



**SPECIAL MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, April 27, 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

SPECIAL MEETING AGENDA

1. Authorize the Chief Executive Officer to execute a Long Form Confirmation Agreement with Pacific Gas and Electric Company (PG&E) for Purchase of PCC1 Renewable Energy. Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$7,000,000 (Action)
2. Authorize the Chief Executive Officer to execute two EEI (Edison Electric Institute) Confirmation Agreements for Purchase of Resource Adequacy from Shell Energy North America (Shell) with (1) Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$85,000; and (2) Power Delivery Term: July 2017, in an amount not to exceed \$40,000 (Action)

Public records that relate to any item on the open session agenda for a 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 Peninsula Clean Energy's office, located at 555 Marshall St, 2nd 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: April 25, 2017
BOARD MEETING DATE: April 27, 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 Chief Executive Officer to execute a Long Form Confirmation Agreement with Pacific Gas and Electric Company (PG&E) for Purchase of PCC1 Renewable Energy. Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$7,000,000.

RECOMMENDATION:

Authorize the Chief Executive Officer to execute a Confirmation Agreement for Purchase of PCC1 Renewable Energy from PG&E for July 1, 2017 through December 31, 2017, in an amount not to exceed \$7,000,000. (Action)

BACKGROUND:

PCE has purchased PCC1 Renewable Energy to meet its Phase 1 obligations to customers. With the launch of Phase 2, PCE needs to purchase additional PCC1 Renewable Energy to meet its obligations to customers. PCC1 renewable energy refers to bundled renewable energy, whereby the energy and renewable energy attributes are delivered together. These resources consist of in-state renewable energy projects or out-of-state projects that deliver the renewable energy to the California Independent System Operator (CAISO) at the time the energy is produced.

DISCUSSION:

PG&E solicited offers to supply PCC1 Renewable Energy for calendar year 2017. PCE responded with an offer at a favorable price, which PG&E selected along with offers from other proposers.

The Board is being asked to authorize the CEO to execute an EEI Confirmation with PG&E, in a form approved by General Counsel. This item has been noticed as part of a

special meeting because staff became aware after the regular agenda was posted that PG&E needed the agreement to be executed prior to the May board meeting.

RESOLUTION NO. _____

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

* * * * *

RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER TO EXECUTE A LONG FORM CONFIRMATION AGREEMENT WITH PACIFIC GAS AND ELECTRIC COMPANY FOR PURCHASE OF PCC1 RENEWABLE ENERGY WITH TERMS CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE GENERAL COUNSEL AND FOR THE PERIOD OF JULY 1, 2017 THROUGH DECEMBER 31, 2017 IN AN AMOUNT NOT TO EXCEED \$7,000,000

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

WHEREAS, as was true in 2016, PCE has ongoing commitments to purchase PCC1 Renewable Energy; and

WHEREAS, in February 2017 Pacific Gas and Electric Company (“PG&E”) issued a solicitation offering PCC1 Renewable Energy for calendar year 2017; and

WHEREAS, PCE responded to this solicitation by offering to purchase PCC1 Renewable Energy for July through December 2017 from PG&E; and

WHEREAS, PG&E accepted PCE's offer; and

WHEREAS, PCE has negotiated a Long Form Confirmation agreement with PG&E for the necessary volumes, reference to which should be made for further particulars; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute a Confirmation Agreement with PG&E for PCC1 Renewable Energy with terms consistent with those presented, in a form approved by the General Counsel and for a term covering July 1, 2017 through December 31, 2017 in an amount not to exceed \$7,000,000.

* * * * *

**LONG FORM CONFIRMATION BETWEEN
PACIFIC GAS AND ELECTRIC COMPANY
AND
PENINSULA CLEAN ENERGY AUTHORITY**

This long form confirmation (“Confirmation”) confirms the transaction (“Transaction”) between Pacific Gas and Electric Company, a California corporation (“Seller”, “PG&E” or “Party B”), and Peninsula Clean Energy Authority, a California Joint Powers Authority (“Buyer” or “Party A”), each individually a “Party” and together the “Parties”, effective as of 05/01/2017 (“Confirmation Effective Date”), for the sale and purchase of the Product defined herein.

The Parties agree that this Confirmation incorporates by reference, with the same force and effect as if set forth herein, all of the terms and provisions of the EEI Master Power Purchase and Sale Agreement (defined herein) except as otherwise expressly stated, together with the Cover Sheet elections identified herein (collectively, “EEI Agreement”). The EEI Agreement and this Confirmation shall be referred to collectively herein as the “Agreement.”

Capitalized terms used but not defined in this Confirmation shall have the meanings ascribed to them in the EEI Agreement, the RPS (defined herein), or the Tariff (defined herein). If there is a conflict between the terms in this Confirmation and those in the EEI Agreement, this Confirmation shall control.

[STANDARD CONTRACT TERMS AND CONDITIONS SHOWN IN SHADED TEXT ARE THOSE THAT “MAY NOT BE MODIFIED” PER CPUC DECISIONS (“D.”) 07-11-025; D.10-03-021, AS MODIFIED BY D.11-01-025; AND D.13-11-024.]

Seller: Pacific Gas and Electric Company		Buyer: Peninsula Clean Energy Authority
Contact Information:	Name: Pacific Gas and Electric Company (“Seller”, “PG&E” or “Party B”)	Name: Peninsula Clean Energy Authority (“Buyer” or “Party A”)
	All Notices: P.O. Box 770000, Mail Code N12E San Francisco, CA 94177 Attn: Senior Manager, Contract Management Phone: (415) 973-8660 Facsimile: (415) 972-5507 E-mail: [<i>PG&E to insert here</i>]	All Notices: Peninsula Clean Energy Authority 455 County Center, 4 th Floor Redwood City, CA 94063 Attn: George Wiltsee Phone: (626) 890-8346 Facsimile: (650) 363-4034 Email: gwiltsee@peninsulacleanenergy.com
	Invoices: Attn: Manager, Contract Settlements Phone: (415) 973-4277 Facsimile: (415) 973-9505	Invoices: Attn: Anne Bartoletti Phone: (650) 350-9514 Facsimile: (650) 363-4034 Email: abartoletti@peninsulacleanenergy.com

	<p align="center">Scheduling:</p> <p>Attn: Day-Ahead Scheduling Phone: (415) 973-6222 Facsimile: (415) 973-0400</p>	<p align="center">Scheduling:</p> <p>Attn: George Wiltsee Phone: (626) 890-8346 Facsimile: (650) 363-4034 Email: gwiltsee@peninsulacleanenergy.com</p>
	<p align="center">Payments:</p> <p>Attn: Manager, Contract Settlements Phone: (415) 973-4277 Facsimile: (415) 973-9505</p>	<p align="center">Payments:</p> <p>Attn: Anne Bartoletti Phone: (650) 350-9514 Facsimile: (650) 363-4034 Email: abartoletti@peninsulacleanenergy.com</p>
	<p align="center">Wire Transfer:</p> <p>██████ ██████ ██████ ██████ ████████████████████</p>	<p align="center">Wire Transfer:</p> <p>██████ ██████ ██████ ██████ ████████████████████</p>
	<p align="center">Credit and Collections:</p> <p>Credit and Collections: Attn: Manager, Credit Risk Management Phone: (415) 972-5188 Facsimile: (415) 973-7301 Email: PGERiskCredit@pge.com</p> <p align="center">Defaults:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Pacific Gas and Electric Company 77 Beale Street, Mail Code B30A San Francisco, CA 94105 Attn: Legal Department Facsimile: (415) 973-5520 Email: catherine.watkins@pge.com</p>	<p align="center">Credit and Collections:</p> <p>Credit and Collections: Attn: Janis Pepper Phone: (415) 309-9206 Facsimile: (650) 363-4034 Email: jpepper@peninsulacleanenergy.com</p> <p>Collateral: Attn: Janis Pepper Phone: (415) 309-9206 Facsimile: (650) 363-4034 E-mail: jpepper@peninsulacleanenergy.com</p> <p align="center">Defaults:</p> <p>With additional Notices of an Event of Default or Potential Event of Default to:</p> <p>Address: Peninsula Clean Energy Authority 455 County Center, 4th Floor Redwood City, CA 94063 Attn: Janis Pepper Facsimile: (650) 363-4034 Email: jpepper@peninsulacleanenergy.com</p>

The Parties hereby agree that the General Terms and Conditions of the EEI Agreement are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff:

Dated:

Docket Number:

Party B Tariff: Tariff

Dated: December 19, 2002 Docket Number: ER03-198-000

Article Two

Transaction Terms and Conditions

Section 2.4 is **not** applicable.

Section 2.2 entitled "Governing Terms" shall be amended by adding the following sentence at the end:

"All times and hours of operation listed herein shall be in Pacific Prevailing Time (PPT)."

Section 2.3 entitled "Confirmation" shall be amended by deleting it in its entirety and replacing it with the following:

"For the purposes of this Transaction, Party A and Party B agree that this document shall serve as the Confirmation."

Article Four

Remedies for Failure to Deliver or
Receive

X Accelerated Payment of Damages is applicable.

Article Five

Cross Default for Party A is [REDACTED]

Cross Default for Party B is [REDACTED]

Section 5.1(h)(ii) shall be amended by deleting the following clause from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice;"

Section 5.2 shall be amended by (i) adding the words “and time of day” in the third line immediately following the first instance of the word “day” and (ii) adding the following at the end of the Section:

“The Non-Defaulting Party shall determine its Gains and Losses by determining the Market Quotation Average Price for the Terminated Transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts, to obtain the Market Quotation Average Price with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for the Terminated Transaction in a commercially reasonable manner by calculating the arithmetic mean of the quotes of at least three (3) Broker or Index Quotes based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to the Terminated Transaction. Such Broker or Index Quotes must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. In the event the Non-Defaulting Party is not able, after commercially reasonable efforts to obtain at least three (3) such Broker or Index Quotes with respect to the Terminated Transaction, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner by reference to information supplied to it by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information; provided, however, that such third parties shall not be Affiliates of either Party. Only in the event the Non-Defaulting Party is not able, after using commercially reasonable efforts, to obtain such third party information, then the Non-Defaulting Party shall calculate its Gains and Losses for such Terminated Transaction in a commercially reasonable manner using relevant market data it has available to it internally.”

Section 5.3 shall be amended by adding the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of liquid security then in the possession of the Defaulting Party or its agent pursuant to Article Eight," after the first use of the clause "due to the Non-Defaulting Party" in the sixth line.

Section 5.6 Election:

5.6 Closeout Setoff


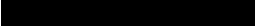
- Option A is applicable.
- Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:
- Option C (No Setoff)

8.1 Party A (**Buyer**) Credit Protection:

Article 8

Credit and Collateral Requirements

(a) Financial Information:

- Option A
- Option B Specify: 
- Option C Specify: 

(b) Credit Assurances:

- Not Applicable
- Applicable

(c) Collateral Threshold:

- Not Applicable

- Applicable
- (d) Downgrade Event:
 - Not Applicable
 - Applicable

(e) Guarantor for Party B: [REDACTED]
Guarantee Amount: [REDACTED]

8.2 Party B (Seller or PG&E) Credit Protection:

- (a) Financial Information:
- Option A
 - Option B Specify: [REDACTED]
 - Option C Specify: [REDACTED]

- (b) Credit Assurances:
- Not Applicable
 - Applicable

- (c) Collateral Threshold:
- Not Applicable
 - Applicable

If applicable, complete the following:

Party A Collateral Threshold: [REDACTED]

Party A Independent Amount: [REDACTED]

Party A Rounding Amount: [REDACTED]

- (d) Downgrade Event:
- Not Applicable
 - Applicable

If applicable, complete the following:

It shall be a downgrade Event for Party A if Party A's Credit Rating falls below [REDACTED] from S&P or [REDACTED] from Moody's or if Party A is not rated by either S&P or Moody's

Other:
Specify [REDACTED]

(e) Guarantor for Party A: [REDACTED]
Guarantee Amount: [REDACTED]

Article 10
Confidentiality

Option A: Confidentiality is Applicable.

Schedule M

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable

Schedule P

Schedule P: Products and Related Definitions shall be excluded in its entirety and shall *not* be incorporated by reference into the Agreement.

Other Changes

As set forth in Article 2 below, the EEI Agreement, by reference, the changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

ARTICLE 1
COMMERCIAL TERMS

Seller: PACIFIC GAS AND ELECTRIC COMPANY		Buyer: PENINSULA CLEAN ENERGY AUTHORITY
Product:	The Product shall consist of Electric Energy and associated Green Attributes from the Project, as further described and subject to the provisions herein.	
Project:	All Product sold hereunder shall be generated by the facility or facilities (“Project”) listed in Exhibit A to this Confirmation or identified pursuant to Section 9.2 herein. Seller shall have sole discretion throughout the Term to designate and re-designate, as applicable, the Project by selecting one or more of the facilities from Exhibit A or pursuant to Section 9.2 herein. Buyer shall not be entitled to, and shall not receive, any amount of Green Attributes produced by the Project that is in excess of the Total Quantity. Buyer shall not be entitled to, and shall not receive, any amount of Electric Energy produced by the Project that is in excess of the Energy Quantity.	
Quantity:	(a) <u>For Green Attributes</u> : “Total Quantity” shall be equal to [REDACTED] of Green Attributes to be conveyed during the Green Attributes Delivery Period to Buyer as provided herein. (b) <u>For Electric Energy</u> : “Energy Quantity” shall be equal to [REDACTED] of Electric Energy to be delivered during the Energy Delivery Period to Buyer as provided herein.	
Energy Price:	[REDACTED]	

Green Attributes Price:	[REDACTED]
Term of Transaction:	<p>Except as otherwise provided herein, the Transaction shall commence upon the Confirmation Effective Date and shall continue until the end of the Delivery Term and the satisfaction of all other obligations of the Parties under this Agreement (“Term”).</p> <p>The Transaction shall terminate early, and prior to the end of the Term, in the event of a failure to satisfy the Green Attributes Condition Precedent defined below or as otherwise provided in the Agreement.</p> <p>Termination because of a failure to satisfy the Green Attributes Condition Precedent shall terminate all of the Parties’ obligations with respect to Green Attributes (including the Total Quantity) and shall terminate those certain obligations of the Parties with respect to Electric Energy (including the Energy Quantity) for which liability or performance has not accrued, arisen or been incurred under the Agreement as of the Transaction Termination Date defined in Section 4.2.</p>
Credit Requirements:	[REDACTED]
Delivery Term:	The “Delivery Term” shall consist of both the Energy Delivery Period and the Green Attributes Delivery Period.
Energy Delivery Period:	The “Energy Delivery Period” shall commence on 05/01/2017, and shall end on the earlier of (a) the conclusion of hour ending 2400 (PPT) on 12/31/2017, and (b) that date upon which the amount of Electric Energy delivered by Seller satisfies the Energy Quantity.
Green Attributes Delivery Period:	<p>Subject to the satisfaction, or waiver in writing by both Parties, of the Green Attributes Condition Precedent, the “Green Attributes Delivery Period” shall commence on the first day that Seller conveys Green Attributes to Buyer and shall end on that date upon which the amount of Green Attributes conveyed to Buyer satisfies the Total Quantity.</p> <p>Seller shall convey Green Attributes to Buyer in the form of WREGIS Certificates. Seller shall transfer WREGIS Certificates into Buyer’s WREGIS account in an amount required to satisfy the Total Quantity.</p>
Delivery Point:	The “Delivery Point” where Buyer shall take possession of the Electric Energy shall be NP15.
Scheduling Obligations:	Seller, or a qualified third party designated by Seller, shall act as Scheduling Coordinator for the Project. Buyer hereby authorizes Seller, or its third party Scheduling Coordinator designee, to deliver the Electric Energy to the CAISO at the Delivery Point as an agent on Buyer’s behalf.
Condition Precedent to the Green Attributes	Notwithstanding any other provision of this Confirmation to the contrary, all of the Parties’ obligations with respect to the Green Attributes and the Green Attributes Delivery Period are conditioned upon (a) PG&E’s receipt, or the Parties’ written waiver, of CPUC Approval as defined below; and (b) PG&E’s receipt of the Performance Assurance from Buyer no later than five (5) Business Days following PG&E’s notice of CPUC Approval

Obligations:	(defined below) (collectively, “Green Attributes Condition Precedent”).
Incorporation By Reference	All of the terms and provisions of the EEI Agreement are incorporated by reference, with the same force and effect as if set forth herein, except as otherwise expressly stated.

ARTICLE 2 DEFINITIONS

2.1 “Balancing Authority” has the meaning set forth in the CAISO Tariff.

2.2 “Balancing Authority Area” has the meaning set forth in the CAISO Tariff.

2.3 “Broker or Index Quotes” means quotations solicited or obtained in good faith from (a) regularly published and widely-distributed daily forward price assessments from a broker that is not an Affiliate of either Party and who is actively participating in markets for the relevant Products or (b) end-of-day prices for the relevant Products published by exchanges which transact in the relevant markets.

2.4 “Business Day” means, for all purposes of the EEI Agreement and all Transactions entered into thereunder, all calendar days other than those days on which the Federal Reserve member banks in New York City are authorized or required by law to be closed, and shall be between the hours of 8:00 a.m. and 5:00 p.m. Pacific Prevailing Time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

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

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

2.7 “California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1078, X1 - 2 and 350, codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

2.8 “CARB” means the California Air Resources Board.

2.9 “Cash Collateral Interest Amount” shall mean with respect to a Cash Collateral Interest Period, the amount of interest derived from:

(x) the sum of: (a) the principal amount of Performance Assurance in the form of cash held by the Secured Party during that month, and (b) the sum of all accrued and unpaid Cash Collateral Interest Amounts accumulated prior to such Cash Collateral Interest Period; multiplied by

(y) the Cash Collateral Interest Rate in effect for that month; multiplied by

(z) the number of days in that Cash Collateral Interest Period;

(u) divided by 360

2.10 "Cash Collateral Interest Payment Date" shall mean the date upon which all of the Performance Assurance in the form of cash has been returned.

2.11 "Cash Collateral Interest Period" shall mean the monthly period beginning on the first day of each calendar month and ending on the earlier of the Cash Collateral Interest Payment Date or the last day of each calendar month.

2.12 "Cash Collateral Interest Rate" shall mean the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

2.13 "CEC" means the California Energy Commission or its successor agency.

2.14 "Confirmation Effective Date" has the meaning set forth in the preamble.

2.15 "Contract Price" means the Energy Price plus Green Attributes Price.

2.16 "CPUC" means the California Public Utilities Commission, or successor entity.

2.17 "CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms:

(a) approves this Agreement in its entirety, including payments to be made by the Buyer, subject to CPUC review of the Buyer's administration of the Agreement; and

(b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 *et seq.*), Decision 03-06-071, or other applicable law.

CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

For the purposes of this Section 2.17, a CPUC Energy Division disposition which contains such findings or deems approved an advice letter requesting such findings shall be deemed to satisfy the CPUC decision requirement.

Also, for the purpose of this Section 2.17 only, the references therein to "Buyer" shall mean "PG&E".

2.18 "Credit Rating" means, with respect to any entity, (a) the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or (b) if such entity does not have a rating for its unsecured, senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody's. If the entity is rated by both S&P and Moody's and such ratings are not equivalent, the lower of the two ratings shall determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

2.19 "Delivered Energy" means the Electric Energy from the Project that is delivered by Seller to Buyer at the Delivery Point.

2.20 “EEI Master Power Purchase and Sale Agreement” as used in the preamble means that certain Master Power Purchase & Sale Agreement copyrighted in 2000 by the Edison Electric Institute and National Energy Marketers Association and designated as “Version 2.1 (modified 4/25/00)”, as modified by those changes published in the EEI Errata, Version 1.1, dated July 18, 2007.

2.21 “Electric Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

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

2.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under this Agreement, which event or circumstance was not anticipated as of the date the Agreement was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (a) the loss of Buyer’s markets; (b) Buyer’s inability economically to use or resell the Product purchased hereunder; (c) the loss or failure of Seller’s supply unless caused by a force majeure event at the Project; or (d) Seller’s ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission Provider’s tariff; provided, however, that existence of the two foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

2.24 “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, having jurisdiction as to the matter in question.

2.25 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere¹; (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Electric Energy. Green

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Attributes do not include (i) any Electric Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and 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, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

2.26 “Index Price” means the Trading Hub price (as defined in the CAISO Tariff) associated with the Delivered Energy to the Delivery Point for each applicable hour as published by the CAISO on the CAISO website; or any successor thereto, unless a substitute publication and/or index is mutually agreed to by the Parties.

2.27 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, 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, including any of the foregoing that are enacted, amended, or issued after the Confirmation Effective Date, and which becomes effective after the Confirmation Effective Date; or any binding interpretation of the foregoing. For purposes of the definition of “CPUC Approval” and Sections 6.1(a), 6.1(b) and 9.3(b) in this Confirmation, the term “law” shall have the meaning set forth in this definition.

2.28 “Letter of Credit” means for purposes of this Agreement an irrevocable, non-transferable, standby letter of credit the form of which must be substantially as contained in Exhibit B to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, the intended beneficiary may require changes to such form; and the issuer must be a Qualified Institution on the date of delivery of the Letter of Credit to the Secured Party. In case of a conflict of this definition with any other definition of “Letter of Credit” contained in the EEI Agreement or any exhibit or annex thereto, this definition shall supersede any such other definition for purposes of the Transaction to which this Agreement applies.

2.29 “Market Quotation Average Price” means the arithmetic mean of the quotations solicited in good faith from not less than three (3) Reference Market-Makers (as hereinafter defined); provided, however, that the Party obtaining the quotes shall use reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-Makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined by disregarding the highest and lowest quotations and taking the arithmetic mean of the remaining quotations. The quotations shall be based on the offers to sell or bids to buy, as applicable, obtained for transactions substantially similar to each Terminated Transaction. The quote must be obtained assuming that the Party obtaining the quote will provide sufficient credit support for the proposed transaction. Each quotation shall be obtained, to the extent reasonably practicable, as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the Party obtaining the quotations and in accordance with the notice pursuant to Section 5.2 of the EEI Agreement, which designates the Early Termination Date. If fewer than three quotations are obtained, it will be deemed that the Market Quotations Average Price in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

2.30 “Notice” means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The contacts table of this Confirmation contains the names and addresses to be used for Notices.

2.31 “Qualified Institution” means either a U.S. commercial bank, or a U.S. branch of a foreign bank acceptable to the Beneficiary Party in its sole discretion; and in each case such bank must (i) have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies, and (ii) have assets of at least \$10 billion US Dollars.

2.32 “Real-Time Market” has the meaning set forth in the Tariff and shall include any market that CAISO may establish prior to or during the Term that clears at an interval between the Day-Ahead Market and the Real-Time Market.

2.33 “Reference Market-Maker” means a leading dealer in the relevant market selected by a party determining its exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit.

2.34 “Renewable Energy Credit” or “REC” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

2.35 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (a) costs reasonably incurred by Buyer in purchasing such substitute Product and (b) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or absent a purchase, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

2.36 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells any Product not received by Buyer, deducting from such proceeds any (a) costs reasonably incurred by Seller in reselling such Product and (b) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or absent a sale, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, further, that in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

2.37 “Tariff” means the CAISO Fifth Replacement FERC Electric Tariff and protocol provisions, including any CAISO-published procedures or business practice manuals, as they may be amended, supplemented or replaced (in whole or in part) from time to time.

2.38 “Transactions” as used in the EEI Agreement shall mean the “Transaction” as defined in the preamble above.

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

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

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

ARTICLE 3 CONVEYANCE OF ENERGY AND GREEN ATTRIBUTES

3.1 Seller’s Delivery of Electric Energy.

Subject to the terms and conditions of this Agreement, beginning on the first day of the Energy Delivery Period and continuing until the last day of the Energy Delivery Period, Seller shall deliver and sell, and Buyer shall purchase and receive the Delivered Energy.

3.2 Seller’s Conveyance of Green Attributes.

(a) Green Attributes. Subject to the terms and conditions of this Agreement, beginning on the first day of the Green Attributes Delivery Period and continuing until the last day of the Green Attributes Delivery Period, Seller shall convey and sell, and Buyer shall purchase and receive, those Green Attributes associated with the Delivered Energy.

(i) Seller represents and warrants that Seller holds the rights to such Green Attributes from the Project and Seller agrees to convey such Green Attributes to Buyer as included in the delivery of the Product from the Project subject to the terms and conditions of this Agreement. *[To the extent the Project is a biomethane facility, the Parties shall modify this section as necessary to ensure that it, and the definition of “Green Attributes”, will not conflict with necessary language that will be added to address biomethane transactions, pursuant to CPUC D.13-11-024, pgs 21-24.]*

(ii) As set forth above, Seller shall convey only that amount of Green Attributes required to meet the Total Quantity and shall do so only during the Green Attributes Delivery Period.

(b) The Green Attributes in the amount of the Total Quantity shall be deemed to be conveyed to and received by Buyer under this Confirmation as set forth herein. During the Green Attributes Delivery Period, Seller shall convey to Buyer the Green Attributes required to meet the Total Quantity within the later of (A) twenty-five (25) Business Days following the day the WREGIS Certificates for the Green Attributes were deposited into Seller’s WREGIS account for the applicable Calculation Period and payment of the Monthly Cash Settlement Amount in accordance with Article 5 herein; and (B) twenty-five (25) Business Days following the satisfaction, or written waiver by both Parties, of the Green Attributes Condition Precedent. Seller shall transfer such WREGIS Certificates, in an amount equivalent to the Total Quantity to Buyer’s WREGIS account such that all right, title and interest in and to the WREGIS Certificates shall transfer from Seller to Buyer.

ARTICLE 4
CPUC FILING AND APPROVAL

4.1 Filing for CPUC Approval.

Within 60 days after the Confirmation Effective Date, Seller shall file with the CPUC a request for CPUC Approval. Buyer shall use commercially reasonable efforts to support Seller in obtaining CPUC Approval. Seller has no obligation to seek rehearing or to appeal a CPUC decision which fails to approve this Confirmation or which contains findings required for CPUC Approval with conditions or modifications unacceptable to either Party. Notwithstanding anything to the contrary in the Confirmation, Seller shall not have any obligation or liability to Buyer or any third party for any action or inaction of the CPUC or other Governmental Authority affecting the approval or status of this Confirmation as a transaction, eligible for portfolio content category 1, as defined in California Public Utilities Code Section 399.16(b)(1).

4.2 Green Attributes Termination Right and Transaction Termination Date.

In the event that: (a) the CPUC issues a final and non-appealable order not approving this Agreement in its entirety, (b) the CPUC issues a final and non-appealable order which contains conditions or modifications unacceptable to either Party, or (c) approval by the CPUC has not been received by Seller on or before 60 days from the date on which Seller files for CPUC Approval, then either Party may, in its sole discretion, elect to terminate this Agreement upon Notice to the other Party provided in accordance with Article 10.7 of the EEI Agreement. Such Notice shall become effective one Business Day(s) after its provision. The effective date of the Notice shall constitute the “Transaction Termination Date”. Any termination elected and noticed in accordance with this Section 4.2 shall terminate all of the Parties’ rights and obligations with respect to Green Attributes (including the Total Quantity) and those certain obligations of the Parties with respect to Electric Energy (including the Energy Quantity) for which liability or performance has not accrued, arisen or been incurred under the Agreement as of the Transaction Termination Date.

4.3 Effect of Termination.

Any termination properly exercised by a Party under Section 4.2 shall be without liability or obligation, except for those obligations and liabilities that accrued, arose, or were incurred prior to the Transaction Termination Date, and shall have no effect on the status of the EEI Agreement. Further, such termination shall not affect those obligations or liabilities with respect to the delivery of any of the Energy Quantity prior to the Transaction Termination Date, and such obligations or liabilities shall be performed or satisfied in accordance with the terms of the Agreement. For the avoidance of doubt, if the Parties’ obligations with respect to Green Attributes are terminated pursuant to this Article 4, the Green Attributes Condition Precedent shall be deemed to have failed and not been satisfied.

ARTICLE 5
COMPENSATION

5.1 Calculation Period.

The “Calculation Period” shall be each calendar month or portion thereof during the Term that Delivered Energy was conveyed to Buyer and for which associated Green Attributes will be transferred to Buyer under this Confirmation.

5.2 Monthly Cash Settlement Amount.

Buyer shall pay Seller the Monthly Cash Settlement Amount, in arrears, for each Calculation Period. The “Monthly Cash Settlement Amount” for a particular Calculation Period shall be equal to the sum of (a) plus (b) minus (c), where:

(a) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour; and

(b) equals the Green Attributes Price multiplied by the quantity of Green Attributes (in MWhs) that will be conveyed and that are associated with the Delivered Energy in the Calculation Period; and

(c) equals the sum, over all hours of the Calculation Period, of the applicable Energy Price for each hour of Delivered Energy, multiplied by the quantity of Delivered Energy during that hour.

5.3 Payment Date.

Notwithstanding anything to the contrary in Article Six of the EEI Agreement, payment of each Monthly Cash Settlement Amount by Buyer to Seller under this Confirmation shall be due and payable four (4) calendar months following the applicable Calculation Period, on or before the later of (a) the twentieth (20th) day of the month in which the Buyer receives from Seller an invoice for the Calculation Period to which the Monthly Cash Settlement Amount pertains, or (b) within ten (10) days following receipt of an invoice issued by Seller for the applicable Calculation Period or, if such day is not a Business Day, then on the next Business Day. Payment to Seller shall be made by wire transfer pursuant to the Notice section of this Agreement.

5.4 Invoices.

The invoice shall include a statement detailing the amount of Delivered Energy and associated Green Attributes transferred to Buyer during the applicable Calculation Period. For purposes of this Confirmation, Buyer shall be deemed to have received an invoice upon the receipt of a PDF format of the invoice. Invoices to Buyer will be sent by facsimile or email to:

Attn: Anne Bartoletti
Phone: (650) 350-9514
Facsimile: (650) 363-4034
Email: abartoletti@peninsulacleanenergy.com

With a copy to:

Janis Pepper
(415) 309-9206
jpepper@peninsulacleanenergy.com

ARTICLE 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Seller's Representation, Warranties, and Covenants.

- (a) **Seller Representations and Warranties.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term 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.
- (b) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term 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.
- (c) 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 the contract.
- (i) For the avoidance of doubt, the term "contract" as used in the immediately preceding paragraph means this Agreement. For further clarity, the phrase "first delivery" as used in the immediately preceding paragraph means the first date of the Green Attribute Delivery Period.
- (d) In addition to the foregoing, Seller warrants, represents and covenants, as of the Confirmation Effective Date and throughout the Delivery Term, that:
- (i) Seller has the contractual rights to sell all right, title, and interest in the Product required to be delivered hereunder;
- (ii) Seller has not sold the Product required to be delivered hereunder to any other person or entity;
- (iii) Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Confirmation);
- (iv) at the time of delivery, all rights, title, and interest in the Product required to be delivered hereunder are free and clear of all liens, taxes, claims, security interests, or other encumbrances of any kind whatsoever;
- (v) Seller shall not substitute or purchase any Product from any other generating resource other than the Project or the market for delivery hereunder; and
- (vi) the facility(s) designated by Seller as the Project and all electrical output from the facility(s) designated as the Project are, or will be by the first date of the Green Attributes Delivery Period, registered with WREGIS as RPS-

eligible.

- (e) Seller makes no representation, warranty or covenant with respect to any portfolio content category designation pursuant to California Public Utilities Code Section 399.16 nor any eligibility of the Product to qualify as excess procurement pursuant to California Public Utilities Code Section 399.13(a)(4)(B).
- (f) As of the Confirmation Effective Date and throughout the Energy Delivery Period, Seller represents, warrants and covenants that the Project meets the criteria in either (A) or (B):
 - (A) The Project either has a first point of interconnection with a California balancing authority, or a first point of interconnection with distribution facilities used to serve end users within a California balancing authority area.
 - (B) The Project has an agreement to dynamically transfer electricity to a California balancing authority.
- (g) If and to the extent that the Product sold by Seller is a resale of part or all of a contract between Seller and one or more third parties, Seller represents, warrants and covenants that the resale complies with the following conditions in (i) through (iii) below as of the Confirmation Effective Date and throughout the Energy Delivery Period:
 - (i) The original upstream third party contract(s) meets the criteria of California Public Utilities Code Section 399.16(b)(1)(A);
 - (ii) This Agreement transfers only Electric Energy and Green Attributes that have not yet been generated prior to the Confirmation Effective Date; and
 - (iii) The Delivered Energy transferred hereunder is transferred to Buyer in real time.
 - (iv) If the Project has an agreement to dynamically transfer electricity to a California balancing authority, the transactions implemented under this Agreement are not contrary to any condition imposed by a balancing authority participating in the dynamic transfer arrangement.

6.2 To the extent a change in Law occurs after the Confirmation Effective Date that causes the representations, warranties, and/or covenants in Section 6.1 and 6.2 that continue beyond the Confirmation Effective Date 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.

6.3 “Commercially reasonable efforts” as set forth in this Article 6 of this Confirmation shall not require Seller to incur out-of-pocket expenses in excess of twenty-five thousand dollars (\$25,000) in the aggregate during the Term.

ARTICLE 7 LIMITATIONS

Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND

ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN THE TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION SET FORTH IN THIS AGREEMENT OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 8 TERMINATION AND CALCULATION OF TERMINATION PAYMENT

8.1 In the event this Transaction becomes a Terminated Transaction, the Settlement Amount with respect to this Agreement shall be calculated in accordance with Section 5.2 of the EEI Agreement.

8.2 This Section 8.2 shall apply if Buyer has posted Performance Assurance in the form of cash. Upon conclusion of the Term, Seller shall pay to Buyer the Cash Collateral Interest Amount for the applicable Cash Collateral Interest Period on the Cash Collateral Interest Payment Date.

ARTICLE 9 GENERAL PROVISIONS

9.1 Buyer Audit Rights.

In addition to any audit rights provided under the EEI Agreement, Seller shall, during the Term as may be requested by Buyer, provide documentation (which may include, for example, meter data as recorded by a meter approved by the Project's governing Balancing Authority) sufficient to demonstrate that the Product has been conveyed and delivered to Buyer.

9.2 Facility Identification.

Seller shall have sole discretion throughout the Term to designate and re-designate, as applicable, the Project by selecting one or more of the facilities from Exhibit A or by identifying one or more facilities as provided herein. If Seller determines that any Product to be delivered in a calendar month shall be from a facility or facilities other than those in Exhibit A, then Seller shall provide Notice to Buyer identifying the facility or facilities that constitute the Project within three (3) Business Days prior to the delivery of Electric Energy from such facility or facilities in such calendar month.

9.3 Governing Law.

(a) Notwithstanding any provision to the contrary in the EEI Agreement, the Governing Law

applicable to this Agreement shall be as set forth herein.

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

For the purposes of Section 9.3(b) above, the words “party” and “parties” shall have the meaning ascribed to them in the preamble above, and the word “agreement” shall mean the term “Agreement” as defined in the preamble above.

9.4 Joint Powers Authority.

Party B hereby acknowledges and agrees that Party A is organized as a Joint Powers Authority in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to a Joint Powers Agreement dated December 4, 2012, as amended July 25, 2013 (the “Joint Powers Agreement”) and is a public entity separate from its members. Party A shall solely be responsible for all its debts, obligations and liabilities accruing and arising out of this Agreement and Party B agrees that it shall have no rights and shall not make any claim, take any actions or assert any remedies against any of Party A’s members, any cities participating in Party A’s aggregation program, or any of Party A’s retail customers in connection with this Agreement or any of the Transactions. The Parties hereby agree and acknowledge that the public entities designated as members or participants under the Joint Powers Agreement creating Party A shall not constitute or otherwise be deemed an Affiliate for the purpose of this Agreement.

ARTICLE 10 CONFIDENTIALITY

10.1 Without limiting the provisions of Section 10.11 of the EEI Agreement, each of Buyer and Seller may disclose the following information regarding the Transaction:

- (a) Party names;
- (b) Resource(s);
- (c) Term;
- (d) Project name, location(s) and information in Exhibit A;
- (e) Capacity of each facility designated as the Project;
- (f) The fact that a facility designated as the Project is on-line and delivering;
- (g) Delivery Point;
- (h) The quantity of Product expected or actually delivered under this Agreement; and
- (i) Information provided by Seller pursuant to Section 9.1 of this Confirmation

Except for disclosures to comply with any applicable regulation, rule, or order of the CPUC, Federal Energy Regulatory Commission, CEC, or other Governmental Authorities, each Party shall provide Notice of any disclosure made pursuant to this Article 10 to the other Party.

Party B acknowledges that Party A is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Party A acknowledges that Party B may submit information to Party A that Party B 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). Upon request or demand of any third person or entity not a party to this

Agreement (“Requestor”) to Party A pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Party A as soon practical shall notify Party B in writing that such request has been made. Party B shall be solely responsible for taking whatever legal steps are necessary to prevent release of the Requested Confidential Information to the Requestor by Party A. If Party B takes no such action, after receiving the foregoing notice from Party A, Party A shall be permitted to comply with the Requestor’s demand and is not required to defend against it. If Party B does take such action, Party A shall provide timely and reasonable cooperation to Party B if requested by Party B, for which Party B will be responsible for any agreed reasonable expenses incurred by Party A in providing such cooperation.

ACKNOWLEDGED AND AGREED TO:

**PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation**

**PENINSULA CLEAN ENERGY
AUTHORITY, a California Joint Powers
Authority, by its duly authorized officers**

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Exhibit A

PROJECT LIST

Name of Facility	Resource	Location	CEC RPS ID	Host Balancing Authority
PCWA (French Meadows Powerhouse 2)	Small Hydro	Forestville, CA	60268A	CAISO
PCWA (Oxbow Powerhouse 1)	Small Hydro	Forestville, CA	60269A	CAISO
PCWA (Hell Hole Powerhouse 1)	Small Hydro	Forestville, CA	60234A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 11	Geothermal	Middletown, CA	60025A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 12	Geothermal	Middletown, CA	60004A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 13	Geothermal	Middletown, CA	60005A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 14	Geothermal	Middletown, CA	60026A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 16	Geothermal	Middletown, CA	60006A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 17	Geothermal	Middletown, CA	60007A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 18	Geothermal	Middletown, CA	60008A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 20	Geothermal	Middletown, CA	60009A	CAISO
Geysers Power Plant - Calpine Geothermal Unit 7-8	Geothermal	Middletown, CA	60003A	CAISO
Geysers Power Plant - Sonoma/Calpine Geyser	Geothermal	Middletown, CA	60010A	CAISO
Geysers Power Plant - Calistoga Power Plant	Geothermal	Middletown, CA	60117A	CAISO
Geysers Power Plant - Aidlin Power Plant	Geothermal	Middletown, CA	60115A	CAISO
DTE Stockton	Biomass	Stockton, CA	60964A	CAISO
Woodland Biomass	Biomass	Woodland, CA	60095A	CAISO
Wadham Energy LP	Biomass	Williams, CA	60092A	CAISO
Montezuma Wind Energy Center	Wind	Rio Vista, CA	60543A	CAISO
Alpaugh 50	Solar Photovoltaic	Alpaugh, CA	60945A	CAISO
El Dorado Irrigation District	Small Hydro	Pollock Pines, CA	60601A	CAISO
El Nido Biomass Facility	Biomass	El Nido, CA	60473A	CAISO

Chowchilla Biomass Facility	Biomass	Chowchilla, CA	60471A	CAISO
Potrero Hills Landfill	Biogas Generation	Suisun City, CA	63116A	CAISO
Westlands Solar Farms	Solar Photovoltaic	Huron, CA	61755A	CAISO
Sun City Project	Solar Photovoltaic	Avenal, CA	60913A	CAISO
SFWP (South Feather Water & Power) - Kelly Ridge	Small Hydro	Oroville, CA	60266A	CAISO
SFWP (South Feather Water & Power) - Sly Creek	Small Hydro	Strawberry Valley, CA	60267A	CAISO
Sand Drag	Solar Photovoltaic	Avenal, CA	60914A	CAISO
Corcoran	Solar Photovoltaic	Corcoran, CA	60948A	CAISO
White River	Solar Photovoltaic	Alpaugh, CA	60949A	CAISO
Alpaugh North	Solar Photovoltaic	Alpaugh, CA	60946A	CAISO
Atwell Island	Solar Photovoltaic	Alpaugh, CA	60947A	CAISO
Avenal Park	Solar Photovoltaic	Avenal, CA	60912A	CAISO
Buena Vista Wind Project	Wind	Byron, CA	60124A	CAISO
Norman Ross Burgess - Three Forks Water Power Project	Small Hydro	Zenia, CA	60502A	CAISO
Big Creek Waterworks	Small Hydro	Hyampom, CA	60900A	CAISO
Dutch Flat #2 Powerhouse	Small Hydro	Nevada City, CA	60264A	CAISO
Rollins Powerhouse	Small Hydro	Grass Valley, CA	60265A	CAISO
Bowman Powerhouse	Small Hydro	Nevada City, CA	60171A	CAISO

Exhibit B

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary:

Applicant: [Insert name of Applicant and address]

Attention:

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[Insert name of Applicant]** (“Applicant”), we hereby issue in favor of **[Insert name of Beneficiary]** (the “Beneficiary”) our irrevocable standby letter of credit No. **[Insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[Insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[Insert name of bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately. This Letter of Credit will expire at our close of business on **[Insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Annex A hereto, referencing this Letter of Credit No. **[Insert number]** and stating the amount of the demand; and
2. One of the following dated statements signed by an authorized representative or officer of Beneficiary:
 - A. “[**Insert name of Beneficiary**] (the “Beneficiary”) is entitled to draw the amount of **[Spell out the amount followed by (US\$xxxxxxx.xx)]**, under Letter of Credit No. **[Insert number]** owed by **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assignee to Beneficiary under or in connection with the **[Insert identification of the EEI agreement]** Agreement between the Beneficiary and **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assignee”
 - B. “Letter of Credit No. **[Insert number]** will expire in thirty (30) days or less and **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assignee has not provided replacement Performance Assurance acceptable to **[Insert name of Beneficiary] (the Beneficiary)**”, and the amount of **[Spell out the amount followed by (US\$xxxxxxx.xx)]** of the accompanying sight draft does not exceed the amount of Performance Assurance that **[Insert name of Beneficiary’s counterparty under the EEI agreement]** or its assignee is required to transfer to the Beneficiary under the terms of the **[Insert identification of the EEI agreement]** between **[Insert name of Beneficiary’s counterparty under the EEI agreement]** and the Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. A drawing for an amount greater than the Letter of Credit Amount is allowed, however, payment shall not exceed the Letter of Credit Amount.

We engage with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored upon presentation, if presented on or before the Expiry Date (or after the Expiry Date as provided below regarding events of Force Majeure), at **[Insert bank's address for drawings]**.

All demands for payment shall be made by presentation of copies or original documents, or by facsimile transmission of documents to **[Insert fax number or numbers]**, Attention: **[Insert name of bank's receiving department]**. If a demand is made by facsimile transmission, the originals or copies of documents must follow by overnight mail, and you may contact us at **[Insert phone number(s)]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the third (3rd) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: _____ **[print or type name]**

Title: _____

[Note: All pages must contain the number of the letter of credit for identification purposes]

Annex A
Form of Sight Draft

DATE: _____

TO: [insert Issuing Bank's name]
[Insert Address]

AT SIGHT

PAY TO THE ORDER OF Pacific Gas and Electric Company

US\$ _____ (US DOLLARS _____)

“DRAWN UNDER [insert the Issuing Bank's name], IRREVOCABLE STANDBY LETTER
OF CREDIT NUMBER NO. _____ DATED _____, 2016”

PACIFIC GAS AND ELECTRIC COMPANY

AUTHORIZED SIGNATURE

GUIDELINES TO PREPARE THE SIGHT DRAFT:

1. **DATE:** ISSUANCE DATE OF THIS SIGHT DRAFT.
2. **PAY TO THE ORDER OF:** BENEFICIARY'S NAME
3. **US\$:** AMOUNT OF DRAWING IN FIGURES.
4. **US DOLLARS:** AMOUNT OF DRAWING IN WORDS.
5. **LETTER OF CREDIT NO.:** THE NUMBER OF THE STANDBY LETTER OF CREDIT THAT IS THE SUBJECT OF THIS DRAWING.
6. **DATED:** ISSUANCE DATE OF THE STANDBY LETTER OF CREDIT THAT IS THE SUBJECT OF THIS DRAWING

NOTE: BENEFICIARY'S NAME SHOULD BE PRINTED AT THE BACK OF THE SIGHT DRAFT WITH ENDORSEMENT.



**PENINSULA CLEAN ENERGY
JPA Board Correspondence**

DATE: April 26, 2017
BOARD MEETING DATE: April 27, 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 Chief Executive Officer to execute two EEI (Edison Electric Institute) Confirmation Agreements for Purchase of Resource Adequacy from Shell Energy North America (Shell). Power Delivery Term: July 1, 2017 through December 31, 2017, in an amount not to exceed \$125,000.

RECOMMENDATION:

Authorize execution of two EEI Confirmation Agreements for Purchase of Resource Adequacy from Shell Energy North America for (1) a power delivery term of July 1, 2017 through December 31, 2017, in an amount not to exceed \$85,000; and (2) a power delivery term of July 2017, in an amount not to exceed \$40,000.

BACKGROUND:

The CPUC has explained Resource Adequacy as follows:

The CPUC adopted a Resource Adequacy (RA) policy framework (PU Code section 380) in 2004 to in order to ensure the reliability of electric service in California. The CPUC established RA obligations applicable to all Load Serving Entities (LSEs) within the CPUC's jurisdiction, including investor owned utilities (IOUs), energy service providers (ESPs), and community choice aggregators (CCAs). The Commission's RA policy framework – implemented as the RA program -- guides resource procurement and promotes infrastructure investment by requiring that LSEs procure capacity so that capacity is available to the CAISO when and where needed. The CPUC's RA program now contains three distinct requirements: System RA requirements (effective June 1, 2006), Local RA requirements (effective January 1, 2007) and Flexible RA requirements (effective January 1, 2015).

System requirements are determined based on the each LSEs CEC adjusted forecast plus a 15% planning reserve margin. Local requirements are determined based on an annual CAISO study using a 1-10 weather year and an N-1-1 contingency. Flexible Requirements are based on an annual CAISO study that currently looks at the largest three hour ramp for each month needed to run the system reliably. There are two types of filings; Annual filings (filed on or around October 31st) and monthly filings (filed 45 calendar days prior to the compliance month). For the annual filings, LSEs are required to make an annual System, Local, and Flexible compliance showing for the coming year. For the System showing, LSEs are required to demonstrate that they have procured 90% of their System RA obligation for the five summer months the coming compliance year. Additionally each LSE must demonstrate that they meet 90% of its Flexible requirements and 100% of its local requirements for each month of the coming compliance year. For the monthly filings LSEs must demonstrate they have procured 100% of their monthly System and Flexible RA obligation. Additionally, on a monthly basis from May through December, LSEs must demonstrate they have met their revised (due to load migration) local obligation.

This is a regulatory requirement. PCEA is not purchasing actual energy. It is paying to ensure that there is enough generation on the grid to ensure reliability. Further, because the regulatory requirements evolve over time, PCEA is frequently having to go to market to purchase RA to ensure the regulatory requirements are met and PCEA receives the most competitive prices possible. In fact, this item was added as part of a special meeting because PCE just recently learned of its updated July requirements and it must file its compliance with the July regulatory requirement prior to the May board meeting.

DISCUSSION:

PCE, working with its consultant PEA, solicited proposals to supply System and Local RA for its third and fourth quarter 2017 needs (July-December). Proposals were received from four different suppliers.

Shell offered the most competitive response to provide sufficient quantities to meet PCE's outstanding Local RA requirements for July through December 2017 and System RA requirements for July 2017.

PCE has previously executed an EEI Master Agreement and Confirmation for RA with Shell. The Confirmation Agreement for this transaction is in substantially the same form as the one previously executed.

The Board is being asked to approve execution of a Confirmation Agreement with Shell, in forms approved by general counsel.

RESOLUTION NO. _____

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

*** * * * ***

**RESOLUTION DELEGATING AUTHORITY TO THE CHIEF EXECUTIVE OFFICER
TO EXECUTE TWO CONFIRMATION AGREEMENTS WITH SHELL ENERGY
NORTH AMERICA FOR PURCHASE OF RESOURCE ADEQUACY WITH TERMS
CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE
GENERAL COUNSEL AND (1) FOR A POWER DELIVERY TERM OF JULY 1,
THROUGH DECEMBER 31, 2017 IN AN AMOUNT NOT TO EXCEED \$85,000; AND
(2) FOR A POWER DELIVERY TERM OF JULY 2017 IN AN AMOUNT NOT TO
EXCEED \$40,000**

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

WHEREAS, as was true in 2016, PCE has ongoing commitments to purchase Resource Adequacy (“RA”); and

WHEREAS, in April 2017 PCE solicited pricing on additional volumes for System and Local Resource Adequacy for 2017; and

WHEREAS, Shell Energy North America (Shell) responded to this solicitation to fulfill a portion of PCE's additional needs for resource adequacy for July through December, 2017; and

WHEREAS, PCE has negotiated two Confirmation Agreements with Shell for the necessary volumes, reference to which should be made for further particulars; and

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the two Confirmation Agreements with Shell for RA with terms consistent with those presented, in a form approved by the General Counsel and (1) for a power deliver term covering July 1, 2017 through December 31, 2017 in an amount not to exceed \$85,000; and (2) for a power deliver term covering July 2017 in an amount not to exceed \$40,000.

* * * * *

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

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **Peninsula Clean Energy Authority** ("Buyer"), and each individually a "Party" and together the "Parties", dated as of April 26, 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 Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 24, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

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

- 1.14 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.29 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.42 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.47 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

- 1.49 “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.51 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Delivery Period	July 1, 2017 – October 31, 2017	November 1, 2017 – December 31, 2017
Name	COLGATE HYDRO UNIT 2	RE Tranquility
Location	Yuba City, CA	Cantua Creek, CA
CAISO Resource ID	COLGAT_7_UNIT 2	TRNQLT_2_SOLAR
Unit SCID	YCWA	RETRQ
Unit NQC	Varies by Month	Varies by Month
Unit EFC	N/A	N/A
Resource Type	Hydro	Solar Photovoltaic
Resource Category (1, 2, 3 or 4)	█	█
Flexible RAR Category (1, 2 or 3)	██	██
Path 26 (North or South)	North	North
Local Capacity Area (if any, as of Confirmation Effective Date)	██████████	██████████
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	██	██
Run Hour Restrictions	██	██

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

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

3.3 [REDACTED] Flexible RA Product

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

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

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

4.2 Delivery Point.

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

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

Contract Quantity (MWs)

Contract Month	RAR or LAR Contract Quantity (MWs)	RAR or LAR with Flexible RAR Contract Quantity (MWs)
January 2017	0	N/A
February 2017	0	N/A
March 2017	0	N/A
April 2017	0	N/A
May 2017	0	N/A
June 2017	0	N/A
July 2017	█	N/A
August 2017	█	N/A
September 2017	█	N/A
October 2017	█	N/A
November 2017	█	N/A
December 2017	█	N/A

4.4 Adjustments to Contract Quantity

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

4.5 Notification Deadline and Replacement Units

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

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

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

4.6 Delivery of Product

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

4.7 Damages for Failure to Provide Designated RA Capacity

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

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

4.8 Indemnities for Failure to Deliver Contract Quantity

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

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

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

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

4.9 Monthly RA Capacity Payment

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

RA CAPACITY PRICE TABLE

Contract Month	RA Capacity Price (\$/kW-month)
January 2017	\$0.00
February 2017	\$0.00
March 2017	\$0.00
April 2017	\$0.00
May 2017	\$0.00
June 2017	\$0.00
July 2017	████
August 2017	████
September 2017	████
October 2017	████
November 2017	████
December 2017	████

4.10 Allocation of Other Payments and Costs

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

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

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

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

on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

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

7.3 No Recourse Against Buyer's Member Agencies

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

ARTICLE 8. CONFIDENTIALITY

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

ARTICLE 9. BUYER’S RE-SALE OF PRODUCT

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

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

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

PENINSULA CLEAN ENERGY AUTHORITY

John W. Pillion

By: _____

By: _____

Name: John W. Pillion

Name: _____

Title: Confirmations Team Lead

Title: _____

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

This Confirmation Letter ("Confirmation") confirms the Transaction between **Shell Energy North America (US), L.P.**, a Delaware limited partnership ("Seller") and **Peninsula Clean Energy Authority** ("Buyer"), and each individually a "Party" and together the "Parties", dated as of April 26, 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 Edison Electric Institute Master Power Purchase and Sale Agreement between the Parties, effective as of June 24, 2016, along with any annexes (including Paragraph 10 of the Collateral Annex, as applicable) and amendments thereto (collectively, the "Master Agreement"). The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the Master Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

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

- 1.14 “CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.
- 1.15 “Delivery Period” has the meaning specified in Section 4.1 hereof.
- 1.16 “Delivery Point” has the meaning specified in Section 4.2 hereof.
- 1.17 “Designated RA Capacity” shall be equal to, with respect to any particular Showing Month of the Delivery Period, the Contract Quantity of Product (including any Alternate Capacity) for such Showing Month, minus (i) any reductions to Contract Quantity made by Seller pursuant to Section 4.4 and for which Seller has not elected to provide Alternate Capacity; and (ii) any reductions resulting from an event other than a Non-Excusable Event.
- 1.18 “Flexible RA Attributes” means any and all flexible resource adequacy attributes, as may be identified at any time during the Delivery Period by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward Flexible RAR, exclusive of any RA Attributes and LAR Attributes.
- 1.19 “Flexible RAR” means the flexible resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.20 “Flexible RAR Showing” means the Flexible RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.21 “Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.
- 1.22 “LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA of competent jurisdiction over the LSE. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.23 “LAR Attributes” means, with respect to a Unit, any and all local resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC, CAISO, LRA, or other Governmental Body of competent jurisdiction, associated with the physical location or point of electrical interconnection of such Unit within the CAISO Control Area, that can be counted toward LAR, exclusive of any RA Attributes and Flexible RA Attributes. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in payments made pursuant to this Transaction.
- 1.24 “LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction over the LSE.
- 1.25 “Local RAR” means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction. Local RAR may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.
- 1.26 “LRA” means Local Regulatory Authority as defined in the Tariff.
- 1.27 “LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).
- 1.28 “Master Agreement” has the meaning specified in the introductory paragraph hereof.
- 1.29 “Monthly Delivery Period” means each calendar month during the Delivery Period and shall correspond to each Showing Month.
- 1.30 “Monthly RA Capacity Payment” has the meaning specified in Section 4.9 hereof.

- 1.31 "Net Qualifying Capacity" has the meaning set forth in the Tariff.
- 1.32 "Non-Excusable Event" means any event, other than a Planned Outage and those events described under the definition of "Unit Firm" in the Master Agreement that excuse Seller's performance, that causes Seller to fail to perform its obligations under this Confirmation, including, without limitation, any such event resulting from (a) the negligence of the owner, operator or Scheduling Coordinator of a Unit, or (b) Seller's failure to comply, or failure to cause the owner, operator or Scheduling Coordinator of the Units to comply, with the terms of the Tariff with respect to the Units providing RA Attributes, Flexible RA Attributes or LAR Attributes, as applicable.
- 1.33 "Notification Deadline" has the meaning specified in Section 4.5 hereof.
- 1.34 "Outage" means any CAISO approved disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the Tariff.
- 1.35 "Planned Outage" means, subject to and as further described in the CPUC Decisions, a CAISO-approved, planned or scheduled disconnection, separation or reduction in capacity of the Unit that is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.
- 1.36 "Product" has the meaning specified in Article 3 hereof.
- 1.37 "RA Attributes" means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CPUC, CAISO or other Governmental Body of competent jurisdiction that can be counted toward RAR, exclusive of any LAR Attributes and Flexible RA Attributes.
- 1.38 "RA Capacity" means the qualifying and deliverable capacity of the Unit for RAR or LAR and, if applicable, Flexible RAR purposes for the Delivery Period, as determined by the CAISO or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RA Attributes, LAR Attributes, and if applicable, Flexible RA Attributes of the capacity provided by a Unit.
- 1.39 "RAR" means the resource adequacy requirements (other than Local RAR or Flexible RAR) established for LSEs by the CPUC pursuant to the CPUC Decisions, or by any other Governmental Body of competent jurisdiction.
- 1.40 "RAR Showings" means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CPUC Decisions, or to an LRA of competent jurisdiction.
- 1.41 "Replacement Capacity" has the meaning specified in Section 4.7 hereof.
- 1.42 "Replacement Unit" has the meaning specified in Section 4.5.
- 1.43 "Resource Category" shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.
- 1.44 "Scheduling Coordinator" has the same meaning as in the Tariff.
- 1.45 "Seller" has the meaning specified in the introductory paragraph hereof.
- 1.46 "Showing Month" shall be the calendar month during the Delivery Period that is the subject of the RAR Showing, as set forth in the CPUC Decisions. For illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.
- 1.47 "Supply Plan" means the supply plan, or similar or successor filing, that a Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other applicable Governmental Body pursuant to Applicable Laws in order for the RA Attributes or LAR Attributes of such RA Capacity to count.
- 1.48 "Tariff" means the tariff and protocol provisions of the CAISO, as amended or supplemented from time to time. For purposes of Article 5, the Tariff refers to the tariff and protocol provisions of the CAISO as they exist on the Confirmation Effective Date.

- 1.49 “Transaction” for purposes of this Agreement means the Transaction (as defined in the Master Agreement) that is evidenced by this Agreement.
- 1.50 “Unit” or “Units” shall mean the generation assets described in Article 2 hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Buyer.
- 1.51 “Unit EFC” means the effective flexible capacity that is or will be set by the CAISO for the applicable Unit.
- 1.52 “Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. The Parties agree that if the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, that for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, or (ii) the CAISO-adjusted Net Qualifying Capacity.

ARTICLE 2. UNIT INFORMATION

Applicable Contract Quantity	17MW	10MW
Name	Colgate Hydro Unit 2	RE Tranquility
Location	Yuba City, CA	Cantua Creek, CA
CAISO Resource ID	COLGAT_7_UNIT 2	TRNQLT_2_SOLAR
Unit SCID	YCWA	RETRQ
Unit NQC	Varies by Month	Varies by Month
Unit EFC	N/A	N/A
Resource Type	Hydro	Solar Photovoltaic
Resource Category (1, 2, 3 or 4)	█	█
Flexible RAR Category (1, 2 or 3)	██	██
Path 26 (North or South)	North	North
Local Capacity Area (if any, as of Confirmation Effective Date)	████████	████████
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	██	██
Run Hour Restrictions	██	██

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

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

3.3 [REDACTED] Flexible RA Product

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

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

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

4.2 Delivery Point.

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

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

Contract Quantity (MWs)

Contract Month	RAR or LAR Contract Quantity (MWs)	RAR or LAR with Flexible RAR Contract Quantity (MWs)
January 2017	0	N/A
February 2017	0	N/A
March 2017	0	N/A
April 2017	0	N/A
May 2017	0	N/A
June 2017	0	N/A
July 2017 Colgate Hydro Unit 2	■	N/A
July 2017 RE Tranquility	■	N/A
August 2017	0	N/A
September 2017	0	N/A
October 2017	0	N/A
November 2017	0	N/A
December 2017	0	N/A

4.4 Adjustments to Contract Quantity

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

4.5 Notification Deadline and Replacement Units

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

Buyer, provide Buyer with Product from one or more Replacement Units, up to the Contract Quantity, for the applicable Showing Month; provided that in each case, Seller shall notify Buyer in writing of such Replacement Units no later than the Notification Deadline. If Seller notifies Buyer in writing as to the particular Replacement Units and such Units meet the requirements of this Section 4.5, then such Replacement Units shall be automatically deemed a Unit for purposes of this Confirmation for the remaining portion of that Showing Month.

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

4.6 Delivery of Product

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

4.7 Damages for Failure to Provide Designated RA Capacity

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

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

4.8 Indemnities for Failure to Deliver Contract Quantity

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

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

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

4.9 Monthly RA Capacity Payment

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

RA CAPACITY PRICE TABLE

Contract Month	RA Capacity Price (\$/kW-month)
January 2017	\$0.00
February 2017	\$0.00
March 2017	\$0.00
April 2017	\$0.00
May 2017	\$0.00
June 2017	\$0.00
July 2017	██████
August 2017	\$0.00
September 2017	\$0.00
October 2017	\$0.00
November 2017	\$0.00
December 2017	\$0.00

4.10 Allocation of Other Payments and Costs

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

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

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. [RESERVED]

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

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

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

7.2 Seller Representations and Warranties

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

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

7.3 No Recourse Against Buyer's Member Agencies

The Parties acknowledge and agree that Buyer is a Joint Powers Authority, which is a public agency separate and distinct from its member agencies. All debts, liabilities, or obligations undertaken by Buyer in connection with the

Agreement are undertaken solely by Buyer and are not debts, liabilities, or obligations of its member agencies. Seller waives any recourse against Buyer's member agencies.

ARTICLE 8. CONFIDENTIALITY

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

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

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

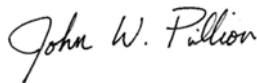
ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

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

PENINSULA CLEAN ENERGY AUTHORITY



By: _____

By: _____

Name: John W. Pillion

Name: _____

Title: Confirmations Team Lead

Title: _____