



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, February 23, 2017**

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. Marketing and Outreach Report (Discussion)
4. Approve a Resolution Delegating Authority to the Chief Executive Officer to Execute one or more Phase 2 Confirmation Agreements with Energy America, LLC; Shell Energy North America (US), L.P.; and/or Exelon Generation Company, LLC; and Ancillary Documents (Action)
5. Approve a Resolution on Formation of Citizens Advisory Committee (Action)
6. Power Charge Indifference Adjustment (PCIA) Vintaging and PCIA Workgroup Update (Discussion)
7. Board Members' Reports

CONSENT AGENDA

8. Authorize Purchase of Resource Adequacy from NRG Power Marketing LLC for May and June 2017, in an amount not to exceed \$300,000 (Action)
9. Authorize the Execution of an Amendment to the Confirmation Agreement with Energy America, LLC for Scheduling Coordinator services for Phase 2 (Action)
10. Authorize the Execution of an Energy Services Agreement for Scheduling Coordinator services with ZGlobal Inc. (for Hydro Projects) (Action)
11. Approve Modification to Policy 7: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (Action)
12. Approval of the Minutes for the January 26th, 2017 Meeting (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

DATE: February 21, 2017
BOARD MEETING DATE: February 23, 2017
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: Approve a Resolution Delegating Authority to the Chief Executive Officer to Execute one or more Phase 2 Confirmation Agreements with Energy America, LLC; Shell Energy North America (US), L.P.; and/or Exelon Generation Company, LLC; and Ancillary Documents (Action)

RECOMMENDATION:

Approve a Resolution delegating authority to the Chief Executive Officer to Execute one or more Phase 2 Confirmation Agreements with Energy America, LLC; Shell Energy North America (US), L.P.; and/or Exelon Generation Company, LLC; and Ancillary Documents.

BACKGROUND:

On June 23, 2016, the Board of Directors executed Master Agreements with the three short-listed Energy Service Providers: Energy America, LLC, Shell Energy North America (US), L.P., and Exelon Generation Company, LLC. One Energy Service Provider (ESP) was then selected to provide the Phase 1 energy supply for the Peninsula Clean Energy launch. That ESP was Energy America LLC, which has been providing the electricity supply for our Phase 1 customers to date.

A Confirmation agreement was negotiated and executed with Energy America, which included the actual prices and quantities of energy they are providing for Phase 1.

Energy America is also providing scheduling services for both PCE's Phase 1 load and supply.

At the same time, ancillary agreements, including the Intercreditor Agreement, the Security Agreement and the Deposit Account Control Agreement were negotiated with the three ESPs for use of the multi-party lockbox, which provides a secure means for the ESPs to be paid as well as the necessary credit support to the ESPs.

Updates to the Confirmation agreements have been negotiated with the three short-listed ESPs in anticipation of having them provide energy for Phase 2. The Board is being asked to authorize the CEO to execute one or more of these Confirmations based on the final pricing provided by the ESPs.

DISCUSSION:

Attached to this memorandum are the three negotiated Confirmation Agreements. One difference between these confirmation agreements and those executed last June is that these confirmation agreements do not include scheduling services. Energy America is providing scheduling services for PCE's Phase 1 load, and will be providing additional scheduling services for PCE's Phase 2 load, as only one scheduling coordinator can schedule all of PCE's load per the CAISO. A separate agreement (presented to the Board as agenda item 9) will amend the confirmation with Energy America to schedule the additional PCE load that will be added for Phase 2.

Another difference compared to the Phase 1 procurement is that PCE is asking for final pricing for Phase 2 energy supply for 2017, 2018 and 2019. Depending on the pricing received from the ESPs, PCE may contract for phase 2 supply for calendar years 2017 and 2018 only, or additionally for calendar year 2019. Because PCE is bringing on additional energy supply through long-term contracts with renewable suppliers, we want to maintain some flexibility in determining how much additional supply is needed for future years depending on which long-term renewable contracts are executed.

Assuming the Board Authorizes the Chief Executive Officer to execute the agreements, on February 28, 2017, Staff will request updated final pricing from the ESPs. In the normal course, PCE will be given (at most) a few hours to select one or more ESPs to supply Phase 2 energy and execute a Confirmation with that ESP, making it infeasible to bring the decision back to the Board and comply with the requirements of the Brown Act. The Chief Executive Officer received indicative pricing from the three ESPs earlier this week and anticipates that the pricing received on February 28 will allow PCE to meet its financial goals according to the pro forma budget presented to the board last July.

RESOLUTION NO. _____

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

*** * * * ***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO (A) EXECUTE PHASE 2 CONFIRMATION AGREEMENTS WITH THE ENERGY
SERVICE PROVIDERS SELECTED BY THE CHIEF EXECUTIVE OFFICER FROM
AMONG THE PROVIDERS WITH WHICH PCEA HAS EXECUTED EEI MASTER
AGREEMENTS, WITH TERMS CONSISTENT WITH THOSE PRESENTED, IN A
FORM APPROVED BY THE GENERAL COUNSEL AND FOR A TERM OF UP TO 60
MONTHS, SUBJECT TO THE CONDITIONS THAT THE BINDING FINAL PRICES
RECEIVED FROM THE SELECTED ENERGY SERVICE PROVIDERS ARE AT OR
BELOW A LEVEL THAT WILL (1) PERMIT PCEA TO DELIVER POWER TO ITS
CUSTOMERS AT RATES THAT ARE LESS THAN PG&E's CURRENTLY
EFFECTIVE RATES (AS OF FEBRUARY 23, 2017), NET OF THE CURRENTLY
EFFECTIVE POWER CHARGE INDIFFERENCE ADJUSTMENT AND FRANCHISE
FEE SURCHARGES; AND (2) THAT THE PCEA RATES REFERENCED ABOVE ARE
ANTICIPATED TO BE SUFFICIENT TO RECOVER ALL PROJECTED POWER
SUPPLY EXPENSES, OTHER PROGRAM OPERATING EXPENSES, AND
SCHEDULED DEBT SERVICE AND YIELD A RATE STABILIZATION RESERVE OF
NO LESS THAN 5% OF PROJECTED REVENUES FOR THE TWELVE MONTH
PERIOD FROM OCTOBER 1, 2016 THROUGH SEPTEMBER 30, 2017;**

**(B) EXECUTE SUCH OTHER ANCILLARY DOCUMENTS, IN A FORM APPROVED
BY THE GENERAL COUNSEL, AS MAY BE NECESSARY TO EFFECTUATE
PURCHASE OF SUCH POWER AND RELATED PRODUCTS AND SERVICES.**

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” or “PCEA”) was formed on February 29, 2016; and

WHEREAS, launch of service for Phase 2 is planned for April 2017; and

WHEREAS, Peninsula Clean Energy is ready to purchase energy, renewable energy, carbon free energy, and related products and services (the “Products”) to supply Phase 2 of its launch; and

WHEREAS, in Spring of 2016, Peninsula Clean Energy administered a competitive process to select a Contractor capable of providing the Products to supply Phase 1; and

WHEREAS, at the conclusion of that process, three energy service providers (each, an “Energy Service Provider” or “ESP”) were identified by the selection panel as the ESPs with the most competitive proposals; and

WHEREAS, in June 2016, PCEA executed separate EEI Master Agreements with each of those three ESPs; and

WHEREAS, PCE has now also negotiated a Confirmation Agreement with each of these three ESPs for provision of the Products for Phase 2; and

WHEREAS, a Confirmation Agreement is an agreement between an energy purchaser and an energy supplier that binds a purchaser to purchase and a supplier to supply specific quantities of energy Products at specific prices and is governed by the terms and conditions of the EEI Master Agreement; and

WHEREAS, staff is presenting to the Board for its review each of the negotiated Confirmation Agreements, reference to which should be made for further particulars; and

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute one or more of these Confirmation Agreements and any necessary ancillary documents, because the timing of execution of the Confirmation Agreements makes it infeasible to bring the final selections of ESPs back to the Board and comply with the Brown Act.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to:

(A) Execute one or more Phase 2 Confirmation Agreements with the Energy Service Providers selected by the Chief Executive Officer from among the providers with which PCEA has executed EEI Master Agreements, with terms consistent with those presented, in a form approved by the General Counsel and for a term of up to 60 months subject to the conditions that the binding final prices received from the selected Energy Service Providers are at or below a level that will (1) permit PCEA to deliver

power to its customers at rates that are less than PG&E's currently effective rates (as of February 23, 2017), net of the currently effective Power Charge Indifference Adjustment and Franchise Fee surcharges; and (2) that the PCEA rates referenced above are anticipated to be sufficient to recover all projected power supply expenses, other program operating expenses, and scheduled debt service, and yield a rate stabilization reserve of no less than 5% of projected revenues for the twelve month period from October 1, 2016 through September 30, 2017; and

(B) Execute such other ancillary documents, in a form approved by the General Counsel, as may be necessary to effectuate the purchase of such Products.

* * * * *

[CCO-113499]

The purpose of this Confirmation is to confirm the terms and conditions of the transaction (the “Transaction”) agreed upon by Buyer and Seller as of the Effective Date specified below. This Confirmation supplements, forms a part of, and is subject to that certain Master Power Purchase and Sale Agreement dated June 24, 2016 between Buyer and Seller (the “Master Agreement”). All provisions contained herein or incorporated by reference to the Master Agreement will govern this Confirmation except as expressly modified herein. In the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction.

We confirm the following terms of our Transaction:

Buyer: PENINSULA CLEAN ENERGY AUTHORITY
Address:
Attn:
Tel:
Email:

Seller: ENERGY AMERICA, LLC
12 Greenway Plaza, Suite 250
Houston, TX 77046
Attn: Jay Robertson
Tel: (713) 877-5712
Email: Jay.Robertson@directenergy.com

Effective Date: [XX]

Delivery Term: From and including Hour Ending (“HE”) 0100 on March 1, 2017 through and including HE 2400 on December 31, 2021.

Contract Price: Buyer shall pay to Seller an energy price shown in the tables in Exhibit A for each MWh of Product delivered to Buyer and scheduled in accordance with this Confirmation.

Product: CAISO firm energy

Contract Quantity: MWhs delivered over the Delivery Term as specified in the tables in Exhibit A consistent with the monthly Weekday and Weekend/NERC Holiday MWhs capacities shown.

Delivery Point: CAISO TH_NP15_GEN-APND

Scheduling: Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. If at any time during the Delivery Term, Seller is no longer the Scheduling Coordinator for Buyer, Seller will schedule the Product to Buyer’s Third-Party SC on a Day-Ahead basis using an Inter-SC Trade. “Inter-SC Trade” and “Day-Ahead” have the meaning set forth in the Tariff.

Payment: For each month during the Delivery Term, Buyer will pay Seller an amount equal to the Contract Quantity delivered and scheduled in accordance with this

Deal Number:

Confirmation, multiplied by the Contract Price specified in Exhibit A. Notwithstanding the terms of the Master Agreement, with respect to each calendar month, Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

Time Zone: PPT

ADDITIONAL TERMS:

- a) For Energy delivered to Buyer under this Confirmation, the Energy will be sourced as generic CAISO system energy.
- b) This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of Product. Notwithstanding anything in the Master Agreement to the contrary, this Confirmation will become effective only upon its execution by both Parties. Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation and returning it to fax number 713-877-3729 or _TradeControlGroup@directenergy.com.

IN WITNESS WHEREOF, the Parties have signed this Confirmation effective as of the Effective Date.

ENERGY AMERICA, LLC.

By: _____

Name: _____

Title: _____

Date: _____

PENINSULA CLEAN ENERGY AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

Deal Number:

Exhibit A

CONFIRMATION

Reference:
Master Power Purchase and Sale Agreement
Between Shell Energy North America (US), L.P. ("Seller")
And
Peninsula Clean Energy Authority ("Buyer")
dated June 24, 2016

This Confirmation is entered into as of ___, 2017 (the "Effective Date") by and between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **Peninsula Clean Energy Authority**, a California joint powers authority ("Buyer"). This Confirmation is subject to that certain Master Power Purchase and Sale Agreement dated June 24, 2016 (the "Master Agreement") between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the "CCA");

WHEREAS, Buyer is a California joint powers authority, which has established Peninsula Clean Energy for purposes of delivering CCA service to certain customers located within the County of San Mateo;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer's CCA Implementation Plan and Statement of Intent ("Implementation Plan") to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on June 8, 2016;

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

- 1. DEFINITIONS.** Any capitalized terms in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

"ACS" means "asset-controlling supplier" as that term is defined in the Cap and Trade Regulations.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

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

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively) promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Carbon Free Energy” means Energy generated by from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfies the

requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“CPUC” means the California Public Utilities Commission.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Peninsula Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Energy” means electrical energy, measured in MWh.

“Energy Contract Price” shall mean the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled with Buyer as an IST.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any

judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Implementation Plan” has the meaning set forth in the third recital herein above.

“IST”, an abbreviation for Inter-SC Trade, has the meaning set forth in CAISO Tariff.

“Mandatory Reporting Rule” means the regulations entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Law, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practices shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy generation found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

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

“Security Documents” has the meaning set forth in the Master Agreement.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system, that provides commercial verification of the power source

“Third-Party SC” means a third party designated by Buyer to provide the SC functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source by any auditable contract trail or equivalent, including a tradable commodity system that provides commercial verification that the electricity has been sold once and only once.

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

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT.

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of:

- (a) the quantity of Energy specified in Section 6.1;
- (b) the quantity of Renewable Energy specified in Sections 5.2 and 6.2; and
- (c) the quantity of Carbon Free Energy specified in Section 6.1.

2.2 Change in Law.

If due to any action by the CPUC or any Governmental Authority, or any change in Applicable Law (a “Change in Law”) occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the

Products sold hereunder and that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, or otherwise modifies the California RPS or language required to conform to the California RPS, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer's compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. These Change in Law provisions are independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 RPS Standard Terms and Conditions.

STC 6: Eligibility

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

STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or

misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-2: Tracking of RECs in WREGIS

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

STC 17: Applicable Law

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

- 2.4 No New Construction Without Environmental Review. To the extent that Seller constructs any new facilities to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Law.
- 2.5 Resources. For Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries hereunder, if any, Seller may use (i) Unspecified Sources of Power or (ii) Specified Sources of Power. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.6 Delivery of WREGIS Certificates. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer for Buyer's sole benefit.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and [Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the applicable California RPS requirements or WREGIS specifications reflected in this Confirmation;

Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its applicable reports to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

- 2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 with respect to such Renewable Energy, Buyer agrees to retire the RECs for compliance purchased from Seller hereunder no later than four months after the year in which they are produced for each renewable generation period in accordance with Title 17 CCR Section 95852(b)(3)(D) and to provide Seller with the WREGIS retirement report.
- 2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the regulatory requirements for application of the RPS Adjustment change after the Effective Date and such change causes an increase in the greenhouse gas emissions intensity associated with the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction to mitigate the increase in the greenhouse gas emissions intensity. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. DELIVERY PERIOD. This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the delivery Start Date

through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof:

Start Date:	End Date:
March 1, 2017	The earlier of December 31, 2021 or the date on which Seller has delivered the Contract Quantity of the Products set forth in Exhibits A – C attached hereto

4. DELIVERY POINT AND SCHEDULING.

Product	Delivery Point
Energy	TH_NP15_GEN-APND
Renewable Energy	CAISO or California Balancing Authority
Carbon Free Energy	CAISO or California Balancing Authority

Seller will perform all scheduling requirements applicable to the transaction(s) contemplated under this Confirmation. All scheduling shall be performed consistent with all applicable CAISO and WECC prevailing protocols. The Energy will be scheduled to Buyer on a Day-Ahead basis using an Inter-SC Trade (IST). Renewable and Carbon Free Energy will be scheduled to the applicable delivery point without (an) IST.

5. PRICING.

- 5.1 Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.
- 5.2 Renewable Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to: a) the applicable Renewable Energy Contract Price as specified in Exhibit B, multiplied by the

portion of the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS.

- 5.3 Carbon Free Energy Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity delivered in such month multiplied by the Carbon Free Energy Price specified in Exhibit C.

6. CONTRACT QUANTITIES.

- 6.1 Energy. Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
- 6.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.
- 6.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

7. MONTHLY BILLING SETTLEMENT.

- 7.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded, the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.
- 7.2 Monthly Invoice Timeline. Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.

- 8. COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on its own behalf and will

require resource information, electronic tagging information, and other documentation to be provided by Seller. Seller shall provide all reasonable information to Buyer necessary for Buyer to timely comply with periodic compliance reporting requirements and as otherwise required by Applicable Law with respect to any Product.

9. **NO RESTRICTIONS.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities or prevent Buyer from purchasing Energy from other parties or prevent Seller from selling Energy to other parties; provided, however, that Buyer shall remain responsible to pay Seller for the Contract Quantities represented in Exhibits A, B and C.

10. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.

11. **SECURITY PROVISIONS.**

11.1 Compliance with Security Documents. During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

11.2 Buyer Reporting Requirements. During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports or such additional information or clarifications requested by Seller and such failure is not remedied within fifteen (15) Business Days of Seller's written request therefore and notice of a potential Event of Default, such failure shall be an Event of Default in accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

(a) Monthly Reports. The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

(i) Monthly and year to date consolidated and consolidating financial statements for such month prepared in accordance with generally accepted accounting principles. Such financial statements shall

include, at a minimum, a detailed profit and loss statement, balance sheet, statement of cash flows, a monthly and year to date financial projections showing line item and total variances between such financial projections and actual results and an executive summary describing the causes of any variances which are +/- 5% between the monthly financial statements and the financial projections. Such report shall be in the format as Seller may reasonably require from time to time;

- (ii) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
 - (iii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
 - (iv) Cash reconciliations and bank statements for each of Buyer's banking accounts; and
 - (v) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60 days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers; and
 - (vi) Certificate of compliance with Buyer's adopted policies, if any.
- (b) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

This Confirmation is subject to the Exhibits identified below and that are attached hereto:
Exhibit A – Energy Contract Quantity and Price Schedule Exhibit B – Renewable Energy Contract Quantity and Price Schedule Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule

Notwithstanding anything contained in the Master Agreement to the contrary, this Confirmation shall only be effective when executed by both Parties.

IN WITNESS WHEREOF, the undersigned Parties have signed this Confirmation effective as of the Effective Date.

Shell Energy North America (US), L.P.

Peninsula Clean Energy Authority, a
California joint powers authority

Sign: _____

Sign: _____

Print: _____

Print: _____

Title: _____

Title: _____

Exhibit A
Energy Contract Quantity and Price Schedule

[Insert Price Table]

The monthly quantities listed below will be shaped in accordance with the Weekday and Weekend hourly amounts listed in the following two tables.

[Insert Monthly Quantity Table]

[Insert Hourly Shapte Tables]

]

Exhibit B
Renewable Energy Contract Quantity and Price Schedule
[Insert Annual Volume and Price Table]

Exhibit C
Carbon Free Energy Quantity and Price Schedule
[Insert Annual Volumes and Prices]

CONFIRMATION

Reference:

Master Power Purchase and Sale Agreement
Between Exelon Generation Company, LLC (“Seller”)

And

Peninsula Clean Energy Authority, a California joint powers authority (“Buyer”)
dated June 24, 2016

Transaction Date: [TBD] (the “Effective Date”)

RECITALS:

WHEREAS, pursuant to California Public Utilities Code Sections 366.1, et. seq., Buyer has been registered as a Community Choice Aggregator (the “CCA”);

WHEREAS, Buyer is a California joint powers authority, which has established Peninsula Clean Energy for purposes of delivering CCA service to certain customers located within the County of San Mateo;

WHEREAS, pursuant to California Public Utilities Code Section 366.2, Buyer submitted Buyer’s CCA Implementation Plan and Statement of Intent (“Implementation Plan”) to the CPUC;

WHEREAS, the CPUC certified the Implementation Plan on June 8, 2016;

WHEREAS, Buyer has selected Seller to supply the requested Energy, Renewable Energy and Carbon Free Energy to support Buyer’s delivery of CCA service to Buyer’s Customers; and

WHEREAS, Seller and Buyer desire to set forth the terms and conditions pursuant to which Seller shall supply the Product to Buyer, and Buyer shall take and pay for such supply of Product subject to satisfaction of the conditions herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Confirmation and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

- 1. DEFINITIONS.** Any capitalized terms used in this Confirmation but not otherwise defined below shall have the meaning ascribed to such term in the Master Agreement:

“ACS” means “asset-controlling supplier” as that term is defined in the Cap and Trade Regulations.

“Ancillary Services” has the meaning ascribed to such term under the Tariff.

“Applicable Law” means any statute, law, treaty, rule, tariff, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal

or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, or any binding interpretation of the foregoing, as any of them is amended or supplemented from time to time, that apply to either or both of the Parties, the Project(s), or the terms of the Agreement.

“Buyer Facilities” has the meaning set forth in Section 10 hereof.

“CAISO” means the California Independent System Operator Corporation or the successor organization to the functions thereof.

“California RPS” or “California Renewables Portfolio Standard” means the California renewables portfolio standard, as set forth in Cal. Pub. Util. Code §§ 399.11 et seq. and Cal. Pub. Res. Code §§ 25740-25751, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the California Public Utilities Commission (“CPUC”) as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038 and D.14-12-023, and as may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Cap and Trade Regulations” means the Mandatory Greenhouse Gas Emissions Reporting and California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulations (California Code of Regulations Title 17, Subchapter 10, Articles 2 and 5 respectively), as amended from time to time, promulgated by the California Air Resources Board of the California Environmental Protection Agency pursuant to the California Global Warming Solutions Act of 2006.

“Capacity” means the net generating capability of a generating resource or generating resources. Capacity is expressed in MW.

“Carbon Free Energy” means Energy deliveries from Carbon Free Sources.

“Carbon Free Source” means any energy source, except for nuclear-powered generation assets, that is located within the WECC and that is considered by the State of California to have zero Greenhouse Gas emissions in accordance with the Cap and Trade Regulations. Carbon Free Source does not include any Category 3 Renewables, ACS resources or any energy source with an e-tag with a source point associated with a nuclear or coal-fired generating facility.

“Category 1 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(1) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 2 Renewable” means Renewable Energy that satisfies the requirements of Section 399.16(b)(2) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“Category 3 Renewable” means the Renewable Energy Credits that satisfy the requirements of Section 399.16(b)(3) of the California Public Utilities Code, as applicable to the REC Vintage transferred hereunder.

“CEC” means the California Energy Commission.

“Change in Law” has the meaning set forth in Section 2.2 hereof.

“Commercially Reasonable Efforts” for the purposes of this Confirmation, “commercially reasonable efforts” or acting in a “commercially reasonable manner” shall not require a Party to undertake extraordinary or unreasonable measures.

“Compliance Obligation” has the meaning set forth by the Cap and Trade Regulations.

“Covered Products” has the meaning set forth in Section 13.2 hereof.

“CPUC” means the California Public Utilities Commission.

“CRRs” means Congestion Revenue Rights as defined in the Tariff.

“Customer Information” has the meaning set forth in Section 13.1 hereof.

“Customers” means the residential, commercial, industrial, and all other retail end use customers that have not opted out of the Peninsula Clean Energy Program, as designated from time to time by Buyer as being served by Buyer within the jurisdictional boundaries of the County of San Mateo, and identified to Seller pursuant to this Confirmation.

“Debt Service” means the obligations payable by Buyer for interest on loans outstanding and any principal repayments and any capital leases, but excluding any interest on or principal repayments of inter-company working capital loans between Buyer and one or more of its Affiliates.

“Debt Service Coverage Ratio” means, as of any date of calculation, the ratio of (a) EBITDA to (b) Debt Service, for the preceding twelve (12) month period ending on such date of calculation; provided, however, that, for any date of calculation where preceding twelve (12) months of data are not available to Buyer, all preceding months of data for the Delivery Period that are available to Buyer shall be used to compute the calculation.

“Delivery Period” shall be the period beginning on the Start Date and ending on the End Date, as set forth in Section 3 below.

“Delivery Point” has the meaning set forth in Section 4 hereof.

“Effective Date” has the meaning set forth in the Reference Section at the beginning of this Confirmation.

“Energy” means electrical energy measured in MWh.

“Energy Contract Price” means the price (\$/MWh) to be paid by Buyer to Seller for the Energy Contract Quantity delivered hereunder, as set forth on Exhibit A.

“Energy Contract Quantity” means the quantity of Energy set forth in Exhibit A, which will be delivered to the CAISO by Seller and scheduled to Buyer’s Third Party SC on a Day-Ahead basis as an IST.

“Eligible Renewable Energy Resource” or “ERR” means an Eligible Renewable Energy Resource as such term is defined in the California RPS program.

“Exhibits” shall be those certain Exhibits, which are attached hereto and made a part hereof.

“FERC” means the Federal Energy Regulatory Commission.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States.

“Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, or the CAISO or any other transmission authority, having or asserting jurisdiction over a Party or the Agreement.

“Imbalance Charge” means any scheduling penalties, imbalance penalties, overpull or unauthorized overrun penalties, operational flow order penalties, cash out charges, banking charges or similar penalties, fees or charges, assessed by, or oversupply credits or payments due with respect to a failure to comply with balance and/or scheduling requirements of any applicable entity, specifically excluding any distribution charges imposed by PG&E on the delivery of the Energy hereunder.

“Implementation Plan” has the meaning set forth in the Recitals hereof.

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

“Losses” means the difference between (1) the quantity of Energy delivered by PG&E to all Customers prior to application of PG&E’s distribution loss factor and (2) the wholesale quantity of Energy delivered by Seller for all Peninsula Clean Energy Customers Load as filed by Buyer with CAISO and subsequently delivered at retail to Customers.

“Mandatory Reporting Rule” means the regulations, as amended from time to time, entitled Mandatory Greenhouse Gas Emissions Reporting set forth in Article 2 of Subchapter 10 of Title 17 of the California Code of Regulations.

“MW” means megawatt.

“MWh” means megawatt-hour.

“PG&E” means the Pacific Gas and Electric Company, its successors and assigns.

“Pass-Through Charges” has the meaning set forth in Section 6 of Appendix I.

“Peninsula Clean Energy Customer Load” means the wholesale electric load requirements of Customers, without deduction for Losses. Peninsula Clean Energy Customer Load shall be deemed to include all Customers that have not opted out of the Peninsula Clean Energy Program on any given day during the Delivery Period.

“Peninsula Clean Energy Program” means the community choice aggregation program operated by Buyer.

“Phase(s)” means specifically defined period(s) of time throughout the Delivery Period during which additional Customers are incorporated into the Peninsula Clean Energy Customer Load in accordance with the Peninsula Clean Energy Program, as further described in the Implementation Plan.

“Product” shall have the meaning set forth in Section 2.1 below.

“Project” shall mean the Eligible Renewable Energy Resource(s) used to provide Renewable Energy hereunder.

“Prudent Industry Practices” means any of the practices, methods, techniques and standards (including those that would be implemented and followed by a prudent operator of generating facilities similar to the Project(s) in the United States during the relevant time period) that, in the exercise of reasonable judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result, giving due regard to manufacturers’ warranties and recommendations, contractual obligations, the requirements or guidance of Governmental Authority, including CAISO, Applicable Laws, the requirements of insurers, good business practices, economy, efficiency, reliability, and safety. Prudent Industry Practice shall not be limited to the optimum practice, method, technique or standard to the exclusion of all others, but rather shall be a range of possible practices, methods, techniques or standards.

“REC Vintage” means the date of Energy production found on a WREGIS Certificate.

“Renewable Energy” means Energy and associated Renewable Energy Credits generated by an Eligible Renewable Energy Resource.

“Renewable Energy Contract Price” shall mean the price (\$/REC) to be paid by Buyer to Seller for Renewable Energy delivered hereunder, as set forth on Exhibit B.

“Renewable Energy Contract Quantity” shall mean the quantity of RECs to be delivered by Seller to Buyer hereunder, as set forth on Exhibit B.

“Renewable Energy Credits” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision D.08-08-028, as applicable to the specific REC Vintage(s) transferred hereunder. For avoidance of doubt, the Parties agree that RECs do not include any production tax credits associated with the construction or operation of an ERR or other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation.

“RPS Adjustment” means the reduction in the Compliance Obligation of an electricity importer authorized by and calculated in accordance with section 95852 (b)(4) of the Cap and Trade Regulations and section 95111(b)(5) of the Mandatory Reporting Rule.

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

“Security Documents” has the meaning set forth in the Master Agreement.

“Specified Sources of Power” means electricity that is traceable to a specific generation source by any auditable contract trail (e.g., a Transaction Confirmation).

“Tariff” means the tariff and protocol provisions, including any current CAISO-published “Operating Procedures” and “Business Practice Manuals,” as amended, supplemented or replaced by CAISO from time to time.

“Third-Party SC” means a third party designated by Buyer to provide the Scheduling Coordinator functions for the benefit of Buyer.

“Unspecified Sources of Power” means electricity that is not traceable to a specific generation source (e.g., what is commonly known as “market” or “system” power) by any auditable contract (e.g., a Transaction Confirmation). “WECC” means the Western Electricity Coordinating Council, or its successor.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program utilized for the California RPS program.

“WREGIS Certificate” means “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“WREGIS Operating Rules” means the operating rules and requirements adopted by WREGIS.

2. PRODUCT.

2.1 Seller Delivery Obligation. Throughout the Delivery Period, Seller shall sell and deliver or make available, or cause to be sold and delivered or made available to Buyer, the “Product,” which is comprised of:

- (a) the quantity of Energy specified in Section 6.1;
- (b) the quantity of Renewable Energy specified in Section 6.2; and
- (c) the quantity of Carbon Free Energy specified in Section 6.3.

For the avoidance of doubt, Product does not include any resource adequacy or capacity attributes.

2.2 Change in Law.

If due to (i) any action by the CPUC or any other Governmental Authority, or (ii) any change in Applicable Law, including any modification of the California RPS or the Cap and Trade Regulation (i and ii, collectively, a “Change in Law”), occurring after the Effective Date that results in material changes to Buyer’s or Seller’s obligations with regard to the Products sold under this Agreement or that has the effect of changing the transfer and sale procedure set forth in this Confirmation so that the implementation of this Confirmation becomes impossible or impracticable, the Parties shall work in good faith to try and revise this Confirmation so that the Parties can perform their obligations regarding the purchase and sale of Products sold hereunder or Buyer’s compliance with California RPS obligations in order to maintain the original intent of the Parties under this Confirmation. In the event the Parties cannot reach agreement on any such amendments to this Confirmation within 60 days following the Change in Law, to the extent practicable and lawful, Seller shall perform its obligations hereunder with regard to any Product hereunder or compliance with California RPS obligations in accordance with the Applicable Law immediately prior to the Change in Law; provided, however, that notwithstanding the foregoing or anything to the contrary herein, Seller shall not be obligated to perform any obligation hereunder to the extent that doing so would cause Seller to be materially adversely affected. This Change in Law provision is independent of those set forth in the RPS Standard Terms and Conditions below and in Section 2.8.

2.3 RPS Standard Terms and Conditions.

STC 6: Eligibility

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

STC REC-1: Transfer of Renewable Energy Credits

Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities

Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

STC REC-2: Tracking of RECs in WREGIS

Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under this contract.

STC 17: Applicable Law

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

- 2.4 No New Construction. Seller does not intend to construct any new facilities in California to meet its supply obligations hereunder. Notwithstanding the foregoing, if Seller constructs any new facilities in California to meet its supply obligation hereunder, Seller covenants and agrees that the construction and operation of such facility(ies) will be in accordance with any and all Applicable Laws.
- 2.5 Resources. For Category 1 Renewable Energy and Carbon Free Energy delivered under this Confirmation, Seller shall use Specified Sources of Power. For other Energy deliveries, if any, Seller may use either (i) Unspecified Sources of Power or (ii) Specified Sources of Power. The Energy supplied in connection with any Renewable Energy shall comply with applicable California RPS requirements for such Product.
- 2.6 Delivery of WREGIS Certificates. Buyer and Seller agree that the obligation to deliver RECs hereunder shall be evidenced by the delivery of WREGIS Certificates in WREGIS. Throughout the Delivery Period, following generation of the Renewable Energy by the Project(s), Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with the Renewable Energy Contract Quantity are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Peninsula Clean Energy. Prior to the start of each calendar quarter, Seller shall provide Buyer with an indicative, non-binding forecast of the amount of RECs it expects to deliver during such calendar quarter. Such indicative, non-binding forecast shall also identify, if known to Seller, the Eligible Renewable Energy Resource(s) that Seller expects to generate the RECs.

Seller shall comply with all Applicable Law, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. The Parties acknowledge and agree that, as of the Effective Date, the WREGIS Certificates associated with the Renewable Energy Contract Quantity for a month are not available for transfer to Buyer until approximately ninety (90) days after the end of such month. Seller shall transfer such WREGIS Certificates in a timely manner after such WREGIS Certificates are available for transfer to Buyer and in no event later than May 1st of the year following the renewable generation period, as set forth in Exhibit B.

Upon receiving written or electronic confirmation from WREGIS that a transfer order has been initiated by Seller, Buyer shall confirm such transfer order in WREGIS within fourteen (14) days to the extent that the WREGIS Certificates included in such transfer conform to the specifications reflected in this Confirmation. In the event that certain WREGIS Certificates fail to conform to the specifications reflected in this Confirmation, Buyer shall be entitled to reject the transfer of any non-conforming WREGIS Certificates and Seller shall promptly replace the non-conforming WREGIS Certificates with an equivalent amount of WREGIS Certificates of the same REC Vintage and that meet the specifications reflected in this Confirmation; provided, however, that if replacement WREGIS Certificates are not immediately available, Seller may provide replacements once available, but in any event shall provide replacement WREGIS Certificates to Buyer within ninety (90) days after Seller's rejection of such non-conforming WREGIS Certificates.

Upon either Party's receipt of notice from WREGIS that a transfer of WREGIS Certificates was not recognized, that Party will immediately notify the other Party, providing a copy of such notice, and both Parties will cooperate in taking such actions as are necessary and commercially reasonable to cause such transfer to be recognized and completed. Each Party agrees to provide copies of its records to the extent reasonably necessary for WREGIS to verify the accuracy of any fact, statement, charge or computation made pursuant hereto if requested by the other Party.

- 2.7 Retirement of RECs. To facilitate compliance with obligations of suppliers of Renewable Energy as first deliverers of electricity, as defined in Title 17, California Code of Regulations ("CCR") Section 95802, to comply with mandatory greenhouse gas reporting requirements in Title 17 CCR Section 95101 et seq., and to comply with the requirements of the Cap and Trade Regulations in Title 17 CCR Section 95111 and 17 CCR Section 95852 with respect to such Renewable Energy, Buyer agrees to retire the RECs purchased from Seller hereunder for each renewable generation period and to provide WREGIS reports to Seller by no later than May 15 of the year following such renewable generation period, as set forth in Exhibit B, that (1) evidence retirement of the RECs and (2) provide REC serial numbers.

2.8 RPS Adjustment. The Parties acknowledge that the RPS Adjustment is currently applicable to the Category 2 Renewable Product. In the event that the RPS Adjustment is eliminated from the Cap and Trade Regulations and is no longer applicable to the Category 2 Renewable Product, the Parties agree to discuss in good faith amendments to this Transaction. In the event that the Parties are unsuccessful in revising or amending this Transaction or unable to agree upon a mutually acceptable resolution within thirty (30) days after the request of either Party to amend the Transaction pursuant to this Section 2.8 by either Party, either Party may, by written notice to the other, immediately terminate the undelivered portion of Renewable Energy Contract Quantities of Category 2 Renewable Product without penalty, termination payment or liability of either Party.

3. **DELIVERY PERIOD.** This Confirmation shall be in full force and effect as of the Effective Date. The terms set forth herein shall apply from the Start Date through the End Date, which entire period will comprise the Delivery Period. This Confirmation shall terminate on the date on which both Parties have completed the performance of their obligations hereunder, unless earlier terminated pursuant to the terms hereof:

Start Date:	End Date:
[TBD]	[TBD]

4. **DELIVERY POINT.**

Product	Delivery Point
Energy	NP15 EZ Gen Hub
Renewable Energy	Any scheduling point within the CAISO System
Carbon Free Energy	Any scheduling point within the CAISO System

5. **PRICING.**

5.1 Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Energy Contract Quantity delivered and scheduled in accordance with this Confirmation multiplied by the Energy Contract Price specified in Exhibit A.

5.2 Renewable Energy Contract Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the applicable

Renewable Energy Contract Price as specified in Exhibit B, multiplied by the Renewable Energy Contract Quantity transferred from Seller to Buyer through WREGIS during such month. Seller acknowledges that from time to time Buyer may require an adjustment in the amount of Renewable Energy provided to Buyer hereunder in order for Buyer to satisfy requirements of the California RPS program applicable to the Peninsula Clean Energy Authority as well as certain voluntary Renewable Energy procurement requirements identified by Buyer. To the extent that Buyer requires such adjustments to its Renewable Energy requirements, (i) Buyer shall provide written notice to Seller of such adjustments and (ii) Seller shall use commercially reasonable efforts to purchase additional Renewable Energy (in which case Buyer shall reimburse Seller for its actual cost to purchase such additional Renewable Energy) or re-market excess Renewable Energy for the benefit of Buyer (in which case Seller shall credit Buyer's account for the revenues obtained by Seller for remarketing such excess Renewable Energy, provided that Buyer shall remain responsible to pay Seller for the quantities represented in Exhibit B), in each case, in accordance with procedures to be mutually agreed upon by Seller and Buyer. Seller shall not enter into any such transactions to purchase additional Renewable Energy or re-market excess Renewable Energy without Buyer's written approval.

- 5.3 Carbon Free Energy Price and Payment. For each month during the Delivery Period, Buyer will pay Seller an amount equal to the Carbon Free Energy Contract Quantity multiplied by the Carbon Free Energy Price specified in Exhibit C.

6. CONTRACT QUANTITIES.

- 6.1 Energy. Energy Contract Quantities and the Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit A.
- 6.2 Renewable Energy. Renewable Energy Contract Quantities and Renewable Energy Contract Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit B. The Renewable Energy sold by Seller to Buyer shall also include any and all Renewable Energy Credits associated with such Renewable Energy.
- 6.3 Carbon Free Energy. Carbon Free Energy Contract Quantities and Carbon Free Energy Prices pursuant to this Confirmation relate to the quantities set forth in Exhibit C.

7. MONTHLY BILLING SETTLEMENT. Seller's monthly invoice to Buyer shall be settled in accordance with this Section 7.

- 7.1 Collection of Customer Payments. In accordance with the Security Documents, Buyer shall direct PG&E to deposit into a lockbox account, all of the proceeds of all of the Customer account receipts (net of the amounts to be paid to PG&E) received from the sale of the Product to the Customers. Seller shall receive, in accordance with the Security Documents, payments for its invoices due and payable, and after Seller's invoice is paid and agreed to reserves have been funded,

the amounts remaining in such lockbox shall be immediately released to Buyer or its designee in accordance with the Security Documents. The Parties agree that the lockbox account shall be in the name of Buyer, and any interest earned thereon shall accrue to Buyer, as more fully set forth in the Security Documents.

- 7.2 **Monthly Invoice Timeline.** Seller agrees to use commercially reasonable efforts to deliver each monthly invoice to Buyer not later than the fifteenth (15th) day of each month for the previous calendar month. The Parties hereby agree that all invoices under this Confirmation shall be due and payable on the twenty-fifth (25th) day of the month following the month in which Seller delivered such invoice, provided that if such day is not a Business Day, then such invoice will be due and payable on the next Business Day that occurs after the twenty-fifth (25th) day of the month.
8. **COMPLIANCE REPORTING.** Buyer shall be responsible for submitting compliance reports to the CPUC and/or other Governmental Authorities on behalf of Peninsula Clean Energy Authority and will require resource information, electronic tagging information, and other documentation to be provided by Seller. Each Party shall provide all reasonable information to the other Party necessary for the other Party to timely comply with periodic compliance reporting requirements, to satisfy informational requests from a Governmental Authority, or as otherwise required by Applicable Law with respect to any Product.
9. **NO RESTRICTION.** Nothing in this Confirmation shall limit Buyer's ability to develop its own generation facilities ("Buyer Facilities") or prevent Buyer from purchasing energy from other parties or Seller from selling energy to other parties.
10. **RESERVED.**
11. **STANDARD OF CARE AND GOOD FAITH.** When performing its obligations hereunder, Seller shall act in good faith and shall perform all work in a manner consistent with Prudent Utility Practices.
12. **RESERVED.**
13. **MARKETING/INDEMNIFICATION.** Buyer is solely responsible for statements in any of its marketing materials or other public claims made by Buyer related to Buyer's purchase of Product hereunder and for ensuring that such statements comply with applicable federal and state requirements.
14. **RESERVED.**
15. **SECURITY PROVISIONS.**
- 15.1 **Compliance with Security Documents.** During the entire period that this Confirmation remains in effect, Buyer shall comply with the Security Documents. Upon the occurrence of an Event of Default (after giving effect to any applicable cure periods) by Buyer under any Security Document or a termination of any Security Document by Seller due to Buyer's failure to perform in accordance with the terms thereof, such event shall constitute an Event of Default of Buyer in

accordance with Article Five of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform.

15.2 **Buyer Reporting Requirements.** During the entire period this Confirmation remains in effect, Buyer shall provide Seller with the report(s) required below and shall also provide Seller with any clarifications requested regarding such report(s) and such other information that Seller reasonably requests regarding Buyer's financial performance, Buyer's performance of its obligations under this Confirmation or any Security Document or the ongoing viability of the CCA. In the event Buyer fails to provide Seller with any required reports set forth below in Section 15.2(a) and such failure is not remedied within fifteen (15) Business Days of Seller's written request therefore and notice of a potential Event of Default, such failure shall be an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such failure to perform; provided, however, that should any such reports not be available on a timely basis due to a delay in preparation or certification, or otherwise outside of the reasonable control of Buyer, such delay shall not be an Event of Default of Buyer so long as Buyer diligently pursues the preparation and delivery of the required reports.

(a) **Monthly Reports.** The following reports shall be provided by Buyer to Seller not later than twenty (20) days following the end of each calendar month for items (i) through (vi) below, and each report shall be with regard to such previous calendar month or other period as applicable:

- (i) Customer deposit report including a complete and detailed report of all collateral Buyer is holding from any Customer in the format agreed to between the Parties but shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity;
- (ii) Customer on-bill prepayment report including a complete and detailed report of all Customer on-bill payments that were deposited into the Primary Secured Account (as defined in the Security Documents);
- (iii) Cash reconciliations and bank statements for each of Buyer's Peninsula Clean Energy's banking accounts;
- (iv) Summary of payments made by Customers or other entities to Buyer and a summary of delinquent accounts regarding Customers, such information to be provided on an aggregate basis (i.e. not by Customer) and shall include information segregated for delinquencies for each of the following time periods: 30 days, 60

days, 90 days and 120 days, plus the total account receivable balance owed to Buyer from its Customers;

- (v) Summary of all Customers added or deleted from the list of Customers served by Buyer, such information shall not include the identity or personal details (name, address, telephone number, family size, social security number, bank account number, credit score, payment history, etc.) of any Customer nor any information that may allow Seller to determine a Customer's identity; and
- (vi) Summary of all net meter data, grossed-up meter data and the difference between the two amounts on a daily and hourly interval basis.

- (b) Annual Reports. The following report shall be provided by Buyer to Seller not later than 180 days following the end of Buyer's fiscal year, shall be with regard to such previous fiscal year and shall be as follows: Buyer's financial reports consisting of, at a minimum, statement of revenues, expenses and changes in fund net assets, statement of net assets, and statement of cash flows on a consolidating basis (as applicable), each as prepared in accordance with generally accepted accounting principles and audited by an independent certified public accountant.

- 15.3 **Debt Service Coverage Ratio Covenant** From July 1, 2017 through the remainder of the Delivery Period, Buyer shall establish and maintain a Debt Service Coverage Ratio of at least 1.1 to 1.0 (measured as of the last Business Day of each applicable calendar quarter). If at any time after July 1, 2017, Buyer fails to maintain such Debt Service Coverage Ratio for two (2) consecutive quarters (in each case, measured as of the applicable calculation date (as described in Section 15.2(a) above)), such event shall constitute an Event of Default of Buyer in accordance with Article V of the Master Agreement and Buyer shall therefore be the 'Defaulting Party' with regard to such event.

This Confirmation is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated June 24, 2016 (the "Master Agreement") between Buyer and Seller, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement. This Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, shall collectively be referred to as the "Agreement."

This Confirmation is subject to the Exhibits identified below and that are attached hereto:
Exhibit A – Energy Contract Quantity and Price Schedule Exhibit B – Renewable Energy Contract Quantity and Price Schedule Exhibit C – Carbon Free Energy Contract Quantity and Price Schedule

IN WITNESS WHEREOF, the undersigned Parties have signed this Confirmation effective as of the Effective Date.

**EXELON GENERATION COMPANY,
LLC**

**PENINSULA CLEAN ENERGY
AUTHORITY**, a California joint powers
authority

Sign: _____
Print: _____
Title: _____

Sign: _____
Print: _____
Title: _____

EXECUTION COPY

Exhibit A
Energy Contract Quantity and Price Schedule

[TBD]

EXECUTION COPY

Exhibit B
Renewable Energy Contract Quantity and Price Schedule

[TBD]

EXECUTION COPY

Exhibit C
Carbon Free Energy Contract Quantity and Price Schedule

[TBD]



**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: February 22, 2017
BOARD MEETING DATE: February 23, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Dave Pine, Chair, Peninsula Clean Energy Authority
SUBJECT: Proposed Formation of New Citizens Advisory Committee

RECOMMENDATION: Adopt a Resolution on Formation of a new Citizens Advisory Committee (CAC) as outlined below.

BACKGROUND:

The San Mateo County Community Choice Energy (CCE) Advisory Committee held its first meeting on May 28, 2015. The Advisory Committee was comprised of elected officials from all 20 cities in the County and the County itself, as well as representatives from several labor, environmental and other community organizations.

On March 24, 2016, the Board of Directors of Peninsula Clean Energy (PCE), comprised only of elected officials, met for the first time and an Ad-Hoc Citizens Advisory Committee (CAC) was formed of the non-elected CCE Advisory Committee members, with the intent of having this committee serve until PCE was launched in October. On September 22, 2016, the PCE Board voted to extend the Ad-Hoc CAC until the end of 2016.

On December 12, 2016, an ad-hoc committee of PCE's Board was formed to develop a recommendation for the full Board as to objectives, composition and structure of a new CAC. The following PCE Board members volunteered to serve on the ad-hoc committee: Rick Bonilla, Cameron Johnson, Dave Pine, and Charles Stone. Public input on this matter was received from Menlo Spark, San Mateo Community Choice, and former members of the original Ad-Hoc Citizens Advisory Committee. The Board ad-hoc committee's recommendations were also reviewed by the PCE Executive Committee.

DISCUSSION:

The ad-hoc committee recommends the following objectives, composition and structure for the new CAC:

Proposed Objectives for the CAC

The goal of PCE is to reduce greenhouse gas emissions by providing cleaner power to County residents and businesses at competitive rates. PCE will also develop new renewable energy sources, including within San Mateo County, and implement programs to further reduce greenhouse gas emissions. To further PCE's mission, the CAC would:

- Act as a liaison to the community.
- Provide input on both specific PCE Board agenda items as well as on PCE's general policy and operational objectives.
- Engage in outreach to the community, including encouraging ratepayers to opt-up to ECO100 (PCE's 100% renewable energy product offering) and implement other carbon reducing practices.
- Assist with legislative advocacy.
- Provide a forum for community discussions on a wide variety of strategies to reduce carbon emissions.

Proposed Composition and Structure of the CAC

- The CAC would be comprised of 11 to 15 members drawn from the community and appointed by the PCE Board. Members might be affiliated with a community group, but would not formally represent that group on the CAC. Members would be selected by the Board after an application process where candidates would first be vetted by an ad-hoc committee of the Board.
- Composition & Qualifications:
 - o Reside or work in San Mateo County.
 - o From geographically diverse areas of the County.
 - o Have a relevant background in, or expertise related to, the electricity field and/or community outreach and engagement.
 - o Have the capability to build connections to local communities to encourage adoption of ECO100 and other carbon reducing practices.
 - o A personal commitment of time and energy to attending CAC and PCE meetings and to helping the organization attain its full potential.
- Terms:
 - o CAC members would serve three-year terms. The terms would be staggered so that one third of the committee members' terms expire each year.
 - o Term limit of three terms.

- Meetings:
 - The CAC would meet on a monthly basis, typically one week prior to the PCE's monthly Board meeting.
- Other:
 - The CAC would be chaired by a member of the CAC selected by the CAC membership.
 - The CAC Chair, or the Chair's designee, would provide a report to the PCE Board at each PCE Board meeting.
 - A stipend for expenses would be available only upon request to those members who are low-income individuals.
 - The members of the CAC would be subject to all applicable conflict of interest laws.

FISCAL IMPACT:

The new CAC will require PCE staff time to prepare for and conduct the CAC meetings.

RESOLUTION NO. _____

PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO,

STATE OF CALIFORNIA

* * * * *

**RESOLUTION ESTABLISHING THE PENINSULA CLEAN ENERGY AUTHORITY
CITIZENS ADVISORY COMMITTEE.**

RESOLVED, by the Peninsula Clean Energy Authority of the County of San Mateo, State of California (“Peninsula Clean Energy” or “PCE”), that

WHEREAS, PCE was formed on February 29, 2016; and

WHEREAS, Section 3.5 of the PCE Joint Powers Agreement states that the “Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board”; and

WHEREAS, PCE believes that establishment of an advisory committee, made up of members drawn from the community, would assist PCE in carrying out its mission.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board approves the creation of a Citizens Advisory Committee (“Committee” or “CAC”) structured as follows:

1. The CAC shall comply with the requirements of the Ralph M. Brown Act.
2. The members of the CAC are subject to all applicable conflict of interest laws, and shall avoid impropriety and the appearance of impropriety, and

shall not use their position to further their own pecuniary gain or for any other purpose not directly related to the governmental function which they have been appointed to perform.

3. The CAC shall act as a liaison to the community, in furtherance of PCE's mission.
4. The CAC may provide input on both specific PCE Board agenda items as well as on PCE's general policy and operational objectives.
5. The CAC may engage in outreach to the community, including encouraging ratepayers to opt up to ECO100 (PCE's 100% renewable energy product offering) and implement other carbon reducing practices.
6. The CAC may assist with legislative advocacy.
7. The CAC shall provide a forum for community discussions on a wide variety of strategies to reduce carbon emissions.
8. The CAC shall be made up of 11 to 15 members drawn from the community and appointed by the PCE board. Although some members may be affiliated with a community group, such members would not formally represent that group on the CAC.
9. CAC members shall be appointed by the PCE Board through an application process that shall include review and recommendation by an ad-hoc committee of the PCE Board. The PCE Board will seek to create a

CAC whose membership represents geographically diverse areas of San Mateo County.

10. The CAC members serve at the pleasure of the PCE Board and any member may be removed by a majority vote of the PCE Board.
11. CAC members must either reside or be employed in San Mateo County, and should have relevant backgrounds or expertise related to the electricity field and/or community outreach and engagement. CAC members should have the capability to build connections to local communities to encourage adoption of ECO100 and other carbon reducing practices. CAC members must demonstrate and maintain a personal commitment of time and energy to attending CAC and PCE meetings and to helping the organization attain its full potential.
12. The general term for CAC members shall be three years. However, initial CAC members shall be appointed for staggered terms of one year, two years, or three years. CAC members may serve no more than three terms.
13. The CAC shall meet on a monthly basis, typically one week prior to PCE's monthly Board meeting. The CAC shall choose a Chair from among its membership. The CAC Chair, or the Chair's designee, shall provide a report to the PCE Board at each PCE Board meeting.

* * * * *



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: February 21, 2017
BOARD MEETING DATE: February 23, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Authorize Purchase of Resource Adequacy from NRG Power Marketing LLC for May and June 2017, in an amount not to exceed \$300,000.

RECOMMENDATION:

Adopt a Resolution delegating authority to the Chief Executive Officer to execute a Confirmation Agreement with NRG Power Marketing LLC for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel for May and June 2017. (Action)

BACKGROUND:

PCE has purchased Resource Adequacy to meet its Phase 1 requirements. With the launch of Phase 2, PCE needs to purchase additional Resource Adequacy (RA) to meet its obligations as a Load Serving Entity to ensure the reliability of electric service.

DISCUSSION:

PCE, working with its consultant PEA, solicited bids to supply System RA for its second quarter 2017 needs (April, May and June). Bids were received from eight different suppliers. PCE expressed a preference that the RA supplier agree that it would exclude nuclear and coal resources from the RA they would supply. The lowest price bid, which also included an agreement to exclude these resources, was received from NRG Power Marketing, to supply RA to PCE for April, May, and June.

This memo is seeking approval of the confirmation agreement for the May and June 2017 RA purchase from NRG. We received approval from the Board for the April purchase at the January board meeting.

The Board is being asked to approve execution of the Confirmation Agreement with NRG Power Marketing. The General Counsel has reviewed and approved the agreement.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE A CONFIRMATION AGREEMENT WITH NRG POWER MARKETING
LLC FOR RESOURCE ADEQUACY WITH TERMS CONSISTENT WITH THOSE
PRESENTED, IN A FORM APPROVED BY THE GENERAL COUNSEL AND FOR
THE PERIOD OF MAY AND JUNE 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, as was true in 2016, PCEA has ongoing regulatory requirements to purchase Resource Adequacy (“RA”); and

WHEREAS, in January 2017 PCEA requested prices for Resource Adequacy from multiple energy suppliers to serve Phase 2 customers in April, May, and June 2017; and

WHEREAS, NRG Power Marketing LLC provides the most competitively priced option for April, May, and June 2017 system RA volumes; and

WHEREAS, PCE has negotiated a Confirmation agreement with NRG Power Marketing LLC for the necessary volumes; and

WHEREAS, PCEA and NRG Power Marketing LLC are using the Western System Power Pool ("WSPP") model master agreement for this purchase; and

WHEREAS, a draft form of the Confirmation agreement negotiated has been provided to the Board for its review, reference to which should be made for further particulars; and

WHEREAS, a form of the WSPP Master Agreement has been provided to the Board for its review at the September 22, 2016 board meeting, reference to which should be made for further particulars.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute a Confirmation Agreement with NRG Power Marketing LLC for Resource Adequacy with terms consistent with those presented, in a form approved by the General Counsel and for a term covering May and June 2017.

* * * * *

**WESTERN SYSTEM POWER POOL AGREEMENT
CONFIRMATION LETTER - RESOURCE ADEQUACY
BETWEEN
NRG POWER MARKETING LLC
AND
PENINSULA CLEAN ENERGY**

This Confirmation Letter ("Confirmation") confirms the Transaction between NRG Power Marketing LLC ("Seller") and Peninsula Clean Energy, a California Joint Powers Authority ("Buyer") and each individually a "Party" and together the "Parties", dated as of January 17, 2017, (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 October 12, 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 May 2017:

Name	Sunrise Power Project
Location	Fellows, CA
CAISO Resource ID	SUNRIS_2_PL1X3
Contract Identifier	
Unit SCID	NRG1
Unit NQC	
Unit EFC	
Resource Type	Gen
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	

For June 2017:

Name	Ormond Beach Unit 1
Location	Oxnard, CA
CAISO Resource ID	ORMOND_7_UNIT 1
Contract Identifier	
Unit SCID	NES1
Unit NQC	
Unit EFC	
Resource Type	Steam
Resource Category (1, 2, 3 or 4)	
Flexible RAR Category (1, 2 or 3)	
Path 26 (North or South)	South
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: May 1, 2017, through June 30, 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)	Total RAR Contract Quantity (MWs)
January 2017	0	0	0
February 2017	0	0	0
March 2017	0	0	0
April 2017	0	0	0
May 2017	■	■	■
June 2017	■	■	■
July 2017	0	0	0
August 2017	0	0	0
September 2017	0	0	0
October 2017	0	0	0
November 2017	0	0	0
December 2017	0	0	0

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 no event may such generating unit be a nuclear facility or coal facility and provided further that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. 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, 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/Year	RAR 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 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

N/A

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 Peninsula Clean Energy is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Peninsula Clean Energy acknowledges that the other party may submit information to Peninsula Clean Energy 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 Peninsula Clean Energy may submit to the other party information that Peninsula Clean Energy 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.

NRG Power Marketing LLC

By: _____

Name: _____

Title: _____

Peninsula Clean Energy

By: _____

Name: _____

Title: _____

804 Carnegie Center
Princeton, NJ 08540
ContractAdmin@nrg.com



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: February 22, 2017
BOARD MEETING DATE: February 23, 2017
SPECIAL NOTICE/HEARING: None
VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors
FROM: Jan Pepper, Chief Executive Officer
SUBJECT: Authorize the Execution of an Amendment to the Agreement with Energy America, LLC for Scheduling Coordinator Services for Phase 2

RECOMMENDATION:

Authorize the Execution of an Amendment to the Agreement with Energy America, LLC for Scheduling Coordinator Services for Phase 2

BACKGROUND:

The Peninsula Clean Energy board approved a master agreement and a confirmation agreement with Energy America (aka Direct Energy) for scheduling services for PCE's load for Phase 1. Scheduling services for PCE's load for Phase 2 is required in order to deliver the energy to our customers.

DISCUSSION:

PCEA executed a Master Agreement and Confirmation with Energy America, LLC in June for energy supply and scheduling services for PCE's Phase 1 customers. PCE has negotiated an agreement with Energy America to provide scheduling services that allows for a decrease in the scheduling price for PCE's Phase 2 load with modified payment terms.

FISCAL IMPACT:

The total annual fiscal impact for the Phase 2 scheduling coordinator services will not exceed \$500,000.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN
AMENDMENT TO THE AGREEMENT WITH ENERGY AMERICA, LLC FOR
SCHEDULING COORDINATOR SERVICES FOR PHASE 2**

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, PCEA as a load-serving entity is required by the California Independent System Operator (“CAISO”) to schedule its load into the CAISO market; and

WHEREAS, PCEA will initiate Phase 2 of its program on April 1, 2017 and will begin providing service to all customers not already being served in Phase 1; and

WHEREAS, Energy America, LLC has successfully provided scheduling coordinator services for PCEA’s load during Phase 1; and

WHEREAS, the California Independent System Operator (CAISO) requires that one scheduling coordinator providing scheduling services for all of PCEA’s load;

WHEREAS, PCEA has drafted an amendment to the agreement with Energy America, LLC to provide these services for the term of April 1, 2017 through December 31, 2020; and

WHEREAS, the pricing for these services will not exceed \$500,000 annually and is within the budget shown in PCEA's 2016 pro forma budget for scheduling coordinator services for Phase 2.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Chief Executive Officer is hereby authorized to negotiate and execute an amendment to the agreement, in a form approved by General Counsel, for Energy America, LLC to provide these services for Phase 2.

* * * * *

[CCO-113499]

**FIRST AMENDMENT
TO
CONFIRMATION**

THIS FIRST AMENDMENT (the "Amendment") is made and entered into effective as of April 1, 2017 (the "Effective Date") by and between Energy America, LLC ("Seller") and Peninsula Clean Energy Authority, a California joint powers authority ("Buyer"), with respect to that certain Confirmation, dated as of June 29, 2016 (the "Confirmation"), which is subject to the Master Power Purchase and Sale Agreement between the parties dated June 24, 2016 ("Master Agreement"). The Confirmation and the Master Agreement, including any appendices, exhibits or amendments thereto, are collectively referred to as "Agreement."

WHEREAS, Seller provides SC Services to Buyer, which services include scheduling and bidding of load for all Customers served by Buyer, and as more particularly described in Appendix I of the Confirmation;

WHEREAS, Buyer is now serving the load of its Phase 2 Customers, an increase of approximately 2.4 TWhs, which is in addition to the load of its Phase 1 Customers which consisted of approximately 1.3 TWhs;

WHEREAS, Buyer has agreed to partially prepay for the CAISO invoices for Energy related to Phase 2 load under the terms and conditions set forth below; and

WHEREAS, Seller will reduce its scheduling fees for Phase 2 load under the terms and conditions set forth below:

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Amendments to the Confirmation

(a) Section 8 of Appendix I of the Confirmation shall be amended by adding the following provision:

"(e) Prepayment Amount. During the Delivery Period, and notwithstanding any provision to the contrary in this Agreement, Buyer will make a weekly payment to Seller (the "Prepayment") equal to the Prepayment Amount. Seller will send Buyer an invoice for the Prepayment by Thursday each week. The Prepayment will be due no later than the following Monday; provided, however, that if Seller sends the invoice later than Thursday, Buyer will be entitled to a day-for-day extension of the due date for the Prepayment. Any Prepayment received by Seller will be credited against the monthly statement in subsection (c) above. If the CAISO Invoice covers a time period of more than one month, the Prepayment will be applied to the monthly statement corresponding to the month for which the portion of the Prepayment applies. Notwithstanding, the foregoing, Buyer may upon thirty (30) days' prior written notice to Seller, terminate its obligation to make Prepayments under this subsection (e), and effective immediately upon such termination the Scheduling Fee for all Energy shall be [REDACTED] of loss-adjusted scheduled load. Buyer shall only be allowed to make such an election once and upon such termination may not elect to make the Prepayment again. For purposes of this subsection (e), the following definitions are added to this Confirmation:

"CAISO Invoice" means the weekly initial CAISO invoice received by Seller for Buyer's

SCID.

“IST” has the meaning set forth in the Tariff.

“Prepayment Amount” means an amount equal to (Prepayment Ratio) x (CAISO Invoice + Value of Supplier Scheduled ISTs) – (Value of Supplier Scheduled ISTs). The Prepayment Amount shall be deemed to be \$0 if the calculation leads to a figure of less than \$0.

“Prepayment Ratio” is equal to 50% for April 1, 2017 to April 30, 2017 and 65% for May 1, 2017 to December 31, 2020.

“Supplier Scheduled IST” means an IST trade in which Buyer is receiving Energy scheduled through the CAISO Day-Ahead market.

“Value of Supplier Scheduled ISTs” means an amount equal to the sum of hourly Day-Ahead scheduled ISTs x Day-Ahead price at the corresponding delivery point.

- (b) Exhibit D to the Confirmation is amended by deleting it in its entirety and replacing it with the following:

“For April 1, 2017 to April 30, 2017:

The Scheduling Fee for fifty percent (50%) of the overall energy scheduled for that month will be [REDACTED] of loss-adjusted load.

The Scheduling Fee for fifty percent (50%) of the overall energy scheduled for that month will be [REDACTED] of loss-adjusted load.

For May 1, 2017 to December 31, 2020:

The Scheduling Fee for thirty-five percent (35%) of the overall energy scheduled for that month will be [REDACTED] of loss-adjusted load.

The Scheduling Fee for sixty-five percent (65%) of the overall energy scheduled for that month will be [REDACTED] of loss-adjusted load.”

2. Representations

(a) Each Party represents to the other Party that all representations contained in the Agreement are true and accurate as of the date of this Amendment and that such representations are deemed to be given or repeated by each Party, as the case may be, on the date of this Amendment.

(b) Each Party further represents to the other as follows:

(i) it has the power to, and has taken all action necessary for it to, execute and deliver this Amendment;

(ii) its execution and delivery of this Amendment do not violate or conflict with any law

applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iii) all governmental and other consents that are required to have been obtained by it with respect to its execution and delivery of this Amendment have been obtained and are in full force and effect, and all conditions of all such consents have been complied with;

(iv) this Amendment is its legal, valid and binding agreement, enforceable against it in accordance with the terms of the Agreement (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally); and

(v) except as expressly amended hereby, the Agreement is in full force and effect.

3. Miscellaneous

(a) **Definitions.** Capitalized terms used in this Amendment and not otherwise defined herein shall have the meanings specified for such terms in the Agreement.

(b) **Entire Agreement.** This Amendment constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communications and prior writings (except as otherwise provided herein) with respect thereto. Any and all references to the Agreement shall hereafter refer to the Agreement as amended by this Amendment, and this Amendment and the Agreement shall be read together so as to form one document and as the same may be amended, supplemented or modified from time to time. Except as amended herein, the Agreement is hereby ratified and confirmed. The provisions of this Amendment shall apply to any and all outstanding Transactions under the Agreement.

(c) **Counterparts.** This Amendment may be executed and delivered in counterparts, each such counterpart shall be deemed an original, and all such counterparts, together, shall constitute a single agreement. Delivery of an executed signature page of this Amendment by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.

(d) **Headings.** The headings used in this Amendment are for convenience or reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(e) **Governing Law.** THIS AMENDMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS AS APPLICABLE TO THE AGREEMENT.

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

ENERGYAMERICA, LLC

**PENINSULA CLEAN ENERGY
AUTHORITY, A CALIFORNIA JOINT
POWERS AUTHORITY**

By: 
Name: **Darron Giron**
Title: **Senior Director, Product Control**
Date:

By: _____
Name: _____
Title: _____
Date: _____



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: February 22, 2017

BOARD MEETING DATE: February 23, 2017

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Authorize the Execution of an Energy Services Agreement for Scheduling Coordinator Services with ZGlobal Inc. (for Hydro Projects).

RECOMMENDATION:

Authorize the Execution of an Energy Services Agreement for Scheduling Coordinator Services with ZGlobal Inc. (for Hydro Projects).

BACKGROUND:

The Peninsula Clean Energy board approved power purchase agreements (PPAs) for renewable energy from three small hydroelectric power plants. These PPAs require PCE to provide scheduling coordinator services. After reviewing several competitive bids, PCE selected ZGlobal, Inc. to provide these services.

DISCUSSION:

At the January 26, 2017 board meeting, the PCE board approved three PPAs for renewable energy from three small hydroelectric power plants. These PPAs require PCE to provide scheduling coordinator services. PCE is requesting the Board to authorize the execution of an Energy Services Agreement for Scheduling Coordinator Services with ZGlobal Inc., to be provided for the three small hydroelectric facilities. The PPAs are short-term agreements with Mega Renewables for existing hydroelectric projects in Shasta County, California. Each provides Bucket 1 renewables from California RPS-eligible renewable facilities. Hatchet Creek is a 7.5 MW project with a 5-year term. Both Roaring Creek and Bidwell Ditch are 2 MW projects with a 2-year term. Deliveries to PCE from all three of these projects are scheduled to begin in April 2017, coincident with our Phase 2 launch.

We are asking that the board authorize an Energy Services Agreement with the terms shown, subject to the condition that payment for services provided under the agreement shall not exceed \$300,000.

FISCAL IMPACT:

The total fiscal impact over five years for the scheduling coordinator services for the three aforementioned projects in aggregate will not exceed \$300,000.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN
ENERGY SERVICES AGREEMENT WITH ZGLOBAL INC. FOR SCHEDULING
COORDINATOR SERVICES FOR SMALL HYDRO PROJECTS**

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, PCEA and Mega Renewables have executed three power purchase agreements ("PPAs") for three small hydro projects; and

WHEREAS, those PPAs require PCEA to schedule the power generation into the California Independent System Operator ("CAISO") market; and

WHEREAS, ZGlobal Inc. was the low bidder to provide those scheduling coordinator services and is experienced in providing those services in the CAISO market; and

WHEREAS, PCEA has drafted an energy services agreement with ZGlobal Inc. to provide those services for the term of February 27, 2017 through February 26, 2018 for an amount not to exceed \$300,000 in aggregate.

NOW, THEREFORE, IT IS HEREBY RESOLVED that the Chief Executive Officer is hereby authorized to negotiate and execute an energy services agreement, in a form approved by General Counsel, for ZGlobal Inc. to provide those scheduling coordinator services.

* * * * *

[CCO-113499]

ENERGY SERVICES AGREEMENT

Peninsula Clean Energy

This Energy Services Agreement (“Agreement”), dated as of February 22, 2017 (the “Effective Date”), is entered into between ZGlobal, Inc. (“ZGlobal”) and Peninsula Clean Energy (“Client”). ZGlobal and Client are referred to individually as a “Party” and collectively as the “Parties”.

RECITALS

WHEREAS, Client desires to have ZGlobal perform certain energy scheduling and related services, as further described herein;

WHEREAS, ZGlobal is in the business of providing energy scheduling and related service as an agent, as further described herein; and

WHEREAS, except as otherwise defined in the body of this Agreement, terms and expressions used in this Agreement shall have the meanings contained in Exhibit A.

NOW THEREFORE, in consideration of the promises, covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ZGlobal and Client, intending to be legally bound, hereby agree as follows:

ARTICLE 1 **TERM AND TERMINATION**

1.1 Term. The “Primary Term” of this Agreement shall begin on the earlier of February 27, 2017 or the date on which ZGlobal commences scheduling activities required by Client and shall end on February 26, 2018 unless terminated earlier as provided in this Agreement. Thereafter, unless either Party provides written notice to the other Party objecting to extension of the term no later than sixty (60) days prior to the end of the then-current term, the term of this Agreement shall continue for consecutive one (1) year terms (each such term an “Additional Term”), unless terminated earlier as provided in this Agreement.

1.2 Termination for Convenience. Client may terminate this Agreement for any reason or for no reason, in its sole discretion, upon ninety (90) days prior written notice.

1.3 Termination for Cause. During the Primary Term:

(a) Client may terminate this Agreement for cause upon five (5) days prior written notice if:

(i) ZGlobal materially breaches this Agreement, and such material breach was not due to an Event of Force Majeure; or

(ii) One or more of ZGlobal's representations and warranties set forth in Section 5.1 is no longer true or correct.

(b) ZGlobal may terminate this Agreement for cause upon five (5) days prior written notice if:

(i) Client materially breaches this Agreement, and such material breach was not due to an Event of Force Majeure;

(ii) Client shall have failed to timely pay ZGlobal pursuant to Section 3.3 below; or

(iii) One or more of Client's representations and warranties set forth in Section 5.2 is no longer true or correct.

1.4 Exclusive Remedy. FOR THE AVOIDANCE OF DOUBT, EXCEPT FOR AND SUBJECT TO ARTICLE 8 (LIMITATION OF LIABILITY; INDEMNITY), IF CLIENT IS NOT SATISFIED WITH ZGLOBAL'S PERFORMANCE OF SERVICES HEREUNDER, CLIENT'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO TERMINATE THIS AGREEMENT PURSUANT TO SECTION 1.2 OR SECTION 1.3 ABOVE, AS APPLICABLE.

1.5 Outstanding Obligations; Cooperation. In the event that either Party elects to terminate this Agreement, the terms and conditions of this Agreement shall remain in effect until the Parties have fulfilled all outstanding obligations, including payment in full of amounts due and transfer of information to Client or Client's designee. ZGlobal agrees to work cooperatively with Client to facilitate the transition of services from ZGlobal to Client or Client's designee.

ARTICLE 2

DESCRIPTION OF ASSETS; SERVICES

2.1 Description of Assets. All Client assets subject to this Agreement ("Client Assets") are set forth in Exhibit B attached hereto and incorporated herein by this reference.

2.2 Services. ZGlobal, as agent for Client pursuant to this Agreement, shall provide the following services for the Client Assets (Client to check and initial all that apply):

<i>Services</i>	<i>Client Initial</i>
<u> X </u> Scheduling and Outage Coordination (<u>Exhibit C</u>)	<u>ja</u>
<u> X </u> Financial Settlements (<u>Exhibit D</u>)	<u>ja</u>
<u>N/A</u> Forecasting (<u>Exhibit E</u>)	<u> </u>
<u>N/A</u> Facility Management (<u>Exhibit F</u>)	<u> </u>
<u>N/A</u> Portfolio Management (<u>Exhibit G</u>)	<u> </u>

Each exhibit checked and initialed above is attached hereto and incorporated herein by reference, and collectively comprise the “Services” to be performed by ZGlobal under this Agreement.

2.3 Designation of ZGlobal as Agent. Client hereby designates ZGlobal as its agent and representative to perform the Services. Client agrees to promptly:

- (a) Notify CAISO and any other relevant entities of this arrangement; and
- (b) Provide ZGlobal with all necessary and appropriate information and data for ZGlobal to begin performing the Services.

2.4 Standard of Performance. ZGlobal shall perform the Services consistent with Good Industry Practice and Applicable Laws, and in accordance with written direction from Client (if any).

ARTICLE 3

COMPENSATION; BILLING AND PAYMENT

3.1 Compensation. As consideration for the Services performed by ZGlobal hereunder, Client shall pay ZGlobal all applicable Services Fees in accordance with Exhibit H.

3.2 Billing Statements. ZGlobal shall deliver to Client a monthly statement (each a “Statement”) setting forth the Services Fees applicable to the Services performed during that period and all other amounts owing to or from Client in respect of the Services during that period. Payments shall be made to or from ZGlobal, as applicable, on or before the later of the fifteenth day of the month or the tenth (10th) Business Day after receipt of each Statement.

3.3 Failure to Pay. Client’s failure to make timely payments hereunder shall be considered a breach. In the event such breach is not cured within fifteen (15) days following written notice by ZGlobal, then Client shall be in default and ZGlobal may:

- (a) Apply any revenues remitted to ZGlobal from Balancing Authorities, Transmission Owners/Operators and/or the CAISO towards the outstanding amount owed to ZGlobal;

- (b) Apply any monies from the Services Payment Security posted by Client pursuant to Exhibit C towards the outstanding amount owed to ZGlobal; and/or

- (c) Terminate this Agreement and all Services provided for herein pursuant Section 1.3(b)(ii) above.

3.4 Late Payments. Any payment that is not received by Client or ZGlobal on or before the date required shall incur a monthly late fee, which shall be the total outstanding balance

due multiplied by the Interest Rate ("Late Fee").

3.5 Audit Rights. Client (or its designee) shall have the right, with prior written notice, at its sole expense and during normal working hours, to examine the records of ZGlobal to the extent reasonably necessary to verify the accuracy of any Statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any Statement or Late Fee, the necessary adjustments in such Statement or Late Fee and the payments thereof will be promptly made and shall bear interest calculated at the Interest Rate.

ARTICLE 4

CONFIDENTIALITY; PROPRIETARY RIGHTS

4.1 Confidentiality.

(a) Each Party shall hold in confidence all information disclosed to it by the other Party or its representatives, or by CAISO or any Participating Transmission Owner, as defined in the CAISO Tariff, that pertains to the Client Assets or Client's or ZGlobal's business, as the case may be, and that is not publicly available, including this Agreement, proprietary practices, technical information and relevant data ("Confidential Information").

(b) Confidential Information shall not include (i) information that is publicly available or that enters the public domain pursuant to Applicable Laws, or (ii) information obtained by a Party from a third party not known to be under an obligation of non-disclosure to Client or ZGlobal, as the case may be.

(c) The obligations in this Section 4.1 shall continue in effect during the term of this Agreement and for thirty six (36) months after the Termination Date.

(d) Notwithstanding the foregoing, each Party may disclose Confidential Information to the extent necessary to perform this Agreement, and to any Governmental Authority, but only to the extent legally required to do so. If a Party is requested or required by any Governmental Authority to disclose any of the other Party's Confidential Information, such Party shall provide the other Party with prompt notice of such request(s) so that the other Party may seek, at its sole expense, a protective order or other appropriate remedy with respect to such disclosure.

4.2 Proprietary Rights. Client agrees that all rights, title and interest in and to all models, tools, systems or processes used or developed by ZGlobal in the course of providing Service pursuant to this Agreement including, but not limited to, patent rights, trade secrets, mask works and copyrights, shall remain exclusively with ZGlobal without further consideration.

ARTICLE 5

REPRESENTATIONS AND WARRANTIES

5.1 ZGlobal's Representations and Warranties. ZGlobal represents and warrants to Client as follows:

(a) It is duly organized, validly existing and in good standing under the laws of the state of its incorporation, and in each jurisdiction where it is required to be qualified as a foreign corporation;

(b) It has obtained all regulatory approvals and Permits necessary for it to legally perform its obligations under this Agreement;

(c) It possesses the requisite expertise to perform its obligations hereunder, and it is not restricted in any manner, through an agreement not to compete or similar agreement, from performing the Services for Client;

(d) The execution and delivery of this Agreement and the performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any contract or other agreement to which it is a party or any Law applicable to it;

(d) This Agreement constitutes ZGlobal's legally valid and binding obligation enforceable against it in accordance with the terms thereof;

(e) There are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; and

(f) There is no suit, proceeding, judgment, ruling or order by or before any court or any Governmental Authority that would be reasonably likely to materially adversely affect its ability to perform this Agreement.

5.2 Client's Representations and Warranties. Client represents and warrants to ZGlobal as follows:

(a) The execution, delivery and performance of this Agreement by Client have been duly authorized by all necessary authorizing action on the part of Client, and do not require any approval or consent of any holder, or any trustee for any holder, of any indebtedness or other contractual obligation of Client or any other Person, except approvals or consents that have previously been obtained;

(b) There is no litigation, action, suit, proceeding or investigation by any third party pending against the Client before or by any arbitrator or Governmental Authority that, if adversely determined, individually or in the aggregate, could be reasonably expected to:

(i) Adversely affect Client's performance of its obligations under this Agreement, or could be reasonably expected to modify or otherwise adversely affect the authorizations to enable the Client to perform this Agreement;

(ii) Have a material adverse effect on the condition, financial or otherwise, business or operations of the Client; or

(iii) Impair the validity, binding effect or enforceability of this Agreement against the Client or of any action taken or to be taken pursuant to this Agreement or any of the transactions contemplated by this Agreement.

5.3 Annual Updates. Upon the request of the other party on or prior to the anniversary of the Effective Date and no later than thirty (30) days after each anniversary of the Effective Date, ZGlobal and Client shall each confirm in writing to the other that their respective representations and warranties set forth above remain true and correct.

ARTICLE 6

RELATIONSHIP OF THE PARTIES; DISCLAIMERS

6.1 Relationship of the Parties. ZGlobal shall act as Client's agent while performing the Services hereunder. Except when ZGlobal is performing the Services and except to the limited extent necessary for ZGlobal to perform the Services, neither Party has the right, power or authority to assume, create or incur any liability or obligation, express or implied, against, in the name of or on behalf of the other Party, or to enter into any agreement or undertaking for, or act as or be an agent or legal representative of, or otherwise bind, the other Party. Further, this Agreement shall not be interpreted or construed as creating any association, joint venture or partnership between the Parties, or any other arrangement other than the contractual arrangement expressly set forth in this Agreement.

6.2 Other Business. Subject to Section 4.1 above, nothing in this Agreement shall preclude ZGlobal from performing services similar to those hereunder for other clients.

6.3 Warranty Disclaimers. Client acknowledges that it has entered into this Agreement and is contracting to receive the Services based solely upon the expressed representations and warranties in this Agreement. As a result, Client accepts all Services provided under this Agreement "as is" and "with all faults." The Parties expressly negate and disclaim any other representation or warranty with respect to the Services provided under this Agreement, whether written or oral, expressed or implied, including any representation or warranty with respect to merchantability or fitness for any particular purpose.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Dispute or Claim. Any action, claim or dispute which either Party may have against the other arising out of or relating to this Agreement or the transactions contemplated hereunder, or the breach, termination or validity thereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and documentation that support the claim.

7.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.

7.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the operating representatives or contract representatives and senior management of each Party.

7.4 Binding Arbitration. In the event the Parties are unable to resolve the Dispute through informal negotiations within sixty (60) days of receipt of the initial Dispute notice (or such longer time as the Parties may agree in writing), then the Parties shall pursue binding arbitration pursuant to the rules of the American Arbitration Association (“AAA”) and as set forth herein. Either Party may initiate arbitration by written notice to the other Party, and the arbitration shall be conducted according to the following:

- (a) The arbitration shall be held at AAA’s offices in San Francisco, CA;
- (b) The arbitrator shall either be (i) chosen by mutual agreement of the Parties within fifteen (15) days from receipt of written notice from the Party requesting arbitration, or (ii) failing such agreement, selected under the expedited rules of the AAA;
- (c) Not later than seven (7) days prior to the hearing date set by the arbitrator, each Party shall submit a brief with a single proposal for settlement;
- (d) The hearing shall be conducted on a confidential basis without continuance;
- (e) The arbitrator shall provide a brief written summary of the reasons for the decision;
- (f) Each Party shall divide equally the cost of the arbitrator and the hearing, and each Party shall be responsible for its own expenses and those of its counsel and representatives; provided, however, that if the arbitration results in a final decision, determination, award or settlement primarily in favor of either Party (the “Prevailing Party”) as determined in the sole discretion of the arbitrator, then the other Party shall, within ten (10) days after demand by the Prevailing Party, reimburse the Prevailing Party for all of the Prevailing Party’s reasonable costs in connection with the arbitration, including reasonable legal fees and costs and the costs of the arbitration (which shall be, if necessary, determined by the arbitrator); and
- (g) The determination of the arbitrator shall be rendered within thirty (30) days after the hearing, shall be binding on both Parties, and shall be enforceable in a court of competent jurisdiction.

7.5 Enforcement. If a Party fails to proceed with arbitration as required hereunder, unsuccessfully challenges the arbitrator’s determination, or fails to comply with the arbitrator’s determination, then the other Party is entitled to all reasonable costs of suit, including reasonable attorney’s fees for having to compel arbitration or defend or enforce the arbitrator’s determination.

ARTICLE 8
LIMITATION OF LIABILITY; INDEMNITY

8.1 Limitation of Liability.

(a) Each Party shall release and hold harmless the other Party from and against any and all liability, loss or damages arising or alleged to have arisen from, or incident to, or in connection with the provision of Services under this Agreement; provided, however:

(i) Subject to subsection (b) below, if Client incurs any damages resulting from the gross negligence or willful misconduct of ZGlobal, then ZGlobal shall pay to Client the amount of such damages, subject to the limitation on damages set forth in Section 8.2 below; and

(ii) Subject to subsection (b) below, if ZGlobal incurs any damages resulting from the gross negligence or willful misconduct of Client, then Client shall pay to ZGlobal the amount of such damages, subject to the limitation on damages set forth in Section 8.2 below.

(b) For the avoidance of doubt:

(i) Any claim that a Party has incurred damages resulting from the gross negligence or willful misconduct of the other Party shall be considered a Dispute, and such Dispute shall be finally determined pursuant to the provisions in Article 7 (Dispute Resolution); and

(ii) Consistent with the provisions set forth in Section 6.1 above, ZGlobal shall have absolutely no responsibility or liability for any third party agreements not incorporated by reference by this Agreement or transactions not contemplated by this Agreement entered into by Client, including but not limited to Client or any third party failing to perform, inadequately performing, and/or incorrectly performing under or breaching any such third party agreements or transactions.

8.2 Limitation on Damages. NEITHER PARTY HERETO SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY LIABILITY, LOSS OR DAMAGES OTHER THAN DIRECT, ACTUAL DAMAGES RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY. SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER, AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED. NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST OPPORTUNITY COSTS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS IMPOSED HEREIN ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

8.3 Indemnification. Notwithstanding the foregoing Sections 8.1 and 8.2, each Party shall hold the other Party harmless as follows: the indemnitor shall defend, indemnify and hold

harmless the indemnitee, its officers, agents and employees from any claims, suits or actions of every name, kind and description brought forth, or on account of, injuries to or death of any person (including but not limited to workers and the public), or damage to property, resulting from or arising out of indemnitor's willful misconduct or gross negligence while engaged in the performance of obligations or exercise of rights created by this Agreement, except those matters arising from indemnitee's negligence.

ARTICLE 9 **MISCELLANEOUS**

9.1 Entire Agreement. This Agreement is the Parties' complete and final expression of agreement on the subject matter of this Agreement and supersedes all prior agreements, representations, understandings, negotiations, offers and communications, whether oral or written, regarding the subject matter of this Agreement.

9.2 No Assignment. Neither Party may assign this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section 9.2 shall be void. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

9.3 Modification and Amendment. This Agreement can be modified or amended only by a written agreement executed by an authorized representative of each Party.

9.4 Severability. If any provision of this Agreement is held invalid or unenforceable, all other provisions of this Agreement shall not be affected. With respect to a provision held invalid or unenforceable, the Parties shall amend this Agreement as necessary to effect the Parties' original intent as closely as possible.

9.5 No Waiver. If on any occasion a Party does not insist upon the performance of any term, condition or provision of this Agreement, such forbearance shall not operate or be construed as an acceptance of any variation in any term, condition or provision of this Agreement or relinquishment of any right under this Agreement. No waiver by either Party of any right or of any default by the other Party under this Agreement shall be effective unless the waiver is in writing and signed by the waiving Party, and no waiver shall operate or be construed as a waiver of any other or further right or as a waiver of any future default, whether of like or different character or nature.

9.6 Governing Law. This Agreement is governed by and shall be construed according to the laws of the State of California, without regard to principles of conflicts of law.

9.7 Preparation of Agreement. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and this Agreement shall not be construed against either Party as a result of the manner in which this Agreement was prepared, negotiated or executed.

9.8 No Third-Party Rights. This Agreement is intended solely for the benefit of the Parties, and nothing in this Agreement shall be construed to create any rights in favor of, any duty to or standard of care with reference to, or any liability to any Person not a party to this Agreement.

9.9 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications to be given or made under this Agreement shall be in writing, shall be addressed as specified below, and shall either be personally delivered or sent by courier, by registered or certified mail. Initially, the respective Parties' addresses and E-Mails are:

If to ZGlobal: ZGlobal Inc.
 Attn: Kevin Coffee
 604 Sutter Street, Ste. 250
 Folsom, CA 95630
 kcoffee@zglobal.biz

With a copy to: 750 Main St.
 El Centro, CA 92243
 Melissa@zglobal.biz
 Ziad@zglobal.biz

If to Client Peninsula Clean Energy
 Attn: George Wiltsee
 455 County Center, Fourth Floor
 Redwood City, CA 94063
 626-890-8346

With a copy to: jpepper@peninsulacleanenergy.com
 finance@peninsulacleanenergy.com

All notices shall be deemed delivered (a) when delivered in person, (b) if received on a Business Day for the receiving Party, when transmitted by E-Mail to the receiving Party's E-Mail specified above and, if received on a day that is not a Business Day for the receiving Party, on the first Business Day following the date transmitted by E-Mail to the receiving Party's E-Mail specified above, (c) one day after being delivered to a courier for overnight delivery, addressed to the receiving Party at the address specified above (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or E-Mail), or (d) five (5) days after being deposited in a United States Postal Service receptacle, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party at the address specified above (or such other address as such the receiving Party may have specified by written notice delivered to the delivering Party at its address or E-Mail number specified above). Any Party may, by written notice, change the address or E-Mail, or both, to which notices and communications are to be sent.

9.10 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute only one legal instrument. The delivery of an executed counterpart of this Agreement by E-Mail shall be deemed to be

valid delivery of the counterpart.

9.11 Survival. Notwithstanding any provision herein to the contrary, Articles 3, 4, 6, 7 and 9 shall survive the termination or expiration of this Agreement.

9.12 Publicity. Either Party may issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic or interview) relating to the Services or this Agreement; provided, however, the disclosing Party shall, if reasonably possible, provide advance notice of such disclosure to the other Party.


9.13 Interpretation. In this Agreement:

- (a) The headings are for convenience of reference only and shall be ignored in construing this Agreement;
- (b) Where the context requires, the singular includes the plural and vice versa;
- (c) The words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”;
- (d) Unless the context otherwise indicates, references in this Agreement to articles, sections or exhibits are references, respectively, to articles, sections or exhibits of or to this Agreement;
- (e) All exhibits referenced in this Agreement are incorporated into this Agreement and are an integral part of this Agreement;
- (f) If a conflict or inconsistency exists between any exhibit and this Agreement (exclusive of the exhibits), the provisions of this Agreement (exclusive of the exhibits) shall control; and
- (g) All references in this Agreement to contracts, agreements and other documents shall be deemed to refer to such contracts, agreements and other documents as amended, modified and supplemented from time to time.

9.5 Cure Rights. In the case of a breach, the non-breaching Party shall give the breaching Party notice, pursuant to Section 9.9 above, of the breach and the breaching Party shall have fifteen (15) days to cure said breach. Satisfaction of the Notice of Breach required by this provision shall be required prior to implementation of Article 7 (Dispute Resolution) herein above.

To evidence their acceptance of this Agreement, the Parties have caused their authorized representatives to sign below as of the Effective Date.

ZGLOBAL INC.

By: 

Name: Ziad Alaywan

Title: CEO

Peninsula Clean Energy

By: _____

Name: _____

Title: _____

EXHIBIT A

Definitions

Each of the following capitalized terms shall, for all purposes of this Agreement, have the respective meanings set forth below.

“AAA” has the meaning set forth in Section 7.4.

“Additional Term” has the meaning set forth in Section 1.1.

“Affiliate” means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control", "controlled by" and "under common control with" with respect to any Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or member or partnership interests, by contract or otherwise.

“Agreement” means this Energy Services Agreement and includes all exhibits attached to this Agreement.

“Applicable Laws” means all constitutions, treaties, laws, ordinances, rules, regulations, orders, interpretations, Permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority or arbitrator that apply to either or both of the Parties, the Client Assets, the Services or the terms of this Agreement.

“Business Day” means any Day other than a Saturday, a Sunday or a Day on which commercial banks in New York, New York are authorized or required to close.

“California Independent System Operator” and “CAISO” mean the California Independent System Operator.

“CAISO Tariff” means the CAISO FERC Electric Tariff.

“Client Assets” means the items set forth in Exhibit B.

“Client Assets Operating Parameters” means the various operating parameters set forth in Exhibit B.

“Confidential Information” has the meaning set forth in Section 4.1.

“Day” means a calendar day beginning at 12:00 midnight, Prevailing Pacific Time.

“Dispute” has the meaning set forth in Section 7.1.

“Effective Date” has the meaning set forth in the introductory paragraph of this Agreement.

“Energy” means electricity measured in MWh.

“Force Majeure” means, in respect of a Non-Performing Party, an event beyond the reasonable control of the Non-Performing Party that the Non-Performing Party is unable to prevent, avoid or overcome through the exercise of diligent efforts, and that is not the result of the Non-Performing Party’s fault or negligence or failure to comply with any provision of this Agreement. The following events, among others, shall, to the extent they meet the requirements set forth in the immediately preceding sentence, constitute Force Majeure: acts of God, landslide, lightning, earthquake, fire, explosion, flood, storm, hurricane, tornado, storm, insurrection, war, blockade, riot, civil disturbance, sabotage, terrorism and embargo.

“Good Industry Practice” means those practices, methods and acts that would be implemented and followed by prudent operators in the Western United States during the relevant time period, which practices, methods and acts, in the exercise of prudent and responsible professional judgment in the light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result consistent with good business practices, reliability and safety, and shall include, at a minimum, those professionally responsible practices, methods and acts described in the preceding sentence that comply with applicable standards and the requirements of Governmental Authorities, WECC standards, WREGIS Standards, the CAISO and Applicable Laws. Good Industry Practice is not intended to be the optimum practice, method or act to the exclusion of all others, but rather is intended to be any of the practices, methods and/or actions generally accepted in the region.

“Governmental Authority” means any federal, state, local, municipal, tribal or other governmental, administrative, judicial or regulatory entity having or asserting jurisdiction over a Party, the Client Assets, the Services or this Agreement.

“Interest Rate” means the means the rate of interest per annum publicly announced from time to time by Bank of America as its 'Prime Rate', plus one percent (1%), or the maximum rate permitted by applicable Law, whichever is less.

“Late Fee” has the meaning set forth in Section 3.4.

“Month” means a calendar month.

“Parties” means ZGlobal and Client.

“Party” means either ZGlobal or Client.

“Permit” means any license, permit, approval, consent, authorization, waiver, exemption, variance, franchise or similar order of or from any Governmental Authority.

“Prevailing Party” has the meaning set forth in Section 7.4(f).

“Primary Term” has the meaning set forth in Section 1.1.

“Services” means all of the services expressly identified in Section 2.2 (and set forth in the corresponding exhibits) to be performed by ZGlobal under this Agreement.

“Services Fees” means the various fees for Services performed under this Agreement as set forth in Exhibit H.

“Statement” means a billing statement delivered according to Section 3.2.

“Termination Date” means the date specified in a notice terminating this Agreement.

“WECC” means the Western Electricity Coordinating Council and its successors.

“WREGIS” means the Western Renewable Energy Generation Information System and its successors.

[End of Exhibit A]

EXHIBIT B

Description of Client Assets

1. Client Assets.

- Client to provide list of assets (“Client Assets”) subject to this Agreement (e.g., generators) and, if applicable, load and types of transactions to be scheduled (i.e., CAISO ISTs, imports/exports and WECC bilateral transactions).
 - Hatchet Creek Hydroelectric Project
 - Roaring Creek Hydroelectric Project
 - Bidwell Ditch Hydroelectric Project

2. Operating Parameters.

- ZGlobal and Client to agree upon the various operating parameters for the Client Assets, which are set forth in the agreements below (“Client Assets Operating Parameters”).

[End of Exhibit B]

EXHIBIT C

Scheduling and Outage Coordination Services

If applicable, this Exhibit C details the scheduling coordinator services (“Scheduling Coordinator Services”) to be performed or provided by ZGlobal for Client under this Agreement.

1. Categories of Scheduling Coordinator Services

Scheduling Coordinator Services functions vary depending upon location (inside the CAISO vs. outside the CAISO) and need for real-time support. At Client’s option, Client shall direct ZGlobal to perform the Scheduling Coordinator Services for the following categories:

- CAISO
 - 7-day per week day-ahead pre-scheduling Services
 - 7 day, 24 hour real-time Services
 - Non-Business Day real-time Services
- WECC (non-CAISO)
 - Business day day-ahead Services
 - 7 day, 24 hour real-time Services
 - Non-Business Day real-time Services

2. Description of Schedule Coordinating Services

ZGlobal proposes to provide Scheduling Coordinator Services on behalf of Client to allow for scheduling and/or bidding of Client’s generation, transactions and contractual resources with the appropriate Balancing Authorities, Transmission Owners, Transmission Operators, Purchasing/Selling Entities and others as necessary. Such Scheduling Coordinator Services shall commence on Effective Date and continue until the Agreement is terminated.

In order to effectively provide Scheduling Coordinator Services, ZGlobal shall perform activities and tasks and Client shall provide information and support as described in the following sections.

3. Client’s Responsibilities

3.1 Client shall select and specify in writing the categories of Scheduling Coordinator Services listed in this Exhibit C that ZGlobal shall provide.

3.2 Designation of ZGlobal as Client’s Scheduling Coordinator. At least ten (10) Business Days before the agreed upon commencement date for ZGlobal to provide Scheduling Coordinator Services on behalf of Client, Client shall have performed all tasks necessary to allow ZGlobal to provide Scheduling Coordinator Services for Client. This includes but is not limited to executing relevant agreements, notifying relevant entities and enabling ZGlobal’s access to systems on

behalf of Client such as OASIS, OATI (and/or other applicable transmission scheduling applications), the CAISO's SIBR and CMRI systems, meter data and meteorological data.

3.3 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively bid and/or schedule Client's Assets into the applicable market/Balancing Authority Area. This includes data such as Client's load information, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, access to relevant meteorological data and all other pertinent information required by the CAISO or Balancing Authorities.

Information required for day-ahead Pre-Scheduling shall be provided no later than 7:30 AM Pacific Prevailing Time on the trading/pre-scheduling day in accordance with the Western Electricity Coordinating Council's (WECC's) pre-scheduling timelines and CAISO Tariff. For example, the current WECC pre-scheduling timeline requires that on schedules for flow days Friday and Saturday be submitted on Thursday. Similarly, schedules for flow days Sunday and Monday are required to be submitted on Friday.

The CAISO pre-schedules one day prior to flow day every day. Information required for day-of scheduling shall be provided no later than 30 minutes prior to the applicable scheduling deadline. For WECC Balancing Authorities other than the CAISO, the hour-ahead scheduling deadline is currently 20 minutes prior to the flow hour. For the CAISO, the real-time scheduling deadline is currently 75 minutes prior to the flow hour.

3.4 Fees and Costs Imposed as a Result of Scheduling and/or Bidding. Client shall be responsible for all costs and revenues invoiced/remitted to ZGlobal and/or Client from Balancing Authorities, Transmission Owners/Operators and the CAISO as a result of ZGlobal scheduling and/or bidding Client's Assets. This includes items such as the CAISO's Grid Management Charge (GMC), ancillary services, energy imbalance, among others. The intent is that ZGlobal acts as a conduit for dollar flow between Client and the CAISO, Balancing Authorities and Transmission Owners/Operators.

Client payments for all costs and fees shall be remitted to ZGlobal no less than two (2) Business Days prior to the CAISO, Balancing Authorities and/or Transmission Owners/Operators timelines required per the appropriate tariff or contract. Client understands and agrees that failure to timely remit any such costs and fees to ZGlobal could result in Client's security being drawn upon, as further described in paragraph 3.5 below.

3.5 Client Security. To ensure ZGlobal's performance of the Services, and to secure Client's payment obligations hereunder, Client agrees to post the following forms of security:

- **CAISO Registration Security.** ZGlobal is required to post \$500,000 with CAISO to demonstrate ZGlobal's ability to act as a SC on an on-going basis. Within five (5) Business Days of the Effective Date, Client agrees to deposit [REDACTED] with ZGlobal, which will be applied towards ZGlobal's CAISO

registration security requirements (“Registration Security Deposit”). ZGlobal shall return the Registration Security Deposit to Client within five (5) Business Days of the termination of this Agreement.

- **Estimated Aggregate Liability Security.** ZGlobal is also required to post with CAISO an amount greater than 111.11% of ZGlobal's Estimated Aggregate Liability (“EAL”)/.9 as SC for Client. ZGlobal's EAL is determined by the CAISO for SC obligations based on outstanding, estimated and extrapolated financial amounts. Within five (5) Business Days of the Effective Date, Client agrees to deposit security with ZGlobal in the amount of [REDACTED] (111.11% of ZGlobal's EAL as of the Effective Date, as determined using the CAISO EAL calculation), which will be utilized to satisfy ZGlobal's EAL security requirements (“EAL Security Deposit”). If Client ever fails to timely remit any costs and fees to ZGlobal as required under paragraph 3.4 above, then Client understands that CAISO may draw upon the EAL Security Deposit to satisfy any outstanding ZGlobal obligations as SC for Client. If the EAL Security Deposit is ever drawn upon by CAISO, then Client shall promptly replenish the amount that was drawn. ZGlobal shall return the EAL Security Deposit to Client within five (5) Business Days of the termination of this Agreement.
- **ZGlobal Payment Security.** To ensure ZGlobal is promptly reimbursed by Client for performing all Services under this Agreement, Client agrees to deposit [REDACTED] with ZGlobal within thirty (30) days of the Effective Date (“Services Payment Security”). Client and ZGlobal each acknowledge and agree that ZGlobal may draw upon the Services Payment Security only when necessary (e.g., Client has failed to timely pay ZGlobal as further described in Section 3.3 of this Agreement), and only to pay amounts owed by Client to ZGlobal under this Agreement. If ZGlobal ever draws upon any monies from the Services Payment Security, then Client shall promptly replenish the amount drawn. ZGlobal shall return any unused monies from the Services Payment Security to Client within five (5) Business Days of the termination of this Agreement.

3.6 **Exclusivity.** Unless termination notice has been provided in compliance with this Agreement or as otherwise mutually agreed in writing, Client shall not allow any entity other than ZGlobal to act as Scheduling Coordinator for the Client Assets in relevant Balancing Authority Areas.

4. **ZGlobal's Responsibilities**

4.1 **Professional Services.** ZGlobal shall perform the following Scheduling Coordinator

Services in a professional manner consistent with Good Industry Practices and Applicable Laws.

4.2 Scheduling. ZGlobal shall submit to the CAISO and/or Balancing Authorities schedules and/or bids consistent with the CAISO's and/or Balancing Authorities' timelines as prescribed by their tariffs and Client's CAISO Participating Generator Agreements (if required).

4.2.1 Final Schedules. ZGlobal shall provide Client with final confirmed day-ahead pre-schedules no later than 5:00 PM Pacific Prevailing Time the day prior to the day that electricity flows. Any changes to the pre-schedules shall be provided to Client as soon as practicable, but no later than 8:00 AM Pacific Prevailing Time the next day.

4.2.2 OASIS and Other Pertinent Applications. Client shall make available access to and ZGlobal shall utilize applications (such as OASIS, OATI and ICE) to allow ZGlobal to perform scheduling and procurement functions (if required) on behalf of Client.

4.2.3 Outage Reporting and Notification. ZGlobal shall provide the CAISO, Balancing Authorities and/or Transmission Owners/Operators with all required notices and updates regarding Client's generation facilities as required by applicable procedures, requirements and standards. This includes information such as SLIC outage requests, SLIC Forced Outages, CAISO Forced Outage Reports, among other requirements.

4.2.4 NERC Tagging and Checkout. ZGlobal shall be responsible for all tagging and checkout of schedules consistent with pertinent timelines.

[End of Exhibit C]

EXHIBIT D

Financial Settlement Services

If applicable, this Exhibit D details financial settlement services (“Financial Settlement Services”) to be performed or provided by ZGlobal for Client under this Agreement.

1. Categories of Financial Settlement Services

Financial Settlement Services functions vary depending on the specific Scheduling Coordinator Services provided to Client (e.g., CAISO, bilateral transactions, Open Access Transmission Tariff (OATT), and power purchase agreements (PPA)). In coordination with the Scheduling Coordinator Services set forth in Exhibit C, ZGlobal shall perform Financial Settlement Services for the following categories:

- CAISO Settlement statement verification and invoice processing
- CAISO Shadow settlement
- OATT statement verification
- PPA statement verification
- Bilateral transactions verification by counterparty

2. Description of Services

ZGlobal proposes to provide Financial Settlement Services on behalf of Client to allow for settlement of Client’s transactions with the appropriate Balancing Authorities, Transmission Owners, Transmission Operators, counterparties and others as necessary. Such Financial Settlement Services shall coincide with the Scheduling Coordinator Services that ZGlobal is providing to Client pursuant to Exhibit C of this Agreement. However, for the avoidance of doubt, terms of this Agreement shall remain in effect until the Parties have fulfilled all obligations under this Agreement including payment in full amounts due pursuant to this Agreement.

2.1 CAISO Settlement Verification. ZGlobal will download the CAISO daily settlement statements and review the settlement statements to ensure that they are consistent with Client’s scheduled and metered volumes. ZGlobal will verify that the CAISO’s charges/revenues are accurate. ZGlobal will also provide Client with a summary description of the CAISO charge types and how they are applied to Client’s schedules and metered volumes.

On a weekly basis or pursuant to the CAISO Payment Calendar, ZGlobal will receive or remit payments on behalf of Client for all CAISO Invoices and Payment Advices related to their CAISO transactions. Pursuant to Exhibit C, paragraph 3.4, all CAISO costs and revenues related to Clients’ transactions shall be the responsibility of Client.

In the case of net Payment due to CAISO, Client shall remit funds to ZGlobal no less than two (2) Business Days prior to the CAISO due date published on the CAISO Payment Calendar. In the case

of net Payments due to ZGlobal for the Client transactions, ZGlobal will remit funds to Client no less than two (2) Business Days after the CAISO posts funds to ZGlobal. In both cases, ZGlobal will provide an invoice or payment advice to Client for remittance.

2.2 CAISO Shadow Settlement. ZGlobal will independently perform parallel CAISO settlement calculations prior to the CAISO's publication of settlement statements to provide Client with preview of expected CAISO charges for agreed CAISO charge types related to the Scheduling Coordinator Services that ZGlobal is providing to Client under this Agreement. The CAISO Shadow Settlement results will be compared to CAISO charge types and differences between dollar values will be highlighted and investigated when deemed necessary.

2.3 OATT Statement Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes.

2.4 PPA Verification. ZGlobal will review the settlement statements to ensure that they are consistent with Client's scheduled and metered volumes. ZGlobal will verify that the charges/revenues are accurate. ZGlobal will also provide Client with a description of the charge types and how they are applied to Client's schedules and metered volumes.

2.5 Bilateral Transactions Verification By Counterparty. ZGlobal shall review settlement statements for accuracy and coordinate with third parties as necessary to resolve discrepancies. Upon confirming accuracy of such statements, ZGlobal will provide a final invoice to Client for remittance to the appropriate parties.

2.6 Dispute Submittal. ZGlobal shall act as Client's representative with regard to disputes associated with Client's facilities and transactions for which ZGlobal is providing Scheduling Coordinator Services. This includes informally querying the CAISO with respect to the dispute or questionable charge, formally submitting disputes per the CAISO's dispute process and providing Client with progress status and eventual results of the dispute. To the extent there are other types of disputes, ZGlobal shall assist Client by providing information and data as necessary to resolve such disputes.

3. Client's Responsibilities

3.1 Client shall select and specify in writing the categories of Financial Settlement Services listed in this Exhibit D that ZGlobal shall provide.

3.2 Information to be Provided by Client to ZGlobal. Client shall provide ZGlobal with all relevant information to allow ZGlobal to effectively settle Client's Assets into the applicable market/Balancing Authority Area. This includes data such as Client's load information, Day-Ahead and Hour-Ahead forecast data, transactions with counterparties, facilities' capabilities and limitations, planned and forced outages or derates, transmission paths to be utilized, bid prices for energy and ancillary services markets, Settlement Quality meter data, access to relevant

meteorological data and all other pertinent information required by counterparties, the CAISO, or Balancing Authorities.

3.3 Payments. Payments shall be remitted no less than two (2) Business days prior to the CAISO, Balancing Authorities and Transmission Owners timelines required per the appropriate tariff or contract.

4. ZGlobal's Responsibilities

4.1 Professional Services. ZGlobal shall perform the Financial Settlement Services in a professional manner consistent with Good Industry Practices and Applicable Laws.

[End of Exhibit D]

EXHIBIT E

Forecasting Services

Not Applicable.

[End of Exhibit E]

EXHIBIT F

Facilities Management Services

Not Applicable

[End of Exhibit F]

EXHIBIT G

Portfolio Management Services

Not Applicable

[End of Exhibit G]

EXHIBIT H

This Exhibit H describes the Services Fees (“Services Fees”) to be remitted to ZGlobal from Client for all Services performed pursuant to this Agreement.

Service Fees

- Scheduling Coordinator Fee = Monthly payment of [REDACTED] based on monthly production not to exceed [REDACTED]. If there is no production in a month, the fee will be [REDACTED].
- Financial Settlement Fee = [REDACTED]
- Forecasting Fee = \$N/A
- Facility Management Fee = \$N/A
- Portfolio Management Fee = \$N/A

[End of Exhibit H]



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: February 22, 2017

BOARD MEETING DATE: February 23, 2017

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: Approve Modification to Policy 7: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (Action)

RECOMMENDATION: Approve Modification to Policy 7: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (Action)

BACKGROUND:

At the Peninsula Clean Energy board meeting held on October 27, 2016, the board adopted Policy 7: Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets. This policy addresses transactions in the California Independent System Operator (CAISO) market for Congestion Revenue Rights (CRRs). Congestion Revenue Rights provide a means for reserving space on the transmission lines for transporting power that may be in a different part of the state to PCE customers here in northern California and San Mateo County. At times, there may be requests for more power to flow in a certain direction on the transmission lines than there is capacity causing congestion. As a result of this congestion, the cost to transport power from one location to another will increase. The California Independent System Operator (CAISO) allocates CRRs to participants in the market to protect against these congestion costs. In order to be allocated CRRs by the CAISO, the CAISO requires that entities adopt a risk management policy that clearly states how participants in this market will manage the credit risk associated with the financial settlement of CRR transactions.

DISCUSSION:

Since adoption of this policy in October 2016, PCE has been working with the CAISO to meet all of the requirements for transacting in the CRR markets. Direct Energy, PCE's scheduling coordinator, will execute and manage all CRR transactions on behalf of PCE. In the process of holding further discussions with the CAISO to become authorized to participate in the CRR markets, additional changes and enhancements to PCE's risk management policy are required.

The attached policy reflects a similar policy recently accepted by the CAISO for Silicon Valley Clean Energy. Also attached is an element of the policy called the “PCE Risk Management Policy Minimum Standards Documentation” which will also be submitted to the CAISO as part of the documentation package.

Part 2 of this policy describes responsibilities and roles. As part of this policy implementation, PCE will need to form an Enterprise Risk Management (ERM) Oversight Committee. PCE staff recommends that this Oversight Committee include selected members of the board’s Audit and Finance Committee (to be formed), PCE staff members, and possibly PCE consultants. The policy also describes Front Office, Middle Office, and Back Office responsibilities. The Front Office responsibilities will be performed by Direct Energy. The Middle Office and Back Office responsibilities will be performed by PCE staff and PCE consultants.

Part 3 of this policy describes risk exposures and controls. Direct Energy developed the table listing authorized trading limits for monthly, quarterly, yearly and long-term CRRs, which they will follow as the front office trading group.

Section 4 of this policy describes the monitoring and reporting activities which will occur on a monthly basis.

Section 5 of this policy states that PCE employees, consultants, and agents will meet the training requirements as set by the CAISO to transact in this market.

FISCAL IMPACT:

Adopting this revision to Policy 7 will allow PCE to move forward with meeting the requirements of the CAISO to receive an allocation of CRRs through Direct Energy, and mitigate potential congestion costs in the procurement and delivery of power for PCE’s customers.

ATTACHMENTS

- 1) PCE Policy 7 (Revised): Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets
- 2) PCE Risk Management Policy Minimum Standards Documentation



Policy Number: 7

(Revised)

Adoption Date:

Subject: Risk Management Procedures and Controls for Transactions in the Independent System Operator Markets

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1 Overview

This Risk Management Procedures and Controls for Transactions in the California Independent System Operator Markets (Risk Management Policy or RMP) establishes criteria and processes for transacting in the CAISO markets. The CAISO markets in which Peninsula Clean Energy (PCE) participates and to which these policies apply include the following:

- Congestion Revenue Rights

The Risk Management policy consists of the following components:

1. Roles and Responsibilities
2. Risk Exposure and Controls
3. Training
4. Monitoring and Reporting

2 Roles and Responsibilities

PCE's Risk Management Policy ensures appropriate segregation of responsibility for policy approval, valuation and reporting, and trading.

The PCE Governing Board is responsible for approving the Risk Management policy and procedures.

The Enterprise Risk Management (ERM) Oversight Committee is responsible for overseeing modifications to and implementation of PCE's CRR policy and processes.

The Trading Group (Front Office) is responsible for executing CRR transactions, consistent with this CRR policy. In addition, the Front Office is tasked with complying with all controls, limits and procedures and immediately reporting to the Middle Office discrepancies or deviations from accepted practices, policies or procedures, including breaches of established trading and risk limits, unauthorized trading activities and failure of controls.

The Risk Group (Middle Office) is responsible for valuing and monitoring PCE's CRR positions. The Middle Office is also responsible for providing CRR reports to the ERM Oversight Committee and, within 24 hours of discovery, notifying the ERM Oversight Committee of transactions that are inconsistent with this CRR policy.

The Settlement Group (Back Office) is responsible for verifying that trades executed by the Front Office are executed in compliance with this CRR policy. The Back Office is also responsible for immediately reporting to the Middle Office discrepancies or deviations from accepted practices, policies or procedures, including breaches of established trading and risk limits, unauthorized trading activities and failure of controls.

3 Risk Exposure and Controls

PCE uses CRRs for the purpose of hedging congestions costs associated with serving its retail load. PCE participates in the CAISO CRR allocation process to obtain CRRs that protect against and minimize congestion costs. CRR positions are limited to the Seasonal Eligible Quantity and Monthly Eligible Quantity caps as provided by the CAISO with all allocated CRRs sinking to PG&E DLAP or one of PG&E's corresponding SLAPs. All CRR transactions are executed and managed by PCE's Scheduling Coordinator, and confirmation of such transactions are provided to PCE personnel who are independent from the CRR trading function.

The table below lists authorized trading limits for personnel authorized to transact on behalf of PCE. The limits are expressed in terms of Value at Risk at the 95% confidence interval.

			Purchases	Sales		
Product	Transaction Horizon	Transaction Length	\$ Limit (Authorized Personnel)	MW Limit (Authorized Personnel)	\$ Limit (Authorized Personnel)	MW Limit (Authorized Personnel)
CAISO CRRs	Month	1 Month	\$1.0M	1,000MW	N/A	N/A
	Quarter	3 Months	\$3.0M	1,000MW		
	Year	1 Year	\$12.0M	1,000MW		
	Long Term	Up to 10 Years	Approval Required by PCE Board	Approval Required by PCE Board		

PCE's CRR policy addresses relevant risks as follows:

3.1 Credit Risk

Credit risk refers to the potential for non-payment or default by the counterparty to a transaction. PCE's CRRs are financially settled with the CAISO through PCE's Scheduling Coordinator. CRR credit risk is mitigated due to the credit policies and procedures in place at the CAISO and the credit provisions governing PCE's agreement with its Scheduling Coordinator.

3.2 Liquidity Risk

Liquidity risk refers to the potential inability of a party to close out a position at prevailing market prices due to a lack of buyers or sellers for the specific product being liquidated. PCE can liquidate its CRR positions by selling into the CAISO monthly and annual CRR auction markets. PCE's CRR position limits are small in relation to the overall market, and liquidation is unlikely to adversely impact market prices.

3.3 Market Risk

Market risk refers to potential cost exposure resulting from changes in market prices for the underlying commodity. CRRs have positive value when congestion exists between

the source and the sink associated with the CRR path such that locational marginal prices are lower at the sources than at the sink. CRRs have negative value when the opposite is true. PCE uses CRRs to hedge against congestion costs, which are negatively correlated with CRR values, such that the potential adverse financial impacts of changes in CRR values and congestion costs are mitigated. PCE intends to obtain Congestion Revenue Rights (CRRs) through the CRR allocation process with the initial objective of attaining an allocation of CRRs that have consistently cleared with positive value in both the day-ahead market and in the auctions.

4 Monitoring and Reporting

4.1 Monitoring

CRR values shall be monitored at regular intervals, with such intervals selected in consideration of the risk characteristics of PCE's CRR holdings, but no less frequently than monthly. CRR's shall be valued using prevailing industry practices including historical congestion analyses, forward pricing and volatility assessments, and auction clearing prices. PCE's Scheduling Coordinator will use its internal valuation systems to assess potential congestion and make recommendations to the Front Office for requesting CRRs in the monthly and annual allocation process. The Front Office shall enter all CRR transactions into a trade capture system, and the Back Office shall ensure that trade details recorded in the trade capture system are accurately reflected in the settlement system and shall report any discrepancies to the Middle Office and if necessary, the ERM Oversight Committee.

The value of PCE's CRR portfolio will be monitored by PCE Middle Office personnel using internal mark-to-market valuation models, run on a monthly basis. Value at Risk, or the amount that the value of the CRR can be expected to vary within a confidence interval) will be reported at the 95% Confidence interval. Changes in market value and Value at Risk shall be reported as set forth in 4.2. The Back Office will review and validate realized CRR value during the weekly settlement process, and include discrepancies relative to expected values, if any, in a weekly exception report.

PCE Middle Office personnel responsible for monitoring the value of PCE's CRR holdings shall be independent from those Front Office personnel engaged in transacting in the CAISO's CRR markets.

4.2 Reporting

CRR positions and market value shall be reported by the Middle Office on a monthly basis to the PCE Chief Executive Officer and Finance Director. Reports shall include current CRR positions, changes in CRR positions (volumes and dollar amounts) from the prior month, the realized value of PCE's CRR portfolio in the prior month, the estimated market value of PCE's CRR holdings, and Value at Risk. Any material change in such CRR values or risks, including credit, liquidity, and market risks, shall be identified and summarized in the aforementioned report.

On an interval appropriate to each specific CAISO market, but in no circumstance on less than a monthly basis, the Middle Office shall monitor all CAISO transactions for conformance to expected outcomes. To the extent the Middle Office identifies contingencies that are likely to result in an impact exceeding 5% of gross revenues, PCE shall report such contingencies and their proposed resolution to the ERM Oversight Committee. These contingencies shall include market value changes as well as consideration of credit risk and liquidity risk.

5 Training

PCE employees, contractors and agents transaction in CAISO markets shall meet all training requirements set forth in the CAISO Tariff, Business Practices, or applicable CAISO Operating Agreement. Further, all such personnel shall certify that they have read and understand this Risk Management policy and the delegations of authority before being authorized to transact on behalf of PCE.

Reviewed and Approved by:

Jan Pepper – Chief Executive Officer, Peninsula Clean Energy

Date

PCE Risk Management Policy Minimum Standards Documentation

The Market Participant's risk management framework is documented in a risk policy addressing market, credit, and liquidity risks that has been approved by the Market Participant's risk management governance function, which includes appropriate corporate persons or bodies that are independent of the Market Participant's trading functions, such as a risk management committee, a designated risk officer, a board or board committee, or a board or committee of the Market Participant's parent company;

- The Market Participant maintains an organizational structure with clearly defined roles and responsibilities that segregate front-, middle-, and back-office functions to as high a level as is practicable;

See RMP Section 2

- Delegations of authority specify the transactions in which traders are allowed to enter;

See RMP Section 3

- The Market Participant ensures that traders have adequate training and experience relative to their delegations of authority in systems and the markets in which they transact;

See RMP Section 5

- As appropriate, risk limits are in place to control risk exposures;

See RMP Section 3

- Reporting is in place to ensure risks are adequately communicated throughout the organization;

See RMP Section 4.2

- Processes are in place for independent confirmation of executed transactions; and

See RMP Section 2 (Back Office) and RMP Section 4.1

- As appropriate, there is periodic evaluation or mark-to-market of risk positions

See RMP Section 4.1



**REGULAR MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, January 26, 2017
MINUTES**

San Mateo County Office of Education, Pine and Oak Room
101 Twin Dolphin Drive, Redwood City, CA 94065
6:30pm

CALL TO ORDER

Meeting was called to order at 6:36 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Carole Groom, County of San Mateo
Rick DeGolia, Town of Atherton
Charles Stone, City of Belmont
Lori Liu, City of Brisbane
Donna Colson, City of Burlingame
Rae P. Gonzalez, Town of Colma
Glenn Sylvester, City of Daly City
Catherine Mahanpour, City of Foster City
Harvey Rarback, City of Half Moon Bay
Elizabeth Cullinan, Town of Hillsborough
Ray Mueller, City of Menlo Park
Wayne Lee, City of Millbrae
John Keener, City of Pacifica
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Ian Bain, City of Redwood City
Marty Medina, City of San Bruno
Cameron Johnson, City of San Carlos
Pradeep Gupta, City of South San Francisco

Absent: Larry Moody, City of East Palo Alto
Joe Goethals, City of San Mateo
Daniel Yost, Town of Woodside

Staff: Jan Pepper, Chief Executive Officer
George Wiltsee, Director of Power Resources and Energy Programs
Dan Lieberman, Director of Marketing and Public Affairs
Kirsten Andrews-Schwind, Communications and Outreach Manager
Leslie Brown, Manager of Customer Care
Anne Bartoletti, Board Clerk / Executive Assistant to the CEO
David Silberman, General Counsel
Nirit Eriksson, Associate General Counsel

A quorum was established.

SWEARING IN OF NEW BOARD MEMBERS:

The following new Board members were sworn in by Nirit Eriksson, Associate General Counsel:

Rae P. Gonzalez, Town of Colma
Glenn Sylvester, City of Daly City
Harvey Rarback, City of Half Moon Bay

PUBLIC COMMENT:

Mark Roest, SeaWave Battery, Inc.

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion Made / Seconded: Cameron / Stone

Motion passed unanimously 18-0 (Absent: Moody, Mueller, Goethals, Yost)

PUBLIC COMMENT

No public comment.

REGULAR AGENDA

1. CHAIR REPORT

Dave Pine welcomed Board members, new Board members, and attendees.

2. CEO REPORT

Jan Pepper—Chief Executive Officer—reported that Peninsula Clean Energy (PCE) staff moved into temporary office space at 555 Marshall St in Redwood City, and signed a lease for permanent space at 2055-2075 Woodside Rd in Redwood City. They hope to move into the permanent office space in May or June. She introduced new PCE staff member Kirsten Andrews-

Schwind, the Communications and Outreach Manager, and announced that Leslie Brown, the Customer Care Manager, will be starting January 30th. A new position for a Regulatory / Legislative Analyst will be posted soon, but a hiring decision has not been made on the open Contracts and Compliance Manager position.

Jan announced that the California Public Utilities Commission (CPUC) will be holding an En Banc hearing on Community Choice Aggregator (CCA) issues on February 1, 2017. PCE staff and several Board members are planning to attend. She also reported that she, Nirit Eriksson, Associate General Counsel, and several Board members will meet with CPUC Commissioner Carla Peterman on February 2nd, and will be scheduling 'Meet and Greet' meetings with the two newly appointed CPUC Commissioners, Martha Guzman Aceves and Clifford Rechtschaffen. Jan and several Board members met with Senator Jerry Hill on January 6th, and they'll meet with Assemblymembers Berman and Mullin tomorrow, January 27th. Jan also reported that she is working with CalCCA on the Diablo Canyon closure proceeding. PCE will be part of the joint parties filing testimony on January 27th, and Jan will be a witness sponsoring two sections.

3. AUTHORIZE THE CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AGREEMENTS AND ANCILLARY DOCUMENTS FOR RENEWABLE SUPPLY WITH:

Jan Pepper introduced Joe Karp, an attorney with Winston & Strawn, who has been advising PCE on negotiations with the Power Purchase Agreement (PPA) bidders. She announced that there were four PPAs on the agenda – three existing small hydro projects in Shasta County, and one new solar project in Merced County that will be built exclusively for PCE. PCE'S load forecasts and peak capacity needs were discussed.

3.1 Mega Renewables, a California general partnership (Hatchet) – Hatchet Creek Hydroelectric Project. Contract Term: 5 years. Not to Exceed \$4,130,000. (Action)

3.2 Mega Renewables, a California general partnership (Roaring) – Roaring Creek Hydroelectric Project. Contract Term: 2 years. Not to Exceed \$562,000. (Action)

3.3 Mega Renewables, a California general partnership (Bidwell) – Bidwell Ditch Hydroelectric Project. Contract Term: 2 years. Not to Exceed \$1,150,000. (Action)

3.4 Wright Solar Park, LLC, a Delaware limited liability company – Wright Solar Park. Contract Term: 20 years. Not to Exceed \$550,000,000. (Action)

Motion Made / Seconded: Gupta / Lee

Motion passed unanimously 19-0 (Absent: Moody, Goethals, Yost)

PUBLIC COMMENT:

Bill Nack, Local IBEW 1245 and 617
Alex Cannara, Menlo Park

4. POWER SUPPLY PLAN FOR PHASE 2 ENERGY

Jan Pepper and George Wiltsee, Director of Power Resources, explained that in April, 220,000 customers will be coming online. PCE has Phase 1 Master Agreements with three Energy Service Providers (ESPs). Those same ESPs have been contacted to provide pricing for Phase 2 supply. Other firms have been contacted for supplying renewable energy and greenhouse-gas free energy.

5. AUTHORIZE PURCHASE OF RESOURCE ADEQUACY FROM NRG POWER MARKETING LLC FOR APRIL AND MAY 2017, IN AN AMOUNT NOT TO EXCEED \$275,000

Jan Pepper and George Wiltsee explained that PCE needs to purchase more Resource Adequacy (RA) for Phase 2, and NRG is ready to provide that additional RA. Jan explained that tonight they are only asking for approval for the April RA, and next month will seek approval for May and June.

Motion Made / Seconded: Bain / Groom

Motion passed unanimously 18-0 (Absent: Moody, Lee, Goethals, Yost)

6. APPROVE AN ADJUSTMENT IN PENINSULA CLEAN ENERGY'S (PCE'S) RATES, EFFECTIVE MARCH 1, 2017, TO MAINTAIN A 5% DISCOUNT IN GENERATION CHARGES COMPARED TO PG&E

Jan Pepper reported that PG&E raised their rates on January 1, 2017, and the increase ranges between 1.6% and 3% for different rate categories. PG&E also increased the Power Charge Indifference Adjustment (PCIA) charge by 26%. PCE staff recommend an adjustment to decrease PCE's rates to maintain the 5% discount in generation charges compared to PG&E.

Jan explained that the revenue impact of a decrease in PCE's rates would be minimal since PCE's revenues have been higher than what was projected in the July 2016 Pro Forma, and the Pro Forma had projected PG&E would decrease rates so we were prepared for a rate reduction. In addition, the original Pro Forma projected a 15% Opt Out rate, but with our actual Opt Out rate around 1.4%, we're changing our projected Opt Out rate to 5%.

Jan recommended making the effective date March 15th, 2017, rather than March 1st, 2017, due to a request by Calpine to provide them more time to make the changes in their programming.

Motion Made / Seconded: Stone / Bain

Motion passed unanimously 18-0 (Absent: Moody, Lee, Goethals, Yost)

7. FINANCIAL REPORT

Jan Pepper introduced Mike Maher, PCE's Accountant. Mike presented the December reports and stated that we are half way through the fiscal year, with the balance sheet showing close to

\$20,000,000 in assets, and operating revenues of almost \$17,000,000 from Phase 1 through December 31. Mike noted that PCE is “in the black”. Jan added that PCE has a \$12,000,000 line of credit from Barclay’s , of which only \$3,000,000 has been drawn, and that PCE may not need to draw on the other \$9,000,000. The Board discussed creating an Audit and Finance ad hoc committee at a subsequent meeting.

8. MARKETING AND OUTREACH REPORT

Dan Lieberman—Director of Marketing and Public Affairs—introduced Kirsten Andrews-Schwind, the Communications and Outreach Manager who presented the outreach plan for Phase 2, and handed out a survey to the Board and audience members to get feedback and outreach recommendations for their community. Dan reported on recent and upcoming marketing and outreach efforts.

9. AD HOC COMMITTEE REPORT ON FORMATION OF CITIZENS ADVISORY COMMITTEE

Dave Pine reported that the ad hoc committee needs to meet, and he committed to working out the details of the formation of a new Citizens Advisory Committee (CAC) before the next meeting.

10. BOARD MEMBERS’ REPORTS

None.

ADJOURNMENT

Meeting was adjourned at 8:26 pm.