of penalties and alternative compliance payments a Governmental Authority required Purchaser to pay due to Seller's non-performance, and which penalties or alternative compliance payments are no longer subject to judicial review, subject to any limitations on such amounts stated in the Confirmation. In the event Seller Delivers Energy but not RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

- (b) Price Allocated between REC and Energy.** This Section R-9.1.2(b) applies to REC Transactions for Firm Bundled REC, Resource Contingent Bundled REC, and Facility As-Run

Bundled REC, in which the Confirmation sets forth an allocation of the Contract Price between the REC and energy.

- (i) If Purchaser refuses to Accept Delivery of RECs in accordance with the Confirmation, then Purchaser shall be liable to Seller as set forth in Section R-9.1.1.
- (ii) Subject to part (v) of this Section, if Seller fails to Deliver RECs in accordance with the Confirmation, then the Seller shall be liable to Purchaser as set forth in Section R-9.1.1.
- (iii) If Purchaser refuses to receive Delivery of Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (iv) If Seller fails to Deliver Energy in accordance with the Confirmation, then Section 21.3(a) of the Agreement shall apply as set forth in the Agreement without modification by this Service Schedule R.
- (v) In the event Seller Delivers Energy but fails to Deliver RECs, and regardless of Purchaser's receipt of Energy, Purchaser shall not be required to pay Seller for such Energy.

R-10 Other Modifications of the Agreement for REC Transactions.

R-10.1 Revised Agreement Definitions. For purposes of REC Transactions, the following revisions to definitions contained in Section 4 of the Agreement shall apply:

R-10.1.1 Contract Quantity: The amount of RECs and, if applicable, Energy, to be supplied for a transaction under the Agreement.

R-10.1.2 Power Marketer: An entity which buys, sells, and takes title to RECS, electric energy, transmission and/or other services from traditional utilities and other suppliers.

R-10.1.3 Physically Settled Option: Includes (i) a call option which is the right, but not the obligation, to buy an underlying REC and/or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation; and (ii) a put option which is the right, but not the obligation, to sell an underlying REC or power product as defined under Service Schedule R according to the price and exercise terms set forth in the Confirmation.

R-10.1.4 Replacement Price: The price at which the Purchaser, acting in a commercially reasonable manner, effects a purchase of substitute REC(s), capacity and/or energy in place of the REC(s), capacity and/or energy not Delivered (for REC(s) and/or energy) or made available (for capacity only) by the Seller or, absent such a purchase, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Purchaser in a commercially reasonable manner, for Energy at the delivery point specified in the Confirmation. Substitute

REC(s) must be similar in all material respects to the REC(s) specified in the Confirmation.

R-10.1.5 Resale Price: The price at which the Seller, acting in a commercially reasonable manner, effects a resale of the REC(s), capacity and/or energy not received by the Purchaser or, absent such a resale, the market price for such quantity of REC(s), capacity and/or energy, as determined by the Seller in a commercially reasonable manner, for Energy at the delivery point specified for the transaction in a Confirmation.

R-10.2 Notices. Section 12.2 of the Agreement is revised by inserting “RECs or” before the phrase “capacity and/or energy.”

SERVICE SCHEDULE R

ANNEX 1 - DEFINITIONS

“Acceptance” has the meaning given in Sections R-3.1.2 or R-3.2.2, as applicable.

“All Attributes” has the meaning given in Section R-2.4.1.

“Applicable Program” means (a) a program adopted by a Governmental Authority that requires the sale, purchase, or use of energy generated or produced by a facility that converts renewable natural resources such as wind, sunlight, rain, tides, geothermal heat, hydro, or biomass into electric energy, including any Renewable Portfolio Standard (RPS) adopted by a Governmental Authority and all Governing Law that pertains thereto, or (b) a voluntary program for reporting, crediting or attributing RECs and all rules, standards and procedures adopted by the administering organization that pertain thereto.

“Attestation” means (a) the Seller’s written statement, certified as true and correct by an authorized officer of Seller, that the REC is Delivered and title to the REC has been transferred to the Purchaser, and that the Seller has taken all steps to effect transfer of the REC required by any Tracking System designated in the Confirmation, and (b) that satisfies the requirements of any Applicable Program designated in the Confirmation or is a generation information system record of ownership transfer. Annex 2 Exhibit 1 is a template for use of the Parties; an agreed form of Attestation should be included as a part of the Confirmation, and the agreed form will suffice as an Attestation regardless of whether or not it meets the criteria of this definition.

“Change in Law” has the meaning given in Section R-5.2.2(a).

“Deliver” has the meaning given in Sections R-3.1.1 or 3.2.1, as applicable.

“Effective Date” means the date both Parties have executed the Confirmation, or which the Parties otherwise specify in the Confirmation.

“Environmental Attribute” means the following, unless a Tracking System is designated in the Confirmation, and such Tracking System defines “Environmental Attribute,” in which case the Tracking System’s definition of “Environmental Attribute” shall control: a characteristic concerning or affecting the environment created by or resulting from the generation of electric energy by a Renewable Energy Source, and which capable of measurement, verification, or calculation. The term does not include tax credits or other tax benefits under any law or other direct third-party subsidies for generation of electric energy by a Renewable Energy Source. The term includes “non-energy attributes” under Oregon law and “non-power attributes” under Washington law. By way of example, the term may include the following: avoided emissions of CO₂ or other gases, or avoided water use (but not water or other rights or credits required under an Applicable Program to site and develop the Renewable Energy Facility itself).

“Facility As-Run REC” has the meaning given in Section R-2.3.5.

“Facility As-Run Bundled REC” has the meaning given in Section R-2.3.6(a).

“Firm Bundled REC” has the meaning given in Section R-2.3.2.

“Energy” in the case of a Firm Bundled REC refers to Firm Capacity/Energy Sale or Exchange Service under Service Schedule C as may be modified by Service Schedule R, in the case of a Resource Contingent Bundled REC refers to Unit Commitment Service under Service Schedule B as may be modified by Service Schedule R, and in the case of Facility As-Run Bundled REC refers to Economy Energy Service under Service Schedule A as may be modified by Service Schedule R.

“Firm REC” has the meaning given in Section R-2.3.1.

“Fuel Impediment” means the reduction or lack of wind or sunlight, excessive wind, or other insufficiency or excess of a Renewable Energy Source (excluding biomass), that causes a reduction or cessation of generation of electric energy by a Renewable Energy Facility.

“Forced Outage” means the removal from service availability of a generating unit, transmission line, or other facility for emergency reasons, or the condition in which the equipment is unavailable due to unanticipated failure (such unanticipated failure does not include a Fuel Impediment).

“Governing Law” has the meaning given in Section 24 of the Agreement as that Section may be modified by Section R-5.1.

“Governmental Authority” means the United States, a State thereof, any political subdivision or governmental body thereof, including any department or agency, with jurisdiction over a Party or an Applicable Program.

“Not Regulatorily Continuing” has the meaning given in Section R-5.2.2(b).

“Program Attributes” has the meaning given in Section R-2.4.2.

“Regulatorily Continuing” has the meaning given in Section R-5.2.2(a).

“REC” refers to a renewable energy certificate and means a credit or certificate representing Environmental Attributes created by or resulting from the generation of one (1) megawatt hour of electric energy by a Renewable Energy Source, subject to the terms and conditions stated in the Confirmation.

“REC Product” has the meaning given in Section R-2.2.

“REC Transaction” has the meaning given in Section R-2.1.

“Resource Contingent REC” has the meaning given in Section R-2.3.3.

“Resource Contingent Bundled REC” has the meaning given in Section R-2.3.4(a).

“Renewable Energy Facility” means an electric generation unit or other facility or installation capable of producing or emitting electric energy using a Renewable Energy Source.

“Renewable Energy Source” means (a) a resource that is recognized as a renewable energy source under an Applicable Program designated in the Confirmation, or (b) if no Applicable Program is designated in the Confirmation, a natural resource from or through which electric energy can be generated, including wind, solar, geothermal, landfill gas, wave, tidal, thermal ocean technologies, and hydroelectric power, and excluding fossil carbon-based, non-renewable, or radioactive fuel.

“Reporting Rights” means the right to report and register the exclusive ownership of the REC or Environmental Attributes under Governing Law or any other laws, regulations, orders or judicial precedents of the government of the United States of America or any department or agency thereof, or any State or political subdivision thereof, including mandatory and voluntary reporting, and including reporting under section 1605(b) of the Energy Policy Act of 1992 and any foreign or international emissions trading or reporting program.

“Scheduled Maintenance” means an outage or partial outage scheduled to perform the necessary normal maintenance on a generating unit, transmission line, or other facility to preserve the reliability of the unit or overall system reliability, including scheduled outages for such maintenance.

“Tracking System” means the entity, if any, the Parties designated in the Confirmation that will perform REC tracking and accounting functions, including receiving evidence of generation of the REC and crediting the resulting REC to the Purchaser’s account.

“Transfer Date” means the date specified in the Confirmation, no later than which Seller must make Delivery as defined in Sections R-3.1.1 or R-3.2.1, as applicable.

“Vintage” means the period in which the REC was or will be created.

SERVICE SCHEDULE R ANNEX 2

**FORM OF
REC TRANSACTION CONFIRMATION**

IDENTIFICATION OF PARTIES

Name of Seller:

Name of Purchaser:

Seller Information:

Purchaser Information:

Contact

Contact

Tel (O): _____

Tel (O): _____

Tel (Cell): _____

Tel (Cell): _____

E-mail: _____

E-mail: _____

Fax: _____

Fax: _____

Contact information is subject to change by notice.

ADDRESSES FOR FORMAL NOTICES:

Purchaser:

Seller

INCORPORATED DOCUMENTATION (any “long form” or other bilateral agreements between the Parties applicable to this Confirmation and incorporated herein)

REC TRANSACTION TERMS

REC Product (e.g., Firm REC, Firm Bundled REC, etc.) (see Section R-2.3):

Vintage of REC already created or period of generation for REC to be created (mm/yyyy)

Contract Quantity (stated either on a megawatt hour basis or percentage of output of a designated Renewable Energy Facility)

Transfer Date (generally the Effective Date of this Confirmation for REC that already exists, and future date for REC to be generated after Effective Date)

Contract Price:

Allocation, if agreed:

REC:

Energy:

Environmental Attributes (Check One)

- ☐ All Attributes (this designation is effective only if a Renewable Energy Source or Renewable Energy Facility is designated below)
- ☐ Program Attributes (this designation is effective only if an Applicable Program is identified below) (Note: WREGIS and possibly other Tracking Systems will not recognize a Program Attributes REC, or may treat it as an All Attributes REC)

Applicable Program (required for Program Attributes; not required for All Attributes, but designation establishes the minimum Environmental Attributes required by a designated Applicable Program). Also required for recovery of penalties and alternative compliance payments (Section R-9.1). Designation should include detailed information, including any applicable legal citations, to assure adequate description of the program.

Designation of Renewable Energy Source or Renewable Energy Facility (required for All Attributes).

Renewable Energy Source: _____

Renewable Energy Facility

Name: _____

Location: _____

Generation Information System number: _____

Tracking System number: _____

Fuel (wind, solar, etc.): _____

Change in Law Provisions (Check One)

☐ Regulatorily Continuing (Section R-5.2.2(b), requiring that Seller make commercial reasonable efforts to obtain compliance with Changes in Law in the designated Applicable Program. If checked, state any agreed maximum costs of such efforts (if no maximum is stated, then no maximum applies):

\$ _____

☐ Not Regulatorily Continuing (Section R-5.2.2(c)).

Tracking System(s) if any: (if none specified, then Delivery occurs by Attestation and not by Tracking System crediting)

Damages. Damages include reimbursement for penalties and alternative compliance payments, subject to any agreed cap on this damages component, which can be zero (Section R-9.1):

\$ _____

Any agreements concerning forward certificates in WREGIS or other Tracking System Expedition) (Section R-3.3.1):

TERMS APPLICABLE TO ENERGY IF INCLUDED IN REC PRODUCT

Period (Schedule) of Delivery: From ______ To ______

Schedule (Days and Hours): _____

Delivery Rate: _____

Delivery Point(s): _____

Contract Quantity (specify all details): _____

Transmission Path for the Transaction (If Applicable): _____

EFFECTIVE DATE AND OTHER PROVISIONS

Effective Date (no earlier than mutual execution of this Confirmation)

Other provisions: _____ [generally
stated in attachment to the Confirmation]

The Parties agree to the REC Transaction set forth herein as of the Effective Date

Seller

Purchaser

Signed: _____

Signed: _____

Name: _____

Name: _____

Date: _____ Date: _____

ANNEX 2, Exhibit 1
Form of Attestation To Be Included As Exhibit To Confirmation

Attestation Of [Seller] (“REC Generator”)
Of Sale, Transfer, and Delivery Of Renewable Energy Certificate to
[Purchaser] “Purchaser”

Party and Contact Information:

[Insert names and addresses of Parties, address, and contact information]

Attestation:

I, [name of attesting officer], the [title] of Seller, declare and certify that Seller sold and delivered

Elect one:

___ Environmental Attributes Only

___ Bundled with electricity

to Purchaser, and further, that

1. Was generated by the Renewable Energy Facility (“REF”) designated below and sold, transferred and delivered, subject to receipt of payment, to Purchaser.
2. Is associated with electricity delivered into the [insert delivery area] in compliance with applicable energy delivery rules.

REF Generator Name and Number	Technology Type	Fuel Type (Renewable Energy Source)	Generation Period (mm/yy)	Generator First Day of Operation

The above statements are true and correct to the best of my knowledge, and based on my duly diligent inquiry. This Attestation may serve as a Bill of Sale to document, in accordance with the Confirmation, the transfer from Generator to Purchaser of all of Seller’s right, title and interest in and to the REC and environmental attributes it represents, as set forth above.

Either Party may disclose this Attestation to others, including a Tracking System, public utility commissions and other regulatory bodies having jurisdiction over Purchaser, and administrators of voluntary green energy programs, to substantiate and verify the accuracy of the Parties’ compliance, advertising and public claims.

Signature:

Date _____

Print Name: _____

SCHEDULE Q
FERC ACCEPTED SELLER-SPECIFIC COST-BASED RATE SCHEDULES

Note: Each rate schedule included in this Schedule Q is applicable solely to the Member which submitted that rate schedule to FERC, and not to any other Member.

INDEX

Name of Member	FERC Order Citation
Arizona Public Service Company	Letter Order, Docket No. ER09-1402 (Aug. 11, 2009)
Nevada Power Company	Letter Order, Docket No. ER11-1832 (Nov. 23, 2010)
PacifiCorp	Letter Order, Docket No. ER14-835 (Feb. 21, 2014)
Public Service Company of Colorado	Letter Order, Docket No. ER11-3287-000 (April 28, 2011)
Sierra Pacific Power Company	Letter Order, Docket No. ER15-1013-000 (April 10, 2015)
Southwestern Public Service Company	Letter Order, Docket No. ER08-857 (Aug. 28, 2008)
Westar Energy, Inc.	Letter Order, Docket No. ER11-3233 (May 26, 2011)

WSPP AGREEMENT SCHEDULE Q FOR ARIZONA PUBLIC SERVICE COMPANY

Determination of Ceiling Rates Applicable to Sales Made by Arizona Public Service Company Under the WSPP Agreement

I. DEFINITIONS

The following terms shall have the specified meaning when used in any Transaction between Arizona Public Service Company (“APS”) and any Customer pursuant to this Cost-Based Tariff (“Tariff”):

1. **APS:** Arizona Public Service Company or any successor-in-interest to Arizona Public Service Company.
2. **Commission:** The Federal Energy Regulatory Commission, or any successor federal agency having jurisdiction over this tariff.
3. **Customer:** Any entity entering into a Transaction with APS under this Tariff.
4. **System Incremental Cost:** (“SIC”) System Incremental Cost means, with respect to a Transaction, all reasonably forecasted incremental generation, power purchase, and other, related costs that APS would not otherwise incur if such Transaction is not entered into. System Incremental Cost shall include, but not be limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, regulatory commission charges, emission allowance and other environmental compliance costs, transmission losses, wheeling charges, any applicable taxes or assessments based on the revenues received or quantities sold under the Transaction, and with respect to capacity and energy purchased from a third party, the total forecasted amount that would be paid for that capacity and energy by APS. For purchases of energy and capacity by APS, System Incremental Cost will also include, but not be limited to, regulatory commission charges, emission allowances, transmission losses, wheeling charges and taxes.
5. **Tariff:** This Cost-Based Tariff, as it may be amended and/or superseded from time to time.
6. **Transaction:** An individual transaction scheduled pursuant to this Tariff.
7. **Party:** References to a Party shall mean either APS or the Customer, who collectively shall be referred to as “Parties.”
8. **Phoenix Valley Load Pocket (“PVLP”):** All delivery points at or within Phoenix 230kV loop, including the 230kV substations forming the boundaries of the loop, which include: Westwing 230kV, Pinnacle Peak 230kV, Kyrene 230kV, Rudd 230kV, Knox 230kV, Browning 230kV, Goldfield 230kV, Liberty 230kV, and Rogers 230kV.

II. AVAILABILITY

Service under this Tariff shall be available to Customers for Transactions that have a

duration of less than one year, or for Customers purchasing for delivery within the PVLP during the months of June, July, or August without regard to the duration of the agreement to purchase.

III. SALES OF ELECTRIC CAPACITY AND/OR ENERGY

APS and Customers may enter into Transactions under this Tariff from time-to-time. All such Transactions shall be voluntary on the part of APS and the Customer(s). APS at its sole discretion will determine the amounts of and times that electric capacity and/or energy is to be made available under this Tariff prior to entering into a Transaction.

IV. RATES

1. A Transaction will be priced at rates established by agreement between Seller and Buyer, provided that the sum of all charges with respect to each Transaction may be up to but shall not exceed the sum of:
 - a) A demand charge, equal to, as appropriate:
 - i. \$6,985 /MW/month;
 - ii. \$1,612 /MW/week;
 - iii. \$322 /MW/day, provided the total demand charge in any week, pursuant to a sale of daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any day during such week; or
 - iv. \$20.15 /MW/hour, provided that the total demand charge in any day, pursuant to a sale of hourly electric power, shall not exceed the daily rate times the highest amount in megawatts of purchased electric power in any hour during such day, and the total demand charges in any week, pursuant to a sale of hourly or daily electric power, shall not exceed the weekly rate times the highest amount in megawatts of purchased electric power in any such week; and
 - b) The System Incremental Cost, forecasted at the time the Transaction is executed, plus 10% of the forecasted System Incremental Cost; and
 - c) The cost of transmission service and any ancillary services purchased by APS and resold to Customer, as known or forecasted at the time the Transaction is executed.

V. EXPANSION OF FACILITIES

APS will have no obligation under this Tariff to plan its system or modify its facilities in order to provide service hereunder.

VI. OTHER TERMS AND CONDITIONS

Except to the extent otherwise specifically agreed to by the Parties, all Transactions under APS's Schedule Q shall be governed by the terms and conditions set forth in the WSPP Agreement.

WSPP AGREEMENT SCHEDULE Q FOR PACIFICORP

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by PacificCorp

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by PacificCorp (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power Company balancing authority area or the Sierra Pacific Power Company balancing authority area, and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by PacificCorp pursuant to the applicable terms and conditions of the WSPP Agreement from PacificCorp's generating resources shall not exceed the following:
 - (i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

<u>Units Most Likely To Participate Methodology</u>	
Monthly	Up to \$11,317/MW
Weekly	Up to \$2,612/MW
Daily	Up to \$522/MW, provided, however, that the Daily rate of \$522/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.
Hourly	Up to \$32.64/MW, provided, however, that the hourly rate of \$32.64/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$522/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,612/MW.
 - (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If PacificCorp enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) PacifiCorp's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by PacifiCorp including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by PacifiCorp in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

WSPP AGREEMENT SCHEDULE Q FOR NEVADA POWER COMPANY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Nevada Power Company

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Nevada Power Company, d/b/a NV Energy ("Nevada Power") (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power balancing authority area, and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Nevada Power pursuant to the applicable terms and conditions of the WSPP Agreement from Nevada Power's generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$8,390/MW
Weekly	Up to \$1,940/MW
Daily	Up to \$390/MW, provided, however, that the Daily rate of \$390/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.
Hourly	Up to \$24.40/MW, provided, however, that the hourly rate of \$24.40/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$390/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$1,940/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Nevada Power enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Nevada Power's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.

4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Nevada Power including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

WSPP AGREEMENT SCHEDULE Q FOR PUBLIC SERVICE COMPANY OF COLORADO

Determination of Ceiling Rates Applicable to Sales Made by Public Service Company of Colorado under the WSPP Agreement

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Public Service Company of Colorado ("Public Service") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Public Service balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from certain Public Service generation resources shall not exceed the following:

Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely to Participate Methodology

Annual	\$123.73/kW
Monthly	\$10.62/kW
Weekly	\$2.45/kW
Daily	\$0.49/kW, provided, however, that the Daily rate of \$0.49/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.
Hourly	\$0.0306/kW, provided, however, that the hourly rate of \$0.0306/kW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$0.49/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2.45/kW.

Unit Revenue Constraint Methodology

Annual	\$265.72/kW
Monthly	\$22.14/kW
Weekly	\$5.11/kW
Daily	\$1.02/kW, provided, however, that the Daily rate of \$1.02/kW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.

Hourly \$0.0639/kW, provided, however, that the hourly rate of \$0.0639/kW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of 1.02/kW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$5.11/kW.

Note: The total amount of Power available for cost-based sales by Public Service based on the costs of Comanche 3 under the WSPP Agreement and under other Public Service tariffs and arrangements, for which the agreed upon demand charge is determined based on Comanche 3, is limited to 500 MWs on an hourly basis.

Plus:

Energy Charge:

- (a) no less than 100% of Public Service's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note: The total charges for any sale by Public Service using the Maximum Demand Charge as determined based on the Unit Revenue Constraint Methodology shall not exceed (1) the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge using the Unit Revenue Constraint Methodology as specified above, plus the variable costs of Comanche 3 (based on the most recent historical month where Comanche 3 was operational at least 80 percent of the time), and (2) be lower than a floor equal to 100% of Public Service's System Incremental Cost.

3. When a cost-based sale of power and/or energy made by Public Service under the WSPP Agreement is conditioned upon Public Service acquiring purchased power, Purchaser shall pay the following amounts to Public Service for power and energy:
 - (a) Public Service's actual purchased power costs; plus
 - (b) a one mill adder for transactions of less than one year in duration.
4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Public Service in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.
5. For purposes of this Schedule Q, "Purchased Power" means the Power and Energy

purchased from a third party by Public Service and shall consist of the total amount paid therefor by Public Service associated with such purchase, plus any cost which otherwise would not have been incurred, including, but not limited to, regulatory commission charges, transmission losses, third-party transmission charges, and taxes, fees or assessments related to such transactions. Tax expenses shall include the expenses that are incurred as taxes either in connection with the sale or production of such Power and Energy. The term Purchased Power shall not apply to long-term purchases that are secured to supply Public Service's obligation load requirements as a system resource or to meet other regulatory requirements.

6. For purposes of this Schedule Q, System Incremental Costs ("SIC")¹ shall be determined as follows:

SIC are any costs forecasted to be incurred by Public Service solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to, costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where Public Service has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics.
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. Public Service forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of coordination energy.² In order for Public Service to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because transactions are entered into in the market in advance. The forecast incremental costs for Public Service utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (e.g., minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are

returned. The difference in costs between the first and second run, *i.e.*, with and without an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current and short-term forecast system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

If the Parties to a transaction under this WSPP Agreement expressly agree in a transaction agreement, incremental costs may be determined in the same manner as specified above, but on an after-the-fact, actual basis.

Note 1: The Commission previously accepted this incremental rate methodology in *Xcel Energy Services, Inc., et al.*, 117 FERC ¶ 61,180, at PP 45-49 (2006).

Note 2: The Commission has found this approach to be acceptable. *See, e.g., Western Systems Power Pool*, 55 FERC ¶ 61,495, at 62,718 (1991) (noting that incremental cost “may be forecasted hourly, weekly, or monthly”).

WSPP AGREEMENT SCHEDULE Q FOR SIERRA PACIFIC POWER COMPANY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Sierra Pacific Power Company

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Sierra Pacific Power Company, d/b/a NV Energy (“Sierra”) (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service), (2) at a delivery point located within the Nevada Power Company balancing authority area (“NEVP”), and (3) for a term of less than one year.
2. The rates for any cost-based power and/or energy sale made by Sierra pursuant to the applicable terms and conditions of the WSPP Agreement from Sierra’s generating resources shall not exceed the following:

(i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped using the following methodology:

Units Most Likely To Participate Methodology

Monthly	Up to \$9,810/MW
Weekly	Up to \$2,260/MW
Daily	Up to \$450/MW, provided, however, that the Daily rate of \$450/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.
Hourly	Up to \$28.10/MW, provided, however, that the hourly rate of \$28.10/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$450/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$2,260/MW.

- (ii) Energy Charge of 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Sierra enters into purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:
 - (i) Sierra’s out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental

impositions; and

(ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.

4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Sierra including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Nevada Power Company in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

WSPP AGREEMENT SCHEDULE Q FOR SOUTHWESTERN PUBLIC SERVICE COMPANY

Determination of Ceiling Rates Applicable to Sales Made by Southwestern Public Service Company under the WSPP Agreement

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Southwestern Public Service Company ("SPS") (1) pursuant to the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service and (2) at a delivery point located within the SPS balancing authority area.
2. The rates for any cost-based power and/or energy sale made pursuant to the WSPP Agreement from SPS generation resources shall not exceed the following:

Maximum Demand Charge:

Monthly	\$ 7.56/kW
Weekly	\$ 1.745/kW
Daily (On-peak)	\$ 0.349/kW, provided, however, that the Total Weekly charges for a customer paying the Daily rate of \$0.349/kW (on-peak) or \$0.249 (off-peak) shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.
Daily (Off-peak)	\$ 0.249/kW
Hourly	\$ 21.813/MW, provided, however, that the Total Daily charges for a customer paying the Hourly rate of \$21.813/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum Daily (on-peak) demand charge, and total Weekly charges for such a customer shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum Weekly demand charge of \$1.745/kW.

plus

Energy Charge:

- (a) no less than 100% of SPS's System Incremental Costs (SIC); plus
- (b) up to 10% of SIC, provided, however, that whenever the SIC for an hour is based on purchased power, the 10% mark up shall be limited to one mill/kWh.

Note A: The total charges for any cost-based sale under the WSPP Agreement shall not exceed the product of the requested demand (kW) multiplied by the applicable Maximum Demand Charge in this Section 1, plus the variable costs of Lea Power

Partners (based on the second previous month's cost data), and notwithstanding the foregoing, a floor equal to 100% of SPS's System Incremental Cost.

Note B: The total amount of Power available for cost-based sales by SPS under the WSPP Agreement and under other SPS tariffs and agreements for which the agreed upon demand charge is determined based on Lea Power Partners is limited to 600 MWs on an hourly basis.

3. When a cost-based sale of power and/or energy made by SPS under the WSPP Agreement is conditioned upon SPS acquiring Purchased Power, Purchaser shall pay the following amounts to SPS for power and energy:
 - (a) SPS's actual Purchased Power costs; plus
 - (b) a one mill adder for transactions of less than one year in duration.
4. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by SPS in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which otherwise would not have been incurred, had such service not been provided.
5. For purposes of the WSPP Agreement, System Incremental Costs ("SIC") shall be determined as follows:

SIC are any costs forecasted to be incurred by SPS solely by reason of its provision of an incremental amount of coordination-type energy to supply to another company, including but not limited to costs for fuel, reactant, labor, operation, maintenance, start-up, fuel handling, taxes, emission allowances, and services provided by RTOs, ISOs, or other transmission providers such as transmission and ancillary services and losses. Such costs may also include costs paid to third parties where the SPS has an existing contractual entitlement to purchase energy.

- For intraday (real-time) transactions, incremental cost is determined through a review of hourly system characteristics.
- For non-intraday transactions, incremental cost is determined by using a resource optimization model such as, but not limited to ProSym, Cougar or GenTrader.

The forecasted incremental cost represents the relative increase in total variable cost, in comparison to the previously determined base variable cost. SPS forecasts incremental costs on a monthly, daily and hourly basis in order to evaluate whether it would be economic to engage in a wholesale sale of energy.² In order for SPS to transact, and sell power to another entity, the purchaser must be willing to pay no less than the forecasted incremental cost for the period during which the energy is sold. It is necessary to use forecasted costs because

² The Commission has found this approach to be acceptable. See, e.g., *Western Systems Power Pool*, 55 FERC ¶ 61,495 at 62,718 (1991) (noting that incremental cost "may be forecasted hourly, weekly, or monthly").

transactions are entered into in the market in advance. The forecast incremental costs for SPS utilize its unique portfolio resources, applicable fuel costs and generation characteristics.

Monthly forecasted incremental variable costs are developed utilizing an optimization and unit commitment model. Generation characteristics such as forecasted fuel prices, effective heat rates, system penalty factors, start-up costs, unit parameters (e.g., minimum run time, dispatch minimum, dispatch maximum), variable O&M, and tolling costs are utilized in the model to establish the base cost to serve a forecasted amount of obligation (load and the net of applicable firm purchase and sales transactions). Planned and forced outages are also considered in the model. Additional obligations are added to the model (consistent with blocks traded in the market), and the optimized costs are returned. The difference in costs between the first and second run, i.e., with and without an incremental transaction or load addition, will represent the incremental cost to serve the additional obligation. The forecasted incremental cost to serve the additional obligation will establish the minimum price required in order to engage in a sale of similar energy volume.

Daily forecasted incremental costs are developed utilizing a unit commitment and optimization program. The best available generation characteristics are utilized in the model to forecast the base cost to serve the next-day obligation. Additional obligations are applied and system costs evaluated to establish the forecasted cost to serve a potential incremental sale.

On an hourly basis, the system operator forecasts the incremental cost to serve an additional obligation by evaluating current system conditions and the resources that are not previously allocated to meet established obligations. If additional portfolio resources are available (not allocated for native load requirements), the system operator will evaluate the comprehensive cost to produce the quantity of energy needed for an incremental sale.

WSPP AGREEMENT SCHEDULE Q FOR WESTAR ENERGY

Determination of Ceiling Rates Applicable to Cost-Based Sales Made by Westar Energy under the WSPP Agreement

1. The following rates shall be applicable to any cost-based sale of power and/or energy made by Westar Energy (“Westar”) (1) pursuant to the applicable terms and conditions of the WSPP Agreement, including under Service Schedule A (Economy Energy Service), Service Schedule B (Unit Commitment Service), and Service Schedule C (Firm Capacity/Energy Sale or Exchange Service) and (2) at a delivery point located within the Westar Energy balancing authority area.
2. The rates for any cost-based power and/or energy sale made by Westar Energy pursuant to the applicable terms and conditions of the WSPP Agreement from Westar Energy's generating resources shall not exceed the following:

- (i) Maximum Demand Charge:

The Maximum Demand Charge shall be capped at either of the following methodologies:

Units Most Likely To Participate Methodology

Monthly	Up to \$13,520/MW
Weekly	Up to \$3,120/MW
Daily	Up to \$624/MW, provided, however, that the Daily rate of \$624/MW shall not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.
Hourly	Up to \$39.00/MW, provided, however, that the hourly rate of \$39.00/MW shall not exceed the product of the number of kilowatts sold for a day multiplied by the maximum daily demand charge of \$624/MW, and also not exceed the product of the number of kilowatts sold for a week multiplied by the maximum weekly demand charge of \$3,120/MW.

- (ii) Energy Charge of no less than 100% of SIC, plus up to 10% of SIC; and
 - (iii) All charges incurred for transmission service, ancillary services, and transmission losses.
3. If Westar Energy enters into a purchased power transaction specifically for the purpose of reselling such power hereunder, the rates shall not exceed the sum of the following:

- (i) Westar Energy's out-of-pocket costs of purchasing such capacity and/or energy, including all related charges incurred for transmission service, ancillary services, transmission losses and any applicable taxes or other similar governmental impositions; and
 - (ii) \$1.00 per megawatt-hour multiplied by the total megawatt-hours scheduled.
- 4. System Incremental Costs ("SIC") means all reasonably forecasted costs of such power and/or energy and which otherwise would not have been incurred by Westar Energy including, but not limited to, costs associated with fuel, labor, variable operation and maintenance, start-up, shut-down, fuel handling, taxes or other similar governmental impositions, regulatory commission charges, emission allowances and other environmental compliance costs.
- 5. Purchasers in cost-based transactions shall also be responsible for any taxes, purchased power costs, and for any other costs incurred by Westar Energy in fulfilling its obligations for the provision of power and/or energy under the WSPP Agreement, which cost would otherwise not have been incurred, had such service not been provided.

LIST OF MEMBERS

3 Phases Renewables Inc.
AEP Energy Partners, Inc.
Alameda Municipal Power
Alcoa Power Marketing LLC
American Electric Power Service Corporation as agent for Indiana Michigan Power Company
American Electric Power Service Corporation as agent for Public Service Company of Oklahoma and
Southwestern Electric Power Company
Anahau Energy, LLC
ArcLight Energy Marketing, LLC
Arizona Electric Power Cooperative, Inc.
Arizona Public Service Company
Arkansas Electric Cooperative Corp.
Associated Electric Cooperative, Inc.
ATCO Power Canada Ltd.
Avangrid Renewables, LLC
Avista Corporation
Basin Electric Power Cooperative
BTG Pactual Commodities (US) LLC
Black Hills/Colorado Electric Utility Company, L.P.
Black Hills Wyoming, Inc.
Black Hills Power Inc.
BNP Paribas Energy Trading GP
Bonneville Power Administration
BP Energy Company
Brookfield Energy Marketing LP
California Clean Power Corp.
California Department of Water Resources
California Power Holdings, LLC
CalPeak Power LLC
Calpine Energy Services, L.P.
Canadian Wood Products – Montreal Inc.
Cargill Power Markets, LLC
Castleton Commodities Merchant Trading L.P.
Central Arizona Water Conservation District
Cheyenne Light, Fuel and Power
Citigroup Energy Inc.
City of Anaheim, Public Utilities Dept.
City of Azusa, California
City of Banning, California
City of Burbank, California
City of Cerritos (Cerritos Electric Utility)
City of Colton, California
City of Corona Department of Water and Power
City of Farmington, New Mexico
City of Gillette
City of Glendale, California
City of Independence, Missouri
City of Iola, Kansas
City of Lancaster

City of Lodi Electric Utility
City of Moreno Valley, California
City of Palo Alto, California
City of Pasadena, California
City of Rancho Cucamonga, California
City of Redding, California
City of Riverside, California
City of Roseville, California
City of Sikeston, Board of Municipal Utilities
City of St. George Energy Service Department
City of Vernon, California
City of Wathena, Kansas
Clatskanie People's Utility District
Cleco Power LLC
Cleco Utility Group, Inc.
Colorado River Commission of Nevada
Colorado Springs Utilities
Columbia Power Corporation
Comision Federal de Electricidad
Commerce Energy, Inc.
ConocoPhillips Company
Constellation Energy Services, Inc.
Constellation NewEnergy, Inc.
Covanta Energy Marketing, LLC
CP Energy Marketing (US) Inc.
Credit Suisse Energy LLC
Deseret G&T
Direct Energy Business, LLC
DTE Energy Trading, Inc.
Dynegy Marketing and Trade, LLC
Dynegy Power Marketing, LLC
East Bay Municipal Utility District
East Texas Electric Cooperative, Inc.
EDF Trading North America, LLC
Elk Hills Power, LLC
El Paso Electric Company
Empire District Electric Company
Energy America , LLC
Energy Keepers, Inc.
Energy Transfer Group, LLC
Energy Unlimited, Inc.
ENMAX Energy Corporation
ENMAX Energy Marketing Inc.
Entergy Services, Inc. (also Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc.,
Entergy New Orleans, Inc., Entergy Texas, Inc.)
Eugene Water & Electric Board
ETC Endure Energy L.L.C.
Exelon Generation Company, LLC
FortisBC Inc.
Freepoint Commodities LLC
Freeport-McMoRan Cooper & Gold Energy Services, LLC

GDF SUEZ Energy Marketing NA, Inc.
GenOn Energy Management, LLC
Gila River Power LLC
Grays Harbor Energy LLC
Great River Energy
Golden Spread Electric Cooperative, Inc.
Golden State Water Company
Grand River Dam Authority
Guzman Energy, LLC
Harquahala Generating Company, LLC
Hetch Hetchy Water & Power
Hinson Power Company, Inc.
Idaho Falls Power
Idaho Power Company
Illinois Power Marketing Company
Imperial Irrigation District
Inland Empire Energy Center LLC
J. Aron & Company
Jonesboro City Water and Light
J.P. Morgan Ventures Energy Corporation
Kansas City Board of Public Utilities
Kansas City Power & Light Company
Kansas Power Pool
KCP&L Greater Missouri Operations Company
La Paloma Generating Company, LLC
Lafayette Utilities System
Las Vegas Power Company, LLC
Lincoln Electric System
Los Alamos County
Los Angeles Department of Water and Power
Louisiana Energy and Power Authority
Louisville Gas & Electric Company
Luminant Energy Company LLC
Macquarie Energy LLC
Malaga Power, LLC
Manitoba Hydro
Marin Clean Energy
McMinnville Water & Light
Mercuria Energy America, Inc.
Merrill Lynch Commodities, Inc.
Metropolitan Water District of Southern California
MidAmerican Energy Company
Midwest Energy, Inc.
Missouri Joint Municipal Electric Utility Comm.
Modesto Irrigation District
Mohave Electric Cooperative, Inc.
Morgan Stanley Capital Group, Inc.
M-S-R Public Power Agency
Municipal Energy Agency of Nebraska
NaturEner Power Watch, LLC
Navajo Tribal Utility Authority

Nebraska Public Power District
NextEra Energy Power Marketing, LLC
Nevada Power Company
Newmont Nevada Energy Investments
New West Energy
Nexen Energy Marketing U.S.A. Inc.
Noble Americas Energy Solutions LLC
Noble Americas Gas & Power Corp.
Northern California Power Agency
Northern States Power Company
Northern Wasco County People's Utility District
NorthPoint Energy Solutions Inc.
NorthWestern Corporation dba NorthWestern Energy
NRG Power Marketing LLC
Occidental Power Services, Inc.
Oklahoma Gas & Electric Company
Oklahoma Municipal Power Authority
Omaha Public Power District
Ontario Power Generation Inc.
Otter Tail Power Company
Pacific Gas & Electric Company
Pacific Summit Energy LLC
PacifiCorp
Patua Project LLC
PG&E Energy Services
PG&E Energy Trading - Power, L.P.
Pittsburg Power Company
Plains Electric Generation and Transmission Cooperative, Inc.
Platte River Power Authority
PNGC Power
Port of Oakland
Portland General Electric
Power and Water Resources Pooling Authority
Power Company of America, L.P.
Power Resources Cooperative
Powerex Corp.
Public Service Company of New Mexico
Public Service Company of Colorado
Public Utility District No. 1 of Benton County
Public Utility District No. 1 of Chelan County
Public Utility District No. 1 of Clark County
Public Utility District No. 1 of Cowlitz County
Public Utility District No. 1 of Douglas County
Public Utility District No. 1 of Franklin County
Public Utility District No. 1 of Grays Harbor County
Public Utility District No. 1 of Klickitat County
Public Utility District No. 1 of Lewis County
Public Utility District No. 1 of Okanogan County
Public Utility District No. 1 of Pend Oreille County
Public Utility District No. 1 of Snohomish County
Public Utility District No. 2 of Grant County

Public Utility District No. 3 of Mason County
Puget Sound Energy
Rainbow Energy Marketing Corporation
Reliant Energy Services, Inc.
Renewable Power Strategies LLC dba RPS Advisors
Rising Tree Wind Farm LLC
Royal Bank of Canada
RWE Trading Americas Inc.
Sacramento Municipal Utility District
Safeway Inc.
Saguaro Power Company
Salt River Project Agricultural Improvement and Power District
San Diego Gas & Electric Co.
San Geronio Farms, Inc.
Seattle City Light
Sempra Generation, LLC
Shell Energy North America (US), L.P.
Sierra Pacific Power Co.
Silicon Valley Power
Silver State Energy Association
Skylar Energy LP
Skylar Resources, LP
Sonoma Clean Power Authority
South Mississippi Electric Power Association
Southern Calif. Edison Co.
Southern California Public Power Authority
Southern Company Services, Inc., as agent for: Alabama Power Company, Georgia Power Company,
Gulf Power Company, Mississippi Power Company and Southern Power Company
Southern Illinois Power Cooperative
Southern Montana Electric Generation & Transmission Cooperative, Inc.
Southern Nevada Water Authority
Southwestern Power Administration
Southwestern Public Service Company
Sulphur Springs Valley Electric Cooperative, Inc.
Sunflower Electric Power Corp.
Tacoma Power
Talen Energy Marketing, LLC
Talen Montana, LLC
Teck Metals Ltd.
Tenaska Power Services Co.
Tennessee Valley Authority
TGP Energy Management, LLC
The Energy Authority, Inc.
TransAlta Energy Marketing (US) Inc.
TransCanada Energy Sales Ltd.
Trico Electric Cooperative, Inc.
Tri-State Generation and Transmission Association, Inc.
Tucson Electric Power Company
Turlock Irrigation District
Twin Eagle Resource Management, LLC
Union Electric Company d/b/a Ameren Missouri

Union Power Partners, L.P.
UNS Electric Inc.
Utah Associated Municipal Power Systems
Valley Electric Association, Inc.
Vantage Wind Energy LLC
Vitol Inc.
WAPA-Colorado River Storage Project
WAPA-Desert Southwest Region
WAPA – Rocky Mountain Region (LAP)
WAPA-Upper Great Plains Region
WAPA-Sierra Nevada Region
Westar Energy, Inc.
Western Farmers Electric Coop.
Western Power Services, Inc.
Williams Flexible Generation, LLC
WTMPA/City of Lubbock (Lubbock Power & Light)

**WESTERN SYSTEM POWER POOL AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
CITY OF SANTA CLARA
AND
PENINSULA CLEAN ENERGY**

This Confirmation Letter ("Confirmation") confirms the Transaction between City of Santa Clara, a chartered California municipal corporation, dba Silicon Valley Power ("Seller") and Peninsula Clean Energy, a California Joint Powers Authority ("Buyer") and each individually a "Party" and together the "Parties", dated as of _____, 2016 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement effective March 31, 2016 (the "WSPP Agreement") between the Parties. The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event

resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.

- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

For January through December 2017:

Name	ALAMEDA GT UNIT 1
Location	Alameda, CA
CAISO Resource ID	ALMEGT_1_UNIT 1
Contract Identifier	
Unit SCID	NCPA
Unit NQC	██████
Unit EFC	██████
Resource Type	Combustion Turbine
Resource Category (1, 2, 3 or 4)	██████
Flexible RAR Category (1, 2 or 3)	██████
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	██████
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	██████
Run Hour Restrictions	██████

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2017, through December 31, 2017, inclusive.

4.2 Delivery Point.

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

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Month/Year	RAR Contract Quantity (MWs)	Flexible RAR Contract Quantity (MWs)	Local RAR Contract Quantity (MWs)
January 2017	████	████	████
February 2017	████	████	████
March 2017	████	████	████
April 2017	████	████	████
May 2017	████	████	████
June 2017	████	████	████
July 2017	████	████	████
August 2017	████	████	████
September 2017	████	████	████
October 2017	████	████	████
November 2017	████	████	████
December 2017	████	████	████

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for all or a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the

Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the

Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of this Confirmation, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, pursuant to Article 6. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month/Year	RAR Capacity Price (\$/kW-month)	Monthly Total	Invoice Issued	Payment Due (on or before)
January 2017	████	████	October 10th, 2016	October 20th, 2016
February 2017	████	████	November 10th, 2016	November 20th, 2016
March 2017	████	████	December 10th, 2016	December 20th, 2016
April 2017	████	████	January 10th, 2017	January 20th, 2017
May 2017	████	████	February 10th, 2017	February 20th, 2017
June 2017	████	████	March 10th, 2017	March 20th, 2017
July 2017	████	████	April 10th, 2017	April 20th, 2017

Contract Month/Year	RAR Capacity Price (\$/kW-month)	Monthly Total	Invoice Issued	Payment Due (on or before)
August 2017	████	████	May 10 th , 2017	May 20 th , 2017
September 2017	████	████	June 10 th , 2017	June 20 th , 2017
October 2017	████	████	July 10 th , 2017	July 20 th , 2017
November 2017	████	████	August 10 th , 2017	August 20 th , 2017
December 2017	████	████	September 10 th , 2017	September 20 th , 2017

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. COLLATERAL REQUIREMENTS

No later than September 30th, 2016, Buyer shall provide Seller with performance assurance in the amount of [REDACTED] in the form of cash prepay. Buyer shall prepay **MONTHLY RA CAPACITY PAYMENT** in the form of cash in accordance to the schedule provided in Section 4.9.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

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

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities

Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

7.3 No Recourse Against Buyer's Member Agencies

The Parties acknowledge and agree that Buyer is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by Buyer in connection with the Agreement are undertaken solely by Buyer and are not debts, liabilities, or obligations of its member agencies. Seller waives any recourse against Buyer's member agencies.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

The Parties acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that the other party may submit information to Santa Clara that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). The other party acknowledges that Santa Clara may submit to the other party information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Contract ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed on the cover page of the Contract. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by

the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

City of Santa Clara, dba Silicon Valley Power

Peninsula Clean Energy

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**WESTERN SYSTEM POWER POOL AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
CITY OF SANTA CLARA
AND
PENINSULA CLEAN ENERGY**

This Confirmation Letter ("Confirmation") confirms the Transaction between City of Santa Clara, a chartered California municipal corporation, dba Silicon Valley Power ("Seller") and Peninsula Clean Energy, a California Joint Powers Authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of _____, 2016 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement effective March 31, 2016 (the "WSPP Agreement") between the Parties. The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body of competent jurisdiction over one or both Parties or this Transaction, including without limitation, the Tariff.
- 1.3 "Availability Incentive Payments" has the meaning set forth in the Tariff.
- 1.4 "Availability Standards" shall mean the availability standards set forth in Section 40.9 of the Tariff.
- 1.5 "Buyer" has the meaning specified in the introductory paragraph hereof.
- 1.6 "CAISO" means the California Independent System Operator Corporation or its successor.
- 1.7 "Capacity Replacement Price" means (a) the price actually paid for any Replacement Capacity purchased by Buyer pursuant to Section 4.7 hereof, plus costs reasonably incurred by Buyer in purchasing such Replacement Capacity, or (b) absent a purchase of any Replacement Capacity, the market price for such Designated RA Capacity not provided at the Delivery Point. The Buyer shall determine such market prices in a commercially reasonable manner.
- 1.8 "Confirmation" has the meaning specified in the introductory paragraph hereof.
- 1.9 "Confirmation Effective Date" has the meaning specified in the introductory paragraph hereof.
- 1.10 "Contingent Firm RA Product" has the meaning specified in Section 3.2 hereof.
- 1.11 "Contract Price" means, for any Monthly Delivery Period, the price specified for such Monthly Delivery Period in the "RA Capacity Price Table" set forth in Section 4.9.
- 1.12 "Contract Quantity" means, with respect to any particular Showing Month of the Delivery Period, the amount of Product (in MWs) set forth in table in Section 4.3 which Seller has agreed to provide to Buyer from the Unit for such Showing Month.
- 1.13 "CPUC Decisions" means, to the extent still applicable, CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050 and subsequent decisions related to resource adequacy, as may be amended from time to time by the CPUC.
- 1.14 "CPUC Filing Guide" means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE's to demonstrate compliance with the CPUC's resource adequacy program.

- 1.15 "Delivery Period" has the meaning specified in Section 4.1 hereof.
- 1.16 "Delivery Point" has the meaning specified in Section 4.2 hereof.
- 1.17 "Designated RA Capacity" shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 "Flexible RA Attributes" means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 "Flexible RAR" means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 "Flexible RAR Showing" means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 "Governmental Body" means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 "LAR" means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 "LAR Attributes" means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 "LAR Showings" means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 "Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 "LRA" means Local Regulatory Authority as defined in the Tariff.
- 1.27 "LSE" means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 "Monthly Delivery Period" means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.29 "Monthly RA Capacity Payment" has the meaning specified in Section 4.9 hereof.
- 1.30 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.31 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the WSPP Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event

resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.

- 1.32 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.33 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.34 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.35 "Product" has the meaning specified in Article 3 hereof.
- 1.36 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.37 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR and, if applicable, LAR and Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, and if applicable, LAR Attributes and Flexible RA Attributes of the capacity provided by a Unit.
- 1.38 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.39 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.40 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.41 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.42 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.43 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.44 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.45 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.46 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.47 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.
- 1.48 "Transaction" for purposes of this Agreement means the Transaction that is evidenced by this Agreement.
- 1.49 "Unit" or "Units" shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.50 "Unit EFC" means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.

- 1.51 "Unit NQC" means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.
- 1.52 "WSPP Agreement" has the meaning specified in the introductory paragraph hereof.

ARTICLE 2. UNIT INFORMATION

For January through December 2017:

Name	ALAMEDA GT UNIT 2
Location	Alameda, CA
CAISO Resource ID	ALMEGT_1_UNIT 2
Contract Identifier	
Unit SCID	NCPA
Unit NQC	████
Unit EFC	████
Resource Type	Combustion Turbine
Resource Category (1, 2, 3 or 4)	████
Flexible RAR Category (1, 2 or 3)	████
Path 26 (North or South)	North
Local Capacity Area (if any, as of Confirmation Effective Date)	████
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	████
Run Hour Restrictions	████

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

Seller shall provide Buyer with Designated RA Capacity from the Units. If those Units are not available to provide the full amount of the Contract Quantity as a result of a Non-Excusable Event, then, subject to Section 4.4, Seller shall have the option to notify Buyer in writing by the Notification Deadline that either (a) Seller will not provide the full Contract Quantity during the period of such non-availability; or (b) Seller will supply Alternate Capacity to fulfill the remainder of the Contract Quantity during such period. If Seller fails to provide Buyer with the Contract Quantity as a result of a Non-Excusable Event and has failed to notify Buyer in writing by the Notification Deadline that it will not provide the full Contract Quantity during the period of such non availability as provided in Section 4.4, then Seller shall be liable for damages and/or required to indemnify Buyer for any resulting penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof. Notwithstanding anything herein to the contrary, if Seller provides less than the full amount of the Contract Quantity for any reason other than a Non-Excusable Event or in accordance with Section 4.4, Seller is not obligated to provide Buyer with Alternate Capacity or to indemnify Buyer for any resulting penalties or fines.

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2017, through December 31, 2017, inclusive.

4.2 Delivery Point

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

4.3 Contract Quantity. The Contract Quantity for each Monthly Delivery Period shall be:

Contract Quantity (MWs)

Month/Year	RAR Contract Quantity (MWs)	Flexible RAR Contract Quantity (MWs)	Local RAR Contract Quantity (MWs)
January 2017	████	████	████
February 2017	████	████	████
March 2017	████	████	████
April 2017	████	████	████
May 2017	████	████	████
June 2017	████	████	████
July 2017	████	████	████
August 2017	████	████	████
September 2017	████	████	████
October 2017	████	████	████
November 2017	████	████	████
December 2017	████	████	████

4.4 Adjustments to Contract Quantity

- (a) **Planned Outages:** If Seller is unable to provide the applicable Contract Quantity for all or a portion of a Showing Month due to a Planned Outage of a Unit, then Seller shall have the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to either (a) reduce the

Contract Quantity in accordance with the Planned Outage for such portion of the Showing Month; or (b) provide Alternate Capacity up to the Contract Quantity for the applicable portion of such Showing Month.

- (b) Invoice Adjustment: In the event that the Contract Quantity is reduced due to a Planned Outage as set forth in Section 4.4(a) above, then the invoice for such month(s) shall be adjusted to reflect a daily pro rata amount for the duration of such reduction.
- (c) Reductions in Unit NQC and/or Unit EFC: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced by Seller if the Unit experiences a reduction in Unit NQC and/or Unit EFC as determined by the CAISO. If the Unit experiences such a reduction in Unit NQC and/or Unit EFC, then Seller has the option, but not the obligation, upon written notice to Buyer by the Notification Deadline, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product, and/or (ii) Alternate Capacity up to the Contract Quantity.

4.5 Notification Deadline and Replacement Units

- (a) The "Notification Deadline" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.
- (b) If Seller desires to provide the Contract Quantity of Product for any Showing Month from a generating unit other than the Unit (a "Replacement Unit"), then Seller may, at no cost to Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.
- (c) If Seller fails to provide Buyer the Contract Quantity of Product or Alternate Capacity for a given Showing Month during the Delivery Period, then (i) Buyer may, but shall not be required to, purchase Product from a third party; and (ii) Seller shall not be liable for damages and/or required to indemnify Buyer for penalties or fines pursuant to the terms of Sections 4.7 and 4.8 hereof if such failure is the result of (A) a reduction in the Contract Quantity for such Showing Month in accordance with Section 4.4, or (B) an event other than a Non-Excusable Event.

4.6 Delivery of Product

- (a) Seller shall provide Buyer with the Designated RA Capacity of Product for each Showing Month.
- (b) Seller shall submit, or cause the Unit's Scheduling Coordinator to submit, by the Notification Deadline (i) Supply Plans to the CAISO, LRA, or other applicable Governmental Body identifying and confirming the Designated RA Capacity to be provided to Buyer for the applicable Showing Month, unless Buyer specifically requests in writing that Seller not do so; and (ii) written confirmation to Buyer that Buyer will be credited with the Designated RA Capacity for such Showing Month per the Unit's Scheduling Coordinator Supply Plan.

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the

Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.

- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.

4.8 Indemnities for Failure to Deliver Contract Quantity

Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure to timely submit accurate Supply Plans that identify Buyer's right to the Designated RA Capacity purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then Buyer may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

4.9 Monthly RA Capacity Payment

In accordance with the terms of this Confirmation, Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit, pursuant to Article 6. Each Unit's Monthly RA Capacity Payment shall be equal to the product of (a) the applicable Contract Price for that Monthly Delivery Period, (b) the Designated RA Capacity for the Monthly Delivery Period, and (c) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that the Monthly RA Capacity Payment shall be prorated to reflect any portion of Designated RA Capacity that was not delivered pursuant to Section 4.4 at the time of the CAISO filing for the respective Showing Month.

RA CAPACITY PRICE TABLE

Contract Month/Year	RAR Capacity Price (\$/kW-month)	Monthly Total	Invoice Issued	Payment Due (on or before)
January 2017	████	████	October 10th, 2016	October 20 th , 2016
February 2017	████	████	November 10 th , 2016	November 20 th , 2016
March 2017	████	████	December 10 th , 2016	December 20 th , 2016
April 2017	████	████	January 10 th , 2017	January 20 th , 2017
May 2017	████	████	February 10 th , 2017	February 20 th , 2017
June 2017	████	████	March 10 th , 2017	March 20 th , 2017
July 2017	████	████	April 10 th , 2017	April 20 th , 2017

Contract Month/Year	RAR Capacity Price (\$/kW-month)	Monthly Total	Invoice Issued	Payment Due (on or before)
August 2017	████	████	May 10 th , 2017	May 20 th , 2017
September 2017	████	████	June 10 th , 2017	June 20 th , 2017
October 2017	████	████	July 10 th , 2017	July 20 th , 2017
November 2017	████	████	August 10 th , 2017	August 20 th , 2017
December 2017	████	████	September 10 th , 2017	September 20 th , 2017

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. However, Buyer shall be entitled to receive and retain all revenues associated with the Designated RA Capacity of any Unit during the Delivery Period (including any capacity or availability revenues from RMR Agreements for any Unit, Reliability Compensation Services Tariff, and Residual Unit Commitment capacity payments, but excluding payments described in clauses (a) through (e) above). In accordance with Section 4.9 of this Confirmation, all such Buyer revenues received by Seller, or a Unit's Scheduling Coordinator, owner, or operator shall be remitted to Buyer, and Seller shall indemnify Buyer for any such revenues that Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. COLLATERAL REQUIREMENTS

No later than September 30th, 2016, Buyer shall provide Seller with performance assurance in the amount of [REDACTED] in the form of cash prepay. Buyer shall prepay **MONTHLY RA CAPACITY PAYMENT** in the form of cash in accordance to the schedule provided in Section 4.9.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

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

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities

Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;

- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

7.3 No Recourse Against Buyer's Member Agencies

The Parties acknowledge and agree that Buyer is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by Buyer in connection with the Agreement are undertaken solely by Buyer and are not debts, liabilities, or obligations of its member agencies. Seller waives any recourse against Buyer's member agencies.

ARTICLE 8. CONFIDENTIALITY

In addition to the rights and obligations in the WSPP Agreement, the Parties agree that Buyer may disclose the Designated RA Capacity under this Transaction to any Governmental Body, the CPUC, the CAISO or any LRA of competent jurisdiction in order to support its applicable LAR, RAR or Flexible RAR Showings, if applicable, and Seller may disclose the transfer of the Designated RA Capacity under this Transaction to the Scheduling Coordinator of each Unit in order for such Scheduling Coordinator to timely submit accurate Supply Plans.

The Parties acknowledges that Santa Clara is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Santa Clara acknowledges that the other party may submit information to Santa Clara that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). The other party acknowledges that Santa Clara may submit to the other party information that Santa Clara considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Contract ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed on the cover page of the Contract. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by

the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

Buyer may re-sell all or a portion of the Product hereunder.

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument; and, the Parties agree that signatures on this Agreement, including those transmitted by facsimile, shall be sufficient to bind the Parties.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. The Effective Date is the date that the final signatory executes the Agreement. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

City of Santa Clara, dba Silicon Valley Power

Peninsula Clean Energy

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: September 19, 2016
BOARD MEETING DATE: September 22, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy

SUBJECT: a. Request approval of Citizens Advisory Committee (CAC) Extension and Meeting Schedule for 2016 (Action)
b. Provide Direction on Future Role and Membership of CAC (Action)

RECOMMENDATION: Review and approve request for CAC to be extended through calendar year 2016, with the meeting time to be changed to the Thursday one week before the Board meeting, and obtain input on future CAC structure beyond 2016.

BACKGROUND:

While exploring the feasibility of establishing a Community Choice Energy program in San Mateo County, the Office of Sustainability and County leadership identified the need to establish a transparent and collaborative process to gather input on the program. Therefore, in May 2015, the Office of Sustainability formed the Community Choice Energy Advisory Committee, later re-named the Peninsula Clean Energy Advisory Committee ('PCE Advisory Committee').

Each city in San Mateo County had one seat on the Advisory Committee, occupied by either a staff member or elected official. County Board Supervisors Carole Groom and Dave Pine served as the Committee's co-chairs. In addition to local governments, the Advisory Committee included members of fifteen local organizations, representing a diversity of interests. The purpose of the Advisory Committee was to provide a forum for local governments, community stakeholders and the public to learn about and provide feedback on matters related to Peninsula Clean Energy.

The Advisory Committee met monthly until the formation of the Peninsula Clean Energy Authority in March 2016. At its first meeting, the PCE Board of Directors (Board) voted to establish an ad-hoc Citizens Advisory Committee (CAC) to provide recommendations on items presented to the Board. The CAC began meeting in April 2016 and continues to meet monthly. Items discussed at CAC meetings have included: marketing and communications, net-energy metering, renewable energy vs greenhouse gas free energy and rate setting.

Each organization that previously served on the Advisory Committee was invited to serve on the

CAC. Due to time constraints and other factors, three organizations decided not to participate. The San Mateo County Transit District was appointed as a new member to fill the empty spots in May 2016. Organizations that currently serve on the CAC are as follows:

Burlingame Citizens Environmental Council
International Brotherhood of Electrical Workers, Local 1245
MenloSpark
Pacifica Climate Committee
San Mateo Community Choice
San Mateo County Association of Realtors
San Mateo County Central Labor Council
San Mateo County Economic Development Association
San Mateo County League of Women Voters
San Mateo County School Boards Association
San Mateo Special Districts Association
San Mateo County Transit District
Sierra Club Loma Prieta Chapter

The CAC was originally formed as an ad-hoc committee to provide recommendations to the PCE Board until PCE's launch. Therefore, the CAC is currently planned to be dissolved in October 2016, upon absence of further direction from the PCE Board.

DISCUSSION:

PCE staff recognize the benefits of having included local stakeholders in the formation and implementation of PCE and believe further stakeholder input is important to ensuring PCE is representing the interests of the San Mateo County community. PCE staff recommend that the CAC continue as an ad hoc committee through calendar year 2016, and that its meeting schedule be revised as follows: meet on the Thursday one week before the PCE board meeting in order to provide feedback and input on the PCE board agenda.

PCE staff seek direction from the Board of Directors on the future role of the CAC, including how input from the CAC can best be received by the PCE Board. This would include when and where the CAC should meet, topics for discussion, the number of seats, the selection process, and selection criteria for membership on the CAC.

FISCAL IMPACT:

The fiscal impact of continuation of the CAC is staff time to prepare for and conduct the CAC meetings.



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: September 19, 2016
BOARD MEETING DATE: September 22, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
SUBJECT: Regulatory Update

RECOMMENDATION: Provide an Update on Current Regulatory Proceedings Affecting PCEA's operations

BACKGROUND:

One of the key functions of an operational Community Choice Aggregation (CCA) is regulatory affairs, both from a reporting and compliance standpoint as well as participation in regulatory proceedings that could have a direct impact on Peninsula Clean Energy (PCE) operations and its customers. At present, the operational CCAs have identified six key proceedings that are being closely monitored. PCE has not become an official "party" to any of these proceedings, but will consider doing so in the future. In addition, PCE is joining the newly forming organization named "Cal-CCA". Cal-CCA is forming as a 501(c)(6) member organization that will likely expand as additional CCAs are established. It is expected that Cal-CCA will advocate on behalf of CCAs in both the regulatory and legislative arenas.

Following are the six priority regulatory proceedings being monitored:

1. PG&E's Diablo Canyon Power Plant Closure (A.16-08-006)
2. PG&E's 2015 ERRRA Forecast Application (A.14-05-024)
3. Energy Storage Procurement and PCIA (A.15-12-003, A.15-12-004 et al)
4. SDG&E establishment of an Independent Marketing Affiliate (Advice Letter 2822-E)
5. PG&E General Rate Case Phase 2 (A.16-06-013)
6. Integrated Resource Planning (IRP) R.16-02-007)

DISCUSSION:

Steve McCarty from LEAN Energy US will be on hand to discuss the above proceedings. PCE

staff will comment on PCE's anticipated activity in monitoring and participation.

FISCAL IMPACT:

There is no fiscal impact associated with this regulatory update; there are fiscal impacts associated with regulatory tracking and participation at the California Public Utilities Commission (CPUC).



To: LEAN Energy Clients
Peninsula Clean Energy (San Mateo County)
Silicon Valley Clean Energy (Santa Clara County)
Redwood Coast Energy Authority (Humboldt County)
Alameda County - East Bay Community Energy
City of Davis/Yolo County – Valley Clean Energy Alliance
Santa Cruz County - Monterey Bay Community Power
Santa Barbara County – Central Coast Clean Power
Contra Costa County

From: Joe Como, Regulatory Consultant, LEAN Energy
Cc: Shawn Marshall, Executive Director
Date: August 30, 2016
Subject: Regulatory Update #3, August 2016

Each month, LEAN focuses on the key regulatory and legislative activities likely to have broad impact on the CCA community. This memo provides an update on key CPUC proceeding developments so far this month, as well as legislative activity so far in August.¹

Key Regulatory Case Developments

PG&E's Diablo Canyon Power Plant Closure

To Do:

File Protests by September 15th. Consider intervening and beginning discovery in PG&E's application at the CPUC to close the Diablo Canyon Power Plant facility. LEAN will be monitoring this proceeding. We will be hosting a conference call within a week to discuss possible next steps, including filing a protest on September 15, and the resource requirements to participate in this important proceeding should it go forward. To review the application, see: https://apps.cpuc.ca.gov/apex/f?p=401:56:0::NO:RP,57,RIR:P5_PROCEEDING_SELECT:A1608006

Issues:

On August 11th PG&E filed its application to replace power from the closure of Diablo Canyon in 2025. This application has significant implications for the CCA community relating to cost allocation, procurement autonomy, energy efficiency program administration and renewable resource integration. As the company indicated in

¹ This Regulatory Update memo is designed to provide LEAN's clients with a current snapshot of regulatory and legislative activities, to help inform our clients prioritize resources, and to make informed decisions about whether and how to engage in the regulatory and legislative landscape. It is not a comprehensive inventory of all of the regulatory and statutory requirements impacting nascent CCAs. Regulatory and statutory compliance requires a much more comprehensive inventory than the subset of activities described, and must be tailored to the specific circumstances of each CCA.

presentations prior to the filing, and as we reported last month, PG&E is proposing to acquire energy efficiency and replacement GHG-free replacement power. It is also asking the CPUC to approve recovery of other costs, such as employee retention and severance. A very important issue for CCAs is that it wants to pay for all of these costs through a non-bypassable charge paid by all distribution customers including CCA customers. PG&E indicated that it would be issuing additional workpapers shortly. A key issue is whether PG&E should be allowed to replace a revenue stream (Diablo Canyon is a rate based asset that allows PG&E to earn a rate of return on the investment) with another revenue stream that all bundled, CCA and DA customers will be responsible to pay. Another important issue is that the CPUC has existing proceedings and programs to determine the necessity for additional energy efficiency and other resources. For instance, the IRP proceeding is the forum to assess capacity as well as energy needs. Also, the CPUC has a separate proceeding for energy efficiency with business plans for the next portfolio due January 15th, 2017. Lastly, PG&E's application seems to be calculated to create a new revenue stream to replace its loss of Diablo Canyon without a proper analysis of what system requirements are needed after 2025.

Status:

The Application number is A.16-08-006. Protests are due September 15.

PG&E's 2015 ERRR Forecast Application (A.14-05-024)

To Do:

Review the PD at the link below, and contact LEAN if you wish to get involved in the working group.

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M164/K951/164951122.PDF>

Issues:

Phase 2 of this PG&E application will address the method for calculating customer vintaging for purposes of applying the PCIA.

Status:

The Proposed Decision (PD) is unchanged from last month. LEAN Energy filed comments in general support of the PD on August 15th, and reply comments opposing PG&E and SCE's attempts to complicate the PD on August 22nd. The PD directs California IOUs to assign a Power Charge Indifference Adjustment (PCIA) vintage to loads within a Community Choice Aggregation (CCA) territory based on the initial service date by a CCA except for customers that opt out of CCA service and later choose to opt back in. For such customers, the IOU is to assign a PCIA vintage based on the customer's date of departure from bundled service. This is the only customer-specific vintaging allowed, and in general is a significant improvement in terms of operational simplicity and fairness for customers. In its comments, CCA advocates argued that only material differences in IOU load fluctuations should require a new vintage for customers that opt back into CCA service. The initial service date of CCA service is considered to be the date the CCA initiates service, or the binding notice of intent process. Further, *new load (new interconnections) within a CCA territory will be assigned the same vintage based on the CCA phase-in date, on the rationale that CCAs are supposed to be accurately forecasting their load. This will make accurate forecasting at service initiation critical for new CCAs.* A copy of LEAN Energy's opening comments can be viewed [here](#), and reply comments can be found [here](#).

The PD notes the significant interest in PCIA issues, and directs interested parties to participate in a working group to address the PCIA concerns raised at the CPUC's March 8th workshop. The working group is encouraged to present its recommendation as Petitions to Modify or a Petition for a Rulemaking within six months of the decision.

September 15: The CPUC may vote on this PD.

Energy Storage Procurement and PCIA (A.15-12-003, A.15-12-004 et al)

To Do:

As time allows, read the decision at the link below; contact LEAN with questions.

<http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M165/K369/165369217.PDF>

Issues:

These applications are the IOUs' requests to approve the contracts resulting from their 2014-2015 energy storage solicitations. At issue are the reasonableness of the contracts, the classification of the contracts (by type, which governs how their costs are allocated), and establishment of a market price benchmark (MPB) for purposes of calculating each energy storage contract's costs to the PCIA. Competing proposals for calculating the storage MPB have been submitted by the IOUs and CCA/DA parties, respectively.

Status:

August 29: As noted last month, a PD approves most of the utility storage contracts proposed, and adopts the IOUs' PCIA calculation methodology for storage that is very similar as that used for traditional generation resources. The operational CCAs had proposed an alternate methodology that they assert would more accurately reflect current market pricing for storage. The one silver lining is that the cost of power supplied by IOUs to charge storage assets will be excluded from the storage PCIA calculation, as that cost is already captured in the PCIA through the traditional generation resource calculation. The PD provides for the PCIA methodology to be revisited by 2020.

On August 9th, the CCA Parties filed comments that: (1) The PCIA methodology should be modified to include a Storage Adder, as the CCA Parties have advocated throughout this proceeding; (2) the Commission should exclude proposed charging costs and adopt a credit or offset for ancillary services revenue; (3) the PCIA methodology for storage resources should be revisited when more data becomes available; and (4) the Commission should clarify that the delay on PCIA treatment until 2017 remains in force.

September 15: The CPUC may vote on this PD.

SDG&E request to establish a Marketing Affiliate (Advice Letter 2822-E)

Issue:

In November 2015, SDG&E filed an advice letter informing the Commission of SDG&E's plan to implement a Compliance Plan, pursuant to the Commission's CCA Code of Conduct, related to communications that may include the subject of Community Choice Aggregation. Numerous parties protested.

Status:

June 10: CPUC's Energy Division released a draft resolution approving SDG&E's request and defining its Independent Marketing Division with broad applicability of the Affiliate Transaction Rules.

July 5: LEAN filed extensive comments on the draft resolution.

August 18: Resolution E-4874 approving SDG&E Independent Marketing Division was voted out by the CPUC. One improvement in the final resolution was the clarification that the Code of Conduct rules also apply to Sempra, SDG&E's parent company. The utility has to submit in March of each of the next 3 years an annual report to the CPUC on the amount of spending and shareholder funding of the Independent Marketing Division. That could be extended by the CPUC.

PG&E GRC Phase 2 (A.16-06-013)

(FYI: The CPUC requires IOUs to split large energy general rate cases into 2 separate applications. The revenue requirement portion of a GRC is handled as a Phase 1 Application. After the CPUC determines what revenue amount will be allowed, the IOU's Phase 2 Application is used to determine where the revenue requirement will be allocated among all customer classes and where new rate designs will be considered. Simply put, Phase 1 determines the size of the pie. Phase 2 determines how the pie is split between customer classes.)

To Do:

Consider intervening in this case. The Prehearing Conference is September 12, 2016 , 10:30 am at the CPUC Office in San Francisco.

Issues:

Two areas of concern are a change in the accounting of medical baseline costs and economic development rates. PG&E is now proposing to move medical baseline costs to the PCIA. PG&E wants to extend its Economic Development Rate, which does not apply to CCA customers, to 2020, past its current termination date of 2017. PG&E will need to demonstrate that this subsidy is cost effective.

Status:

LEAN is monitoring this proceeding.

Integrated Resource Planning (IRP) R.16-02-007:

To Do:

Consider forming a working group to address CCA IRP issues, and participate in the September 26 workshop. Review the following link for background on the proceeding and access to the staff whitepaper:

<http://www.cpuc.ca.gov/LTPP>

Issues:

The CPUC staff issued a white paper on August 11th. The purpose of the white paper is to inform the development of a staff proposal on IRP due in December. The white paper proposed guiding principles for developing an IRP process and identifying the essential elements and underlying terminology for the IRP process, as well as IRP implementation options. The whitepaper also addresses GHG planning, scenario development, and the overall modeling framework. Comments are due August 31st and parties can raise issues that the whitepaper did not address. Some are: how CCAs can procure to meet system needs, how CCAs will meet their renewable needs, forecasting CCA loads. CCAs may want to meet soon to have their own internal workshop on CCA-specific IRP issues. The staff will hold a public workshop on September 26th.

Status:

Lean is monitoring this proceeding.

Key Legislative Activities

SB 215, Joint Governor/Legislative CPUC Reform Package

Authored by state Sens. Mark Leno (San Francisco) and Ben Hueso (Logan Heights), this bill passed the Legislature unanimously on August 28. The bill now goes to the Governor who is expected to sign it. It requires commissioners and other decision-makers to disclose their ex-parte meetings and provide substantive descriptions of those

meetings, prohibits “judge-shopping” and increases penalties to a maximum \$50,000 per violation. The definition of decision-maker is expanded to include commission advisors, which presumably will mean that parties will have a right to equal time meetings with advisors as well as Commissioners. The bill also authorizes the attorney general to prosecute anyone who violates the ex-parte rules.

AB 1530 (Levine): Nonbypassable charge applicability for large customers installing distributed energy resources

To Do: No action at this time.

Issue: This bill originally reduced/exempted non-bypassable charges (NBCs) for installation of DG; it has since been converted into a budget trailer bill, AB 1612, which expands NEM for fuel cell technology and eliminates the NBC exemption provisions. Given this substantive change, the operational CCAs are now not officially opposed, although the conversion to budget trailer bill status eliminates transparency of changes and opportunity to influence. IOUs are still opposed to this bill.

Status: LEAN is monitoring this bill.

AB 1110 (Ting): GHG Emissions Reporting

To Do: No action at this time.

Issue: This bill passed the Senate on August 23 and is now in the Assembly, where concurrence with Senate amendments is pending. It may be considered on or after August 28 pursuant to Assembly Rule 77 (unfinished business). This is the 2nd year of a two-year bill. If it doesn’t make it out of the Assembly soon, the bill will be officially dead. The bill was amended on August 19, with changes that reflect input from MCE and San Francisco. The calls that many people made to their elected officials also contributed to the changes adopted. The bill requires GHG Intensity reporting to be determined through a method developed by the California Energy CPUC in an open stakeholder process, instead of through a mandate to use the California Air Resources Board (CARB) Mandatory Greenhouse Gas Reporting Program. The CEC is to ensure no double counting of GHG emissions from unspecified resources as well as specified. This will help CCAs to count and report to customers the GHG free energy that come from renewable resources.

Status: LEAN is monitoring this bill

AB 2868 (Gatto): Distributed energy storage system deployment/transmission & distribution rate cost recovery

To Do: No action at this time.

Issue: CCA concern about this bill relates to cost shifting for installation of distributed energy storage systems. The bill requires IOUs to submit applications to the CPUC to accelerate widespread deployment of distributed energy storage systems, with costs recovered in transmission and distribution rates paid by CCA customers. That’s a problem for CCAs if CCAs want to install their own distributed energy storage systems because their customers would then be double-paying for distributed energy storage. The core sticking point is how to ensure CCA customers don’t have to pay for such costs, but at the same time legislators want to make sure CCAs contribute to their fair share of distribution infrastructure. The problem is that it isn’t clear if distributed energy storage is “distribution” infrastructure, or a complementary component of customer-side generation -- and addressing cost allocation in legislation is tricky and complicated. The CCA community has circulated language emphasizing the need to evaluate the benefits of storage to the grid and assign costs accordingly. MCE is working with the Assembly Member’s consultant to change the bill to allocate costs at the generation level.

Status: LEAN is monitoring this bill

SB 886 (Pavley): Battery storage requirements for all LSEs

To Do: No action at this time.

Issue: The current version includes language that acknowledges CCA governing board autonomy to adopt their own energy storage system targets. Operational CCAs are supporting.

Status: LEAN is monitoring this bill



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: Sept 19, 2016
BOARD MEETING DATE: Sept 22, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Joint Powers Board
FROM: Jan Pepper, Chief Executive Officer
SUBJECT: Approval of corrected PCE rates

RECOMMENDATION:

PCE staff seek the Board's approval of two Corrected Rate Calculations and the Rate Schedule updated to reflect those corrections

BACKGROUND:

On June 23, 2016, the PCE Board of Directors adopted the retail rates for PCE customers that will be charged at inception of service to customers. A presentation was made by PCE's consultants Pacific Energy Advisors to the board explaining the rates for the ECOplus and ECO100 products.

DISCUSSION:

On September 9, 2016, PCE's consultants notified PCE staff of a computational error in the rate design worksheet for the winter energy charges for two PCE rate schedules: E-20-P and E-20-R-P. These are rate schedules for large commercial customers. On the E-20-P rate, the winter part-peak and off-peak rates that were adopted were slightly lower than they should be. On the E-20-R-P rate, the winter off-peak that was adopted was slightly higher than it should be. The following table shows the adopted versus the corrected rates.

In the first phase of enrollment, PCE is not enrolling any large commercial customers on these rate schedules. However, there are five municipal customer accounts that are taking service under the E-20-P rate schedule, which are included in the first phase enrollment.

E-20-P		<u>ADOPTED</u>	<u>CORRECTED</u>	<u>DIFFERENCE</u>
ENERGY CHARGE (\$/KWH)				
	<u>SUMMER</u>			
	PEAK	0.09749	0.09749	-
	PART-PEAK	0.05925	0.05925	-
	OFF-PEAK	0.03574	0.03574	-
	<u>WINTER</u>			
	PART-PEAK	0.05252	0.05422	0.00170
	OFF-PEAK	0.03981	0.04151	0.00170
DEMAND CHARGE (\$/KW)				
	<u>SUMMER</u>			
	PEAK	12.65400	12.65400	-
	PART-PEAK	2.99250	2.99250	-
E-20-R-P				
ENERGY CHARGE (\$/KWH)				
	<u>SUMMER</u>			
	PEAK	0.22647	0.22647	-
	PART-PEAK	0.08691	0.08691	-
	OFF-PEAK	0.03574	0.03574	-
	<u>WINTER</u>			
	PART-PEAK	0.05422	0.05422	-
	OFF-PEAK	0.05634	0.04151	(0.01483)

Attachment A provides an updated rate schedule for all PCE rates, including the corrections for these two rate schedules.

FISCAL IMPACT:

The correction of these rates will not have a significant fiscal impact on PCE.

ATTACHMENTS:

A. PCE Rates Effective July 1, 2016 (Corrected as of September 22, 2016)

**PENINSULA CLEAN ENERGY
PROPOSED RATES EFFECTIVE JULY 1, 2016**

PG&E EQUIVALENT SCHEDULE	PCE RATE SCHEDULE	UNIT/PERIOD	PCE PROPOSED RATE	PCE PROPOSED WITH PG&E SURCHARGES	PG&E CURRENT GENERATION RATE
<u>RESIDENTIAL CUSTOMERS</u>					
E-1, EL-1, EM, EML, ES, ESL, ESR, ESRL, ET, ETL	E-1				
	ENERGY CHARGE (\$/KWH)	All Energy	0.06815	0.09200	0.09684
E-6, EL-6	E-6				
	ENERGY CHARGE (\$/KWH)				
		Summer Peak	0.17886	0.20271	0.21338
		Summer Part Peak	0.08264	0.10649	0.11209
		Summer Off-Peak	0.04336	0.06721	0.07075
		Winter Partial Peak	0.06517	0.08902	0.09370
		Winter Off-Peak	0.05436	0.07821	0.08233
EV	EV				
	ENERGY CHARGE (\$/KWH)				
		Summer Peak	0.19254	0.21639	0.22778
		Summer Part Peak	0.08043	0.10428	0.10977
		Summer Off-Peak	0.02855	0.05240	0.05516
		Winter Peak	0.05701	0.08086	0.08512
		Winter Partial Peak	0.02667	0.05052	0.05318
		Winter Off-Peak	0.03042	0.05427	0.05713
E-TOU-A, EL-TOU-A	E-TOU-A				
	ENERGY CHARGE (\$/KWH)				
		Summer Peak	0.14884	0.17269	0.18178
		Summer Off-Peak	0.07704	0.10089	0.10620
		Winter Peak	0.06587	0.08972	0.09444
		Winter Off-Peak	0.05228	0.07613	0.08014
E-TOU-B, EL-TOU-B	E-TOU-B				
	ENERGY CHARGE (\$/KWH)				
		Summer Peak	0.16998	0.19383	0.20403
		Summer Off-Peak	0.07207	0.09592	0.10097
		Winter Peak	0.06849	0.09234	0.09720
		Winter Off-Peak	0.05063	0.07448	0.07840
<u>COMMERCIAL, INDUSTRIAL AND GENERAL SERVICE CUSTOMERS</u>					
A-1-A	A-1-A				
	ENERGY CHARGE (\$/KWH)				
		SUMMER	0.08976	0.10830	0.11400
		WINTER	0.05597	0.07451	0.07843
A-1-B	A-1-B				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.10431	0.12285	0.12932
		PART-PEAK	0.08184	0.10038	0.10566
		OFF-PEAK	0.05585	0.07439	0.07831
		<u>WINTER</u>			
		PART-PEAK	0.08166	0.10020	0.10547
		OFF-PEAK	0.06179	0.08033	0.08456
A-6	A-6				

	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.32612	0.34466	0.36280
	PART-PEAK	0.09851	0.11705	0.12321
	OFF-PEAK	0.04313	0.06167	0.06492
	<u>WINTER</u>			
	PART-PEAK	0.06732	0.08586	0.09038
	OFF-PEAK	0.05071	0.06925	0.07289
A-10-A	A-10-A			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.07908	0.09856	0.10375
	WINTER	0.05619	0.07567	0.07965
	DEMAND CHARGE (\$/KW)			
	SUMMER MAX	4.59	4.59	4.83
A-10-B	A-10-B			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.13119	0.15067	0.15860
	PART-PEAK	0.07882	0.09830	0.10347
	OFF-PEAK	0.05215	0.07163	0.07540
	<u>WINTER</u>			
	PART-PEAK	0.06367	0.08315	0.08753
	OFF-PEAK	0.04747	0.06695	0.07047
	DEMAND CHARGE (\$/KW)			
	SUMMER MAX	4.59	4.59	4.83
E-19-S, V	E-19-S			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.10157	0.11810	0.12432
	PART-PEAK	0.06346	0.07999	0.08420
	OFF-PEAK	0.03822	0.05475	0.05763
	<u>WINTER</u>			
	PART-PEAK	0.05824	0.07477	0.07871
	OFF-PEAK	0.04449	0.06102	0.06423
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	PEAK	11.88	11.88	12.51
	PART-PEAK	2.94	2.94	3.09
E-19-P, V	E-19-P			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.09284	0.10937	0.11513
	PART-PEAK	0.05678	0.07331	0.07717
	OFF-PEAK	0.03359	0.05012	0.05276
	<u>WINTER</u>			
	PART-PEAK	0.05191	0.06844	0.07204
	OFF-PEAK	0.03932	0.05585	0.05879
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	PEAK	10.61	10.61	11.17
	PART-PEAK	2.58	2.58	2.72
E-19-T, V	E-19-T			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			

		PEAK	0.05884	0.07537	0.07934
		PART-PEAK	0.04703	0.06356	0.06690
		OFF-PEAK	0.03137	0.04790	0.05042
		<u>WINTER</u>			
		PART-PEAK	0.04888	0.06541	0.06885
		OFF-PEAK	0.03686	0.05339	0.05620
	DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>			
		PEAK	11.66	11.66	12.27
		PART-PEAK	2.93	2.93	3.08
E-19-R-S, V-R-S	E-19-R-S				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.22808	0.24461	0.25748
		PART-PEAK	0.09254	0.10907	0.11481
		OFF-PEAK	0.03822	0.05475	0.05763
		<u>WINTER</u>			
		PART-PEAK	0.05824	0.07477	0.07871
		OFF-PEAK	0.04449	0.06102	0.06423
E-19-R-P, V-R-P	E-19-R-P				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.21634	0.23287	0.24513
		PART-PEAK	0.08467	0.10120	0.10653
		OFF-PEAK	0.03359	0.05012	0.05276
		<u>WINTER</u>			
		PART-PEAK	0.05191	0.06844	0.07204
		OFF-PEAK	0.03932	0.05585	0.05879
E-19-R-T, V-R-T	E-19-R-T				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.20365	0.22018	0.23177
		PART-PEAK	0.08066	0.09719	0.10231
		OFF-PEAK	0.03137	0.04790	0.05042
		<u>WINTER</u>			
		PART-PEAK	0.04888	0.06541	0.06885
		OFF-PEAK	0.03686	0.05339	0.05620
E-20-S	E-20-S				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.09437	0.10987	0.11565
		PART-PEAK	0.05967	0.07517	0.07913
		OFF-PEAK	0.03586	0.05136	0.05406
		<u>WINTER</u>			
		PART-PEAK	0.05463	0.07013	0.07382
		OFF-PEAK	0.04173	0.05723	0.06024
	DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>			
		PEAK	11.52350	11.52350	12.13
		PART-PEAK	2.84050	2.84050	2.99
E-20-P	E-20-P				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.09749	0.11232	0.11823
		PART-PEAK	0.05925	0.07408	0.07798
		OFF-PEAK	0.03574	0.05057	0.05323

		<u>WINTER</u>			
		PART-PEAK	0.05422	0.06905	0.07268
		OFF-PEAK	0.04151	0.05634	0.05931
	DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>			
		PEAK	12.65400	12.65400	13.32
		PART-PEAK	2.99250	2.99250	3.15
E-20-T	E-20-T				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.06005	0.07344	0.07730
		PART-PEAK	0.04852	0.06191	0.06517
		OFF-PEAK	0.03327	0.04666	0.04912
		<u>WINTER</u>			
		PART-PEAK	0.05034	0.06373	0.06708
		OFF-PEAK	0.03862	0.05201	0.05475
	DEMAND CHARGE (\$/KW)				
		<u>SUMMER</u>			
		PEAK	14.96250	14.96250	15.75
		PART-PEAK	3.56250	3.56250	3.75
E-20-R-S	E-20-R-S				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.20919	0.22469	0.23652
		PART-PEAK	0.08751	0.10301	0.10843
		OFF-PEAK	0.03586	0.05136	0.05406
		<u>WINTER</u>			
		PART-PEAK	0.05463	0.07013	0.07382
		OFF-PEAK	0.04173	0.05723	0.06024
E-20-R-P	E-20-R-P				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.22647	0.24130	0.25400
		PART-PEAK	0.08691	0.10174	0.10709
		OFF-PEAK	0.03574	0.05057	0.05323
		<u>WINTER</u>			
		PART-PEAK	0.05422	0.06905	0.07268
		OFF-PEAK	0.04151	0.05634	0.05931
E-20-R-T	E-20-R-T				
	ENERGY CHARGE (\$/KWH)				
		<u>SUMMER</u>			
		PEAK	0.21585	0.22924	0.24131
		PART-PEAK	0.08213	0.09552	0.10055
		OFF-PEAK	0.03327	0.04666	0.04912
		<u>WINTER</u>			
		PART-PEAK	0.05034	0.06373	0.06708
		OFF-PEAK	0.03862	0.05201	0.05475
<u>AGRICULTURAL CUSTOMERS</u>					
AG-1-A	AG-1-A				
	ENERGY CHARGE (\$/KWH)				
		SUMMER	0.07377	0.09323	0.09814
		WINTER	0.05531	0.07477	0.07871
	CONNECTED LOAD (\$/HP)				
		SUMMER MAX	1.28	1.28	1.35

AG-1-B	AG-1-B					
	ENERGY CHARGE (\$/KWH)					
	SUMMER	0.07659	0.09605	0.10110		
	WINTER	0.05541	0.07487	0.07881		
	DEMAND CHARGE (\$/KW)					
	SUMMER MAX	1.92	1.92	2.02		
AG-RA	AG-RA					
	ENERGY CHARGE (\$/KWH)					
	<u>SUMMER</u>					
	PEAK	0.23068	0.25014	0.26331		
	OFF-PEAK	0.04354	0.06300	0.06632		
	<u>WINTER</u>					
	PART-PEAK	0.05020	0.06966	0.07333		
	OFF-PEAK	0.03984	0.05930	0.06242		
	CONNECTED LOAD (\$/HP)					
	SUMMER	1.23	1.23	1.29		
	AG-RB	AG-RB				
		ENERGY CHARGE (\$/KWH)				
<u>SUMMER</u>						
PEAK		0.20647	0.22593	0.23782		
OFF-PEAK		0.04308	0.06254	0.06583		
<u>WINTER</u>						
PART-PEAK		0.03791	0.05737	0.06039		
OFF-PEAK		0.02941	0.04887	0.05144		
DEMAND CHARGE (\$/KW)						
<u>SUMMER</u>						
MAX		2.04	2.04	2.15		
PEAK		1.81	1.81	1.91		
AG-VA	AG-VA					
	ENERGY CHARGE (\$/KWH)					
	<u>SUMMER</u>					
	PEAK	0.19933	0.21879	0.23030		
	OFF-PEAK	0.04098	0.06044	0.06362		
	<u>WINTER</u>					
	PART-PEAK	0.04876	0.06822	0.07181		
	OFF-PEAK	0.03861	0.05807	0.06113		
	CONNECTED LOAD (\$/HP)					
	SUMMER	1.28	1.28	1.35		
	AG-VB	AG-VB				
		ENERGY CHARGE (\$/KWH)				
<u>SUMMER</u>						
PEAK		0.18227	0.20173	0.21235		
OFF-PEAK		0.04125	0.06071	0.06391		
<u>WINTER</u>						
PART-PEAK		0.03802	0.05748	0.06050		
OFF-PEAK		0.02947	0.04893	0.05151		
DEMAND CHARGE (\$/KW)						
<u>SUMMER</u>						
MAX		2.14	2.14	2.25		
PEAK		1.66	1.66	1.75		

AG-4-A	AG-4-A			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.12929	0.14875	0.15658
	OFF-PEAK	0.04476	0.06422	0.06760
	<u>WINTER</u>			
	PART-PEAK	0.04860	0.06806	0.07164
	OFF-PEAK	0.03852	0.05798	0.06103
	CONNECTED LOAD (\$/HP)			
	SUMMER	1.26	1.26	1.33

AG-4-B	AG-4-B			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.09467	0.11413	0.12014
	OFF-PEAK	0.04678	0.06624	0.06973
	<u>WINTER</u>			
	PART-PEAK	0.04513	0.06459	0.06799
	OFF-PEAK	0.03551	0.05497	0.05786
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	MAX	2.24	2.24	2.36
	PEAK	2.38	2.38	2.51

AG-4-C	AG-4-C			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.11060	0.13006	0.13690
	PART-PEAK	0.05417	0.07363	0.07750
	OFF-PEAK	0.03365	0.05311	0.05591
	<u>WINTER</u>			
	PART-PEAK	0.03948	0.05894	0.06204
	OFF-PEAK	0.03067	0.05013	0.05277
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	PEAK	5.45	5.45	5.74
	PART-PEAK	0.93	0.93	0.98

AG-5-A	AG-5-A			
	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.12000	0.13946	0.14680
	OFF-PEAK	0.04949	0.06895	0.07258
	<u>WINTER</u>			
	PART-PEAK	0.05275	0.07221	0.07601
	OFF-PEAK	0.04213	0.06159	0.06483
	CONNECTED LOAD (\$/HP)			
	SUMMER	3.47	3.47	3.65

AG-5-B	AG-5-B			
	ENERGY CHARGE (\$/KWH)			

	<u>SUMMER</u>			
	PEAK	0.11630	0.13576	0.14290
	OFF-PEAK	0.02618	0.04564	0.04804
	<u>WINTER</u>			
	PART-PEAK	0.04497	0.06443	0.06782
	OFF-PEAK	0.01842	0.03788	0.03987
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	MAX	4.16	4.16	4.38
	PEAK	5.21	5.21	5.48

AG-5-C

AG-5-C

	ENERGY CHARGE (\$/KWH)			
	<u>SUMMER</u>			
	PEAK	0.09233	0.11179	0.11767
	PART-PEAK	0.04508	0.06454	0.06794
	OFF-PEAK	0.02750	0.04696	0.04943
	<u>WINTER</u>			
	PART-PEAK	0.03277	0.05223	0.05498
	OFF-PEAK	0.02478	0.04424	0.04657
	DEMAND CHARGE (\$/KW)			
	<u>SUMMER</u>			
	PEAK	9.60	9.60	10.10
	PART-PEAK	1.81	1.81	1.90

STREET AND OUTDOOR LIGHTING

LS-1, LS-2, LS-3, OL-1

SL

ENERGY CHARGE (\$/KWH)	0.07283	0.07625	0.08026
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TC-1

TC-1

ENERGY CHARGE (\$/KWH)	0.06288	0.08142	0.08570
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100% RENEWABLE ENERGY OPTION

Customers electing the 100% renewable energy service option will pay the applicable rate for the default service option plus the 100% Renewable Energy Charge.

ENERGY CHARGE (\$/KWH)	0.01000
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Voltage Discount

For rate schedules not segregated by service voltage, each component of the standard rate shall be discounted for primary or higher service voltage.

4%



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, August 11th, 2016
MINUTES**

San Mateo County Office of Education, Corte Madera Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30pm

CALL TO ORDER

Meeting was called to order at 6:30 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Jim Eggemeyer (alternate), County of San Mateo
Rick DeGolia, Town of Atherton
Greg Scoles (alternate), City of Belmont
Donna Colson, City of Burlingame
Joseph Silva, Town of Colma
Michael Guingona, City of Daly City
Gary Pollard, City of Foster City
Laurence May, Town of Hillsborough
Wayne Lee, City of Millbrae
John Keener, City of Pacifica
Marty Medina, City of San Bruno
Rick Bonilla (alternate), City of San Mateo
Pradeep Gupta, City of South San Francisco

Absent: Lori Liu, City of Brisbane
Larry Moody, City of East Palo Alto
Deborah Penrose, City of Half Moon Bay
Catherine Carlton, City of Menlo Park
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Ian Bain, City of Redwood City
Cameron Johnson, City of San Carlos
Daniel Yost, Town of Woodside

Staff: Jan Pepper, Chief Executive Officer
David Silberman, General Counsel
Gordon Tong, Office of Sustainability
Carolyn Raider, Office of Sustainability

A quorum was established.

PUBLIC COMMENT

Diane Bailey

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion to approve the consent agenda and set the agenda – Made / Seconded: Lee/ Medina

Motion passed 13-0 (Abstained: Eggemeyer, Absent: Aalfs, Liu, Moody, Bain, Yost, Penrose, Carlton, Johnson).

CLOSED SESSION

- 1. CONFERENCE WITH LABOR NEGOTIATORS**
- 2. CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

CLOSED SESSION REPORT

The Board Authorized the CEO to execute a lease agreement to sub-lease space located at 1010 Doyle St in Menlo Park for a 36 month term beginning on or about September 1, 2016 in a form of agreement approved by the General Counsel on a unanimous vote.

The performance objectives for the CEO were approved on a unanimous vote.

REGULAR AGENDA

1. CHAIR REPORT

None

2. CEO REPORT

Jan Pepper—Chief Executive Officer— reported on the PCE opt-out, opt-up, and Early Adopters statistics to date. Ms. Pepper noted that PCE will be cancelling its next meeting, that we're finalizing notices and will send to each Board member, and that we're going to start prioritizing business outreach. Ms. Pepper reported which cities have chosen to opt up to ECO100.

3. MARKETING AND OUTREACH

Ms. Pepper provided an overview of our upcoming Advocates Training Workshops and asks that everyone please promote these events as they are designed to train volunteers on business outreach. Ms. Pepper provided an update on presentations by PCE staff and noted that any city can let PCE know if they would like for staff to give a PCE update at their City Council. Ms. Pepper gave an update on the PCE website traffic with a majority of viewers organically accessing the website.

4. CITIZEN'S ADVISORY COMMITTEE UPDATE

Ms. Pepper provided an overview of the general discussion at the last Citizen's Advisory Committee meeting on August 4, 2016. They discussed the Net Energy Metering (NEM) phase-in schedule and the NEM program logistics. Ms. Pepper reported that the PCE customer call center performance was also discussed.

5. REGULATORY UPDATE

Ms. Pepper presented the recent development regarding AB1110 and asked if Board members would be willing to send an opposition letter against the proposed amendments, which would have a negative impact on CCAs. Ms. Pepper also explained that the closing of PG&E's resource, Diablo Canyon, will have an effect on PCE. Ms. Pepper noted that the CCAs are going to be starting a trade association.

Public comment: Ted Howard, Anne Schneider

6. BOARD MEMBERS' REPORTS

None

ADJOURNMENT

Meeting was adjourned.

Chair

Attest:

Secretary



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: September 13, 2016
BOARD MEETING DATE: September 22, 2016
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy
SUBJECT: Agreement with PIN Presort

RECOMMENDATION: Approve a resolution authorizing an amendment to the agreement with PIN Presort to provide mailing and presorting services by increasing the amount by \$601,000 to an amount not to exceed \$700,000.

BACKGROUND:

Peninsula Clean Energy (PCE) will launch in October 2016 to its first phase of customers. State law requires that customers be sent a minimum of two notices in the 60 days before automatic enrollment and two notices in the 60 days after enrollment informing them about the program. To ensure that customers are adequately informed about the program, the plan is for PCE to send a total of five notices to customers. The first phase of customers, which includes 20% of all residential accounts as well as all small and medium business accounts, will receive these notices in July, August, September, October, and November.

In order to mail these notices to PCE ratepayers, an external vendor was selected to process the address lists, insert letters into the envelopes, address the envelopes, and mail them in a timely fashion. PCE currently has an agreement with PIN Presort to provide these services as a result of a competitive bidding process. However, the estimated additional cost to mail notifications to all ratepayers in San Mateo County for the remainder of Phase 1 and Phase 2 is expected to exceed the dollar amount of the current agreement.

DISCUSSION:

For PCE to launch on schedule in October 2016, notices will need to be printed and

ready to mail as soon as possible. Given this limited timeframe, and considering the experience PIN Presort has sorting and mailing the first and second notices for Phase 1 customers, we are requesting the Board to approve the attached amendment to the agreement with PIN Presort to increase the dollar limit.

We also request that the Board give authority to the Chief Executive Officer or his/her designee to execute subsequent amendments to the Agreement which in aggregate do not exceed \$25,000.

General Counsel has reviewed and approved the resolution and the amendment as to form.

FISCAL IMPACT:

The term of this amended agreement is July 28, 2016 through July 26, 2017 in an amount not to exceed \$700,000.

ATTACHMENTS

- A. Amendment to PIN Presort Agreement
- B. PIN Presort Agreement

RESOLUTION NO. _____

**PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF
CALIFORNIA**

* * * * *

**RESOLUTION AUTHORIZING AN AMENDMENT TO THE AGREEMENT WITH PIN
PRESORT TO PROVIDE MAILING AND PRESORTING SERVICES BY INCREASING
THE AMOUNT BY \$601,000 TO AN AMOUNT NOT TO EXCEED \$700,000 FOR A
TERM ENDING JULY 26, 2017**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California, that

WHEREAS, the Peninsula Clean Energy Authority ("PCEA") was formed on February 29, 2016 as a Community Choice Aggregation program ("CCA"); and

WHEREAS, AB 117 requires that all CCAs provide certain customer notifications in the 60 days before and 60 days after enrollment about the program and its terms and conditions; and

WHEREAS, PIN Presort was selected to provide mailing and presorting services to PCEA based on their experience working with the County of San Mateo; and

WHEREAS, PCEA has signed an agreement with PIN Presort on July 28, 2016 to provide these services for the term of July 28, 2016 through July 26, 2017 for an amount not to exceed \$99,000; and

WHEREAS, PIN Presort has provided these services for the first two notifications for Phase 1 customers as required by AB 117 to PCEA in a satisfactory manner; and

WHEREAS, an amendment to this agreement has been provided to the Board for its review and approval, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Chair of the Board of Directors is hereby authorized and directed to execute said Agreement for and on behalf of the Peninsula Clean Energy Authority, and the Secretary of this Board shall attest the Chair's signature thereto.

BE IT FURTHER RESOLVED that the Chief Executive Officer of the Peninsula Clean Energy Authority, or the Chief Executive Officer's designee, is authorized to execute contract amendments which modify the Peninsula Clean Energy Authority's maximum fiscal obligation by no more than \$25,000 (in aggregate) and/or modify the contract terms and/or services so long as the modified term or services is/are within the current or revised fiscal provisions.

* * * * *

[CCO-113499]

AGREEMENT BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND PIN PRESORT

This Agreement is entered into this 28th day of July, 2016, by and between the Peninsula Clean Energy Authority, a joint powers authority of the state of California, hereinafter called "PCEA" and Pin Presort, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of such services to or for PCEA thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of mail presorting services.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

Exhibit A—Services

Exhibit B—Payments and Rates

Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for PCEA in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit A.

2. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this Agreement exceed ninety-nine thousand dollars (\$99,000). In the event that the PCEA makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration.

3. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from July 28, 2016, through July 26, 2017.

4. Termination; Availability of Funds

This Agreement may be terminated by Contractor or by the Chief Executive Officer of the Peninsula Clean Energy Authority or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such

payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

PCEA may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or PCEA funds by providing written notice to Contractor as soon as is reasonably possible after PCEA learns of said unavailability of outside funding.

5. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of PCEA and shall be promptly delivered to PCEA. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

6. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of PCEA and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of PCEA employees.

7. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless PCEA and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

(A) injuries to or death of any person, including Contractor or its employees/officers/agents;

(B) damage to any property of any kind whatsoever and to whomsoever belonging;

(C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended; or

(D) any other loss or cost, including but not limited to that caused by the concurrent active or passive negligence of PCEA and/or its officers, agents, employees, or servants. However, Contractor's duty to indemnify and save harmless under this Section shall not apply to injuries or damage for which PCEA has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

8. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of PCEA. Any such assignment or subcontract without PCEA's prior written consent shall give PCEA the right to automatically and immediately terminate this Agreement without penalty or advance notice.

9. **Payment of Permits/Licenses**

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

10. **Insurance**

a. **General Requirements**

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by PCEA, and Contractor shall use diligence to obtain such insurance and to obtain such approval. Contractor shall furnish PCEA with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending Contractor's coverage to include the contractual liability assumed by Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to PCEA of any pending change in the limits of liability or of any cancellation or modification of the policy.

b. **Workers' Compensation and Employer's Liability Insurance**

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

c. **Liability Insurance**

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

☒ Comprehensive General Liability... \$1,000,000

(Applies to all agreements)

☒ Motor Vehicle Liability Insurance... \$1,000,000

(To be checked if motor vehicle used in performing services)

☐ Professional Liability..... \$1,000,000

(To be checked if Contractor is a licensed professional)

PCEA and its officers, agents, employees, and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that (a) the insurance afforded thereby to PCEA and its officers, agents, employees, and servants shall be primary insurance to the full limits of liability of the policy and (b) if the PCEA or its officers, agents, employees, and servants have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, PCEA, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to PCEA upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse. In order to meet the requirements of Chapter 2.84, Contractor must certify which of the following statements is/are accurate:

- ☒ Contractor complies with Chapter 2.84 by offering the same benefits to its employees with spouses and its employees with domestic partners.
- ☐ Contractor complies with Chapter 2.84 by offering, in the case where the same benefits are not offered to its employees with spouses and its employees with domestic partners, a cash payment to an employee with a domestic partner that is equal to Contractor's cost of providing the benefit to an employee with a spouse.
- ☐ Contractor is exempt from having to comply with Chapter 2.84 because it has no employees or does not provide benefits to employees' spouses.
- ☐ Contractor does not comply with Chapter 2.84, and a waiver must be sought.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:

- ☒ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.
- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide PCEA with a written explanation of the outcome(s) or remedy for the discrimination.

g. Reporting: Violation of Non-discrimination Provisions

Contractor shall report to the Chief Executive Officer of PCEA the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or Section 11, above. Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the Chief Executive Officer, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a PCEA contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Chief Executive Officer.

To effectuate the provisions of this Section, the Chief Executive Officer shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and PCEA.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed Section 2, above, is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after PCEA makes final payment and all other pending matters are closed, and Contractor

shall be subject to the examination and/or audit by PCEA, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by PCEA.

(c) Contractor agrees upon reasonable notice to provide to PCEA, to any Federal or State department having monitoring or review authority, to PCEA's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of PCEA, to:

Name/Title:	Jan Pepper, Chief Executive Officer
Address:	455 County Center, 4 th Floor, Redwood City, CA 94063
Telephone:	415-309-9206
Email:	jpepper@peninsulacleanenergy.com

In the case of Contractor, to:

Name/Title: Sam Garza, Manager of Business Development
Address: 2526 Qume Drive, Suite 29, San Jose, CA 94131
Telephone: 408-441-7678
Facsimile: 408-453-7678
Email: samgarza@pinpresort.com

18. Electronic Signature

If both PCEA and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law, both boxes below must be checked. Any party that agrees to allow digital signature of this Agreement may revoke such agreement at any time in relation to all future documents by providing notice pursuant to this Agreement.

For PCEA: ☒ If this box is checked by PCEA, PCEA consents to the use of electronic signatures in relation to this Agreement.

For Contractor: ☒ If this box is checked by Contractor, Contractor consents to the use of electronic signatures in relation to this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

PENINSULA CLEAN ENERGY AUTHORITY

By: 

~~Chair, Board of Directors, Peninsula Clean Energy Authority~~
Chief Executive Officer

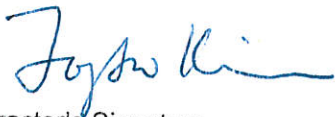
Date: 7/26/16

ATTEST:

By:

Clerk of Said Board

PIN PRESORT



Contractor's Signature

Date: 7/25/16

Exhibit A

In consideration of the payments set forth in Exhibit B, Contractor shall provide the following services:

1. PIN Presort will pick up documents and packages at 455 County Center, Redwood City, California (or other designated pick up locations) for processing on an as-needed basis between 4:30 PM & 5:00 PM
2. The PCEA will apply Basic Barcode Automation rate \$0.382 to the mail. PIN Presort will sort and qualify mail for Automated Presort by applying delivery point barcode. The service fee to perform this sortation is \$0.000 per piece.
3. Any mail that does not qualify at the Basic Barcode rate but can qualify for the Upgrade Presort rate, PIN Presort will apply the additional postage of \$0.058 per piece and submit for Upgrade Basic Presort. PIN Presort will charge a service fee of \$0.02 per piece and will invoice the PCEA back for the postage advanced on those items.
4. PIN Presort will verify the validity of the delivery address on each piece of mail received by on line FASTforward change of address. The fee to utilize move update processing is \$0.002 per piece.
5. To participate in the VAR program offered by PIN Presort, all customer mail must first pass all requirements of DMM section 201.1.1.3 through 201.3.2 concerning automated mail postage discount processing and eligibility standard for machinability and automation. Some requirements are:
 - All Mail must have a valid five- digit numeric Zip code
 - All mail must be typed or Machine Printed Address
 - Some handwritten addressed letter mail may qualify for Automation rates
 - Some handwritten addressed letter mail may NOT qualify for Automation rates
 - All letter mail must be metered at the Basic Barcode Rate
 - All mail must have the Presorted First Class Endorsement applied next to the meter impression.
 - All mail bearing the San Mateo, CA Postmark will require a Drop Shipment Endorsement next to or below the meter impression.
 - Postal Service form 8096, Processing Acknowledgment from PAFOCR, and meter license form, must be completed by the PCEA in order to participate in the VAR mailing.
6. PIN Presort will provide inkjet addressing, barcode printing, and permit printing services at the cost of \$0.02 per piece.
7. PIN Presort will provide envelope sorting and packing services as needed at the cost of \$0.02 per piece.
8. PIN Presort will deliver all mail to the USPS General Mailing Facility at 1750 Lundy Avenue, San Jose, California the same day it is picked up at the County Mailroom. All mail will be processed and delivered to the USPS the same day as picked up from the County mailroom.
9. If PCEA staffing changes do not permit the PCEA to participate in the presort operation on a particular day, the vendor must allow the PCEA to cancel that day's presort pick up by notifying the vendor by 10 A.M. of the same day. Phone (408) 441-7678 or email samgarza@pinpresort.com.
10. Vendor shall guarantee a qualification rate of at least 90 percent per day.
11. On a monthly basis, PIN Presort will provide a report showing number of items

received on a weekly basis for the month with detail showing how many pieces qualified at Basic Automated Presort, Upgrade Presort, Services fees, and Postage applied.

12. Vendor shall provide the PCEA with a minimum 60 days notice for the change of requirements or rate due to changes in the US Postal regulations.
13. Vendor shall provide the PCEA with a minimum 60 days notice for change of the vendor's procedures to which the PCEA must comply.

Exhibit B

In consideration of the services provided by Contractor described in Exhibit A and subject to the terms of the Agreement, PCEA shall pay Contractor based on the following fee schedule and terms:

Amount of Payment

1. \$0.000 per piece of basic automated presort letter mail.
2. \$0.04 per piece of upgraded mail letter.
3. \$0.04 per piece of upgraded mail flat.
4. \$0.002 per piece of fast forwarded letter mail.
5. \$0.058 per piece of letter mail metered at automation rate that which qualifies for upgrade presort rate.
6. \$0.06 per piece of flat mail sorted for presort rate (500 pcs minimum)
7. \$0.123 per piece of flat mail to upgrade from presort to full rate for non-qualified presort flat mail.
8. Cost of services shall be firm for the term of the contract.
9. \$0.02 per piece of mail to be printed with address, barcode, and permits
10. \$0.02 per piece of mail to be sorted and inserted into envelopes



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/26/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	Adobe Insurance Brokers, LLC 356 Digital Dr. Morgan Hill CA 95037	CONTACT NAME:	Doug James			
		PHONE (A/C, No, Ext):	855-236-2346	FAX (A/C, No):	855-236-0001	
		E-MAIL ADDRESS:	doug@adobebrokers.com			
		INSURER(S) AFFORDING COVERAGE		NAIC #		
INSURED	E&J Value Plus, Inc. PIN Presort Po Box 610428 San Jose CA 95161	INSURER A:		AMCO Insurance Company		19100
		INSURER B:		Hartford		22357
		INSURER C:		Everest National Insurance Company		10120
		INSURER D:				
		INSURER E:				
		INSURER F:				

COVERAGES

CERTIFICATE NUMBER: 20160630110145015

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	Y	Y	ACP3017245884	05/18/2016	05/18/2017	EACH OCCURRENCE \$ 2,000,000
	DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000						
	MED EXP (Any one person) \$ 5,000						
	PERSONAL & ADV INJURY \$ 2,000,000						
GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:							GENERAL AGGREGATE \$ 4,000,000
							PRODUCTS - COMP/OP AGG \$ 4,000,000
B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY	N	N	57UECZC6483	05/18/2016	05/18/2017	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	BODILY INJURY (Per person) \$						
	BODILY INJURY (Per accident) \$						
	PROPERTY DAMAGE (Per accident) \$						
UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$							EACH OCCURRENCE \$
							AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	N	7600011915151	08/01/2015	08/01/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	E.L. EACH ACCIDENT \$ 1,000,000						
	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000						
	E.L. DISEASE - POLICY LIMIT \$ 1,000,000						
A	Building/RC/SP/\$1000 Ded.	N	N	ACP3017245884	05/18/2016	05/18/2017	\$1,872,900
A	Bus. Pers. Prop/RC/SPC	N	N	ACP3017245884	05/18/2016	05/18/2017	\$592,800

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder named additional insured.

CERTIFICATE HOLDER**CANCELLATION**Peninsula Clean Energy Authority
County of San Mateo
Office of Sustainability
455 County Center, 4th Floor
Redwood City, CA 94063

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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**AMENDMENT TO AGREEMENT
BETWEEN THE PENINSULA CLEAN ENERGY AUTHORITY AND
PIN PRESORT**

THIS AMENDMENT TO THE AGREEMENT, entered into this 22 day of September, 2016, by and between the PENINSULA CLEAN ENERGY AUTHORITY, hereinafter called "PCEA," and PIN Presort, hereinafter called "Contractor";

W I T N E S S E T H:

Whereas, pursuant to Section 6508 of the Joint Exercise of Powers Act, PCEA may contract with independent contractors for the furnishing of such services to or for PCEA thereof

WHEREAS, the parties entered into an Agreement for mailing and presorting services on July 28, 2016; and

WHEREAS, the parties wish to amend the Agreement to increase the total amount of the Agreement.

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO
AS FOLLOWS:**

1. Section 2 of the agreement is amended to read as follows:

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit A, PCEA shall make payment to Contractor based on the rates and in the manner specified in Exhibit B. PCEA reserves the right to withhold payment if PCEA determines that the quantity or quality of the work performed is unacceptable. In no event shall PCEA's total fiscal obligation under this Agreement exceed seven hundred thousand dollars (\$700,000). In the event that the PCEA makes any advance payments, Contractor agrees to refund any amounts in excess of the amount owed by the PCEA at the time of contract termination or expiration.

4. **All other terms and conditions of the agreement dated July 28, 2016 between the PCEA and Contractor not in conflict shall remain in full force and effect.**

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives,
have affixed their hands.

PENINSULA CLEAN ENERGY AUTHORITY

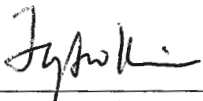
By: _____
Chair, Board of Directors

Date: _____

ATTEST:

By: _____
Secretary of Said Board

PIN Presort



Contractor's Signature

Date: 9/6/16