



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

PUBLIC COMMENT

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

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

ACTION TO SET AGENDA and TO APPROVE CONSENT AGENDA ITEMS

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

CLOSED SESSION

(The Board will adjourn to closed session to consider the following items at the beginning of the agenda, or at any time during the meeting as time permits. At the conclusion of closed session, the Board will reconvene in open session to report on any actions taken for which a report is required by law.)

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: Chief Executive Officer
2. RECONVENE OPEN SESSION AND REPORT OUT OF CLOSED SESSION

REGULAR AGENDA

3. Chair Report (Discussion)
4. CEO Report (Discussion)
5. Marketing and Outreach Report (Discussion)
6. Adopt Resolution to Partner with the CPUC's One Thing for the Sun Campaign (Action)
7. Regulatory and Legislative Report (Discussion)
8. Audit and Finance Committee Report (Discussion)
9. Citizens Advisory Committee Report (Discussion)
10. Board Members' Reports (Discussion)

CONSENT AGENDA

11. Approval of the Minutes for the June 22, 2017 Meeting (Action)
12. Authorize the Chief Executive Officer to execute a WSPP (Western Systems Power Pool) Confirmation Letter for Purchase of Resource Adequacy from CalPeak Power, LLC. Delivery Term: January 2018 through December 2018, in an amount not to exceed \$1,000,000 (Action)
13. Authorize the Chief Executive Officer to execute a WSPP (Western Systems Power Pool) Confirmation Letter for Purchase of Resource Adequacy from NRG Power Marketing LLC. Delivery Term: October 2017 through December 2017, in an amount not to exceed \$150,000 (Action)

Public records that relate to any item on the open session agenda for a regular board meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all members, or a majority of the members of the Board. The Board has designated the Peninsula Clean Energy 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 AUTHORITY
Board Correspondence**

DATE: July 20, 2017

BOARD MEETING DATE: July 27, 2017

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCE) Board of Directors

FROM: Dan Lieberman, Director of Marketing and Public Affairs

SUBJECT: Update on PCE's July Marketing and Outreach Activities

BACKGROUND:

The marketing team has been busy doing outreach, managing social media, and preparing for fall campaigns.

DISCUSSION:

Please Check Your NextDoor Threads

Many customers are still unaware of PCE, and see it for the first time on their PG&E bill. Our communications continue to emphasize the message of understanding your bill and the lower rates PCE offers. As you continue to check and respond to your local Next Door thread for conversations about PCE, please let us know if we can help with information.

Low-Income and Medical Baseline Customer Outreach

In July and August PCE is focusing on reaching agencies that register clients in low-income and Medical Baseline discount programs, to ensure their clients know that their discounts automatically continue. We are reaching out to:

- El Concilio de San Mateo County. PCE will co-present with them in their upcoming outreach event in East Palo Alto.
- Daly City Community Service Center
- Pacifica Resource Center
- County Aging and Adult Services
- County Commission on Disabilities
- County Commission on Aging
- Self-Help for the Elderly
- Center for Independence of Individuals with Disabilities

Please connect us with other social service organizations in your community that work with PG&E discounts, as well as with community groups and good outreach opportunities in general.

Talk Up PCE at National Night Out August 1st

If your city organizes block parties, we encourage you to stop with PCE brochures, mention the benefits of the program, and answer residents' questions.

If you'd like help, several PCE staff members will be available to work with the first board members who ask. Kudos to the City of Colma for already scheduling Kirsten to work their large event at the Serramonte Mall! This is also a good time to connect with any Citizens Advisory Committee members from your city and collaborate with them on covering events.

Outreach Events

PCE continues outreach with a strategic focus in North County to address opt-out rates in this region, as well as events that draw widely from around the County:

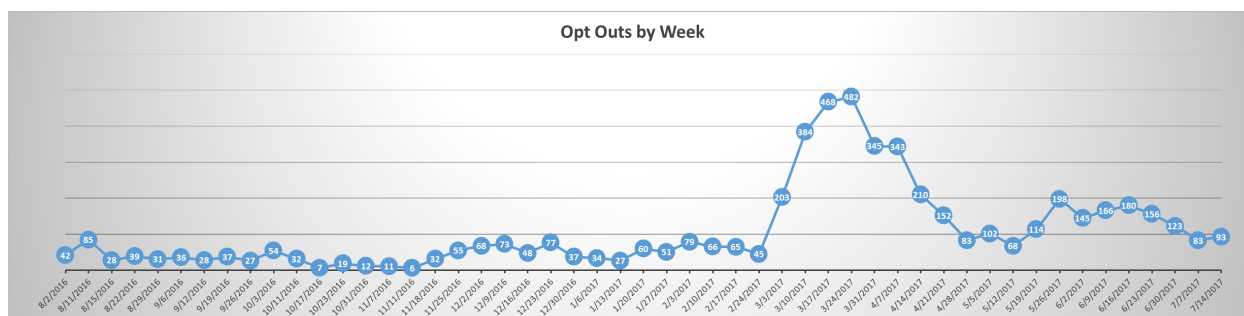
Past Month	
27-Jun	Belmont City Council ECO100 presentation
4-Jul	Tabling at Pacifica 4th of July Celebration
8-Jul	Tabling Kite Festival at Coyote Point
13-Jul	City of San Mateo Sustainability Commission presentation
19-Jul	Eggs and Issues with Pacifica Chamber of Commerce presentation
20-Jul	South San Francisco Rotary Club presentation
22-Jul	Tabling at Surf Contest in Pacifica
Upcoming	
1-Aug	Co-present with El Concilio in East Palo Alto
1-Aug	Colma National Night Out event at Serramonte Mall
3-Aug	Bayshore Friendship Seniors Club Presentation, Daly City
3-Aug	Multi-Chamber Business Expo, South San Francisco
16-Aug	Table EV test drive event at Menlo Park Block party
29-Aug	PCE Presentation at Pacifica Rotary
9-Sep	3 rd Annual Electric Vehicle Expo in San Mateo
23-Sep	Bacon and Brew, San Mateo

Special thanks to this month to:

- Margaret Goodale, Janet Creech, Grant and Jennifer Ligon, Panah and Eric Stauffer, and Anne Bartoletti for volunteering at PCE tabling events in July
- Desiree Thayer and the Burlingame Citizens Environmental Commission for talking up ECO100 in their tabling efforts, along with Donna Colson
- Diane Bailey and Menlo Spark for talking up ECO100 in their tabling efforts
- Rachael Londer of the County Office of Sustainability for working with us to correct misinformation on a NextDoor thread in her town of Foster City
- Marty Medina for working with us on a NextDoor thread in San Bruno

Enrollment Statistics

Weekly opt-outs have plateaued, but not yet at a sustainably low level. We are working to reduce the weekly opt-out rate below 50 in order to keep a steady-state given our customer churn rate. Our overall opt-out rate is 1.85%, which is still very low by industry standards.



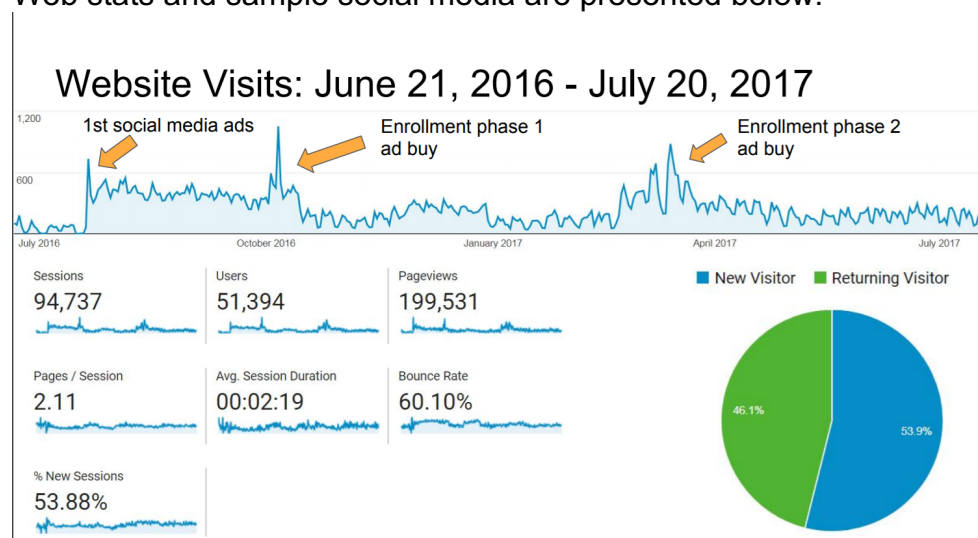
OPT OUT BY CITY/POPULATION 7/14/17				
CITY	Eligible Accts	Total	TOTAL OPT OUT %	WEEKLY INCREASE %
PORTOLA VALLEY INC	1,667	84	5.04%	0.00%
SAN BRUNO INC	16,338	461	2.82%	1.10%
PACIFICA INC	15,384	384	2.50%	0.52%
SO SAN FRANCISCO INC	24,687	609	2.47%	1.16%
HALF MOON BAY INC	4,902	114	2.33%	0.00%
DALY CITY INC	33,749	698	2.07%	3.25%
MILLBRAE INC	9,350	185	1.98%	1.65%
UNINC SAN MATEO CO	24,286	467	1.92%	2.41%
SAN CARLOS INC	14,293	265	1.85%	1.92%
BELMONT INC	11,815	215	1.82%	1.90%
SAN MATEO INC	43,607	741	1.70%	0.95%
BRISBANE INC	2,466	41	1.66%	0.00%
BURLINGAME INC	15,375	237	1.54%	1.28%
HILLSBOROUGH INC	4,046	61	1.51%	3.39%
FOSTER CITY INC	14,376	195	1.36%	1.56%
WOODSIDE INC	2,284	30	1.31%	3.45%
REDWOOD CITY INC	34,285	450	1.31%	2.04%
ATHERTON INC	2,675	33	1.23%	6.45%
COLMA INC	785	■	1.15%	0.00%
EAST PALO ALTO INC	7,745	88	1.14%	1.15%
MENLO PARK INC	15,436	172	1.11%	3.61%
Grand Total	299,551	5,539	1.85%	1.71%

Opt-ups have increased, primarily due to a recent wave of municipal enrollments in ECO100. The table below contains not completely fresh data – PCE staff are aware that there are now over 4,000 accounts in ECO100.

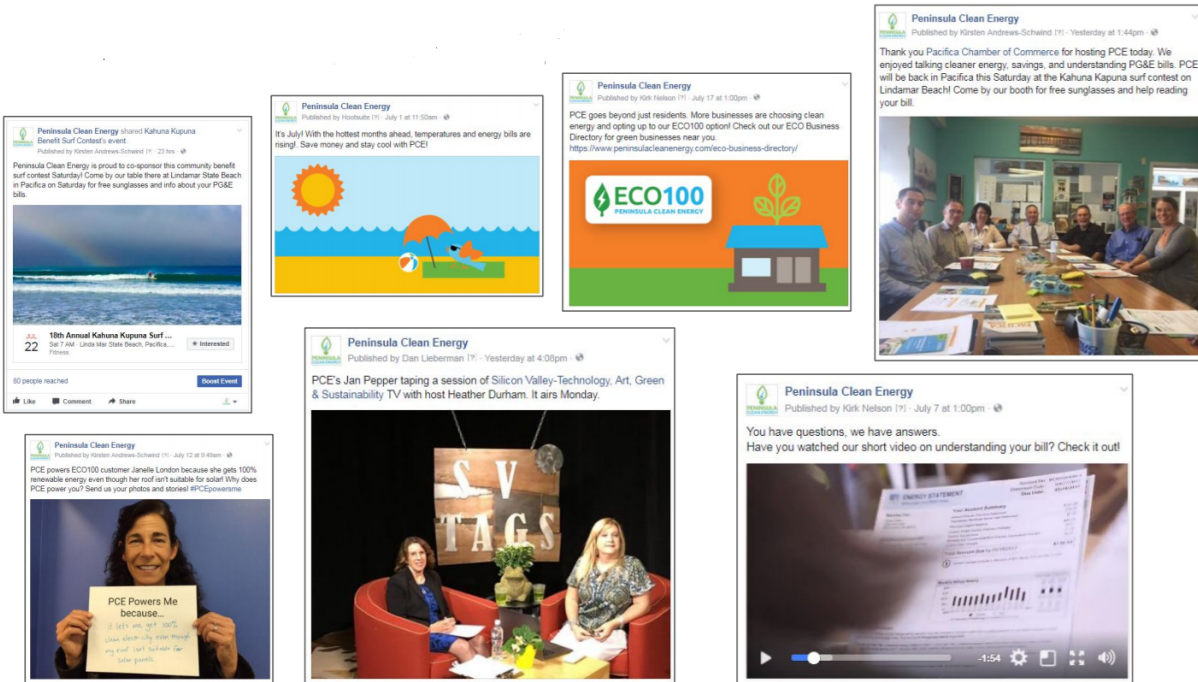
ACTIVE ACCTS BY CITY	Eligible Accts	July			
CITY	Full Territory	RES ACT	COM ACT	ACTIVE	ECO100
ATHERTON INC	2,675	2,269	198	2,467	50
BELMONT INC	11,815	10,225	887	11,112	63
BRISBANE INC	2,466	1,867	504	2,371	68
BURLINGAME INC	15,375	12,622	1,898	14,520	112
COLMA INC	785	499	263	762	
DALY CITY INC	33,749	29,890	1,827	31,717	38
EAST PALO ALTO INC	7,745	6,927	423	7,350	
FOSTER CITY INC	14,376	12,610	837	13,447	101
HALF MOON BAY INC	4,902	4,024	570	4,594	34
HILLSBOROUGH INC	4,046	3,673	132	3,805	
MENLO PARK INC	15,436	12,873	1,633	14,506	232
MILLBRAE INC	9,350	8,247	631	8,878	80
PACIFICA INC	15,384	13,625	814	14,439	80
PORTOLA VALLEY INC	1,667	1,342	135	1,477	1,388
REDWOOD CITY INC	34,285	29,320	3,332	32,652	518
SAN BRUNO INC	16,338	14,350	1,062	15,412	53
SAN CARLOS INC	14,293	11,386	2,119	13,505	165
SAN MATEO INC	43,607	37,438	3,719	41,157	235
SO SAN FRANCISCO INC	24,687	20,277	3,187	23,464	42
UNINC SAN MATEO CO	24,286	19,976	2,750	22,726	206
WOODSIDE INC	2,284	1,906	198	2,104	39
Unallocated		53	3	56	
Unallocated (cust type)				6,697	
Grand Total	299,551	255,399	27,122	289,218	3,535

Web and Social Media

Web stats and sample social media are presented below.



Social Media Samples from the Past Month



Community Snapshots

The marketing team is preparing a snapshot of PCE performance county-wide, and for each of the 20 cities. Each snapshot will include data and info-graphics about the number of customers served, opt-out rates, ECO100 upgrades, forecast annual financial savings for the community, and forecast avoided greenhouse gas emissions for the community. There will be an accompanying press release and opt-ed. Look for that in the coming weeks.

Staff Videos

PCE is bringing back Tyler the videographer who filmed the Board videos a few months ago. This time Tyler will train his video camera on staff, who will discuss key issues they work on. The video will serve as a means of disseminating information about PCE, as well as put a personal face on PCE staff.

Website Upgrades

PCE is working with Circlepoint to implement some content and style improvements to PCE's website. Look for the addition of a "Power Resources" website, among other things.

Staffing

The marketing team recently closed the application window for three positions: a Marketing Associate and two Outreach Fellows. We are now reviewing applications and conducting screening interviews. We hope to hire candidates during August and have them start immediately, if possible.

ECO100 Opt-UpDate™

Notable opt-ups to ECO100 in the past month include the cities of Belmont, Burlingame, and San Mateo. That makes a total of 12 of the 20 cities with municipal accounts opted up to ECO100. Our forecast annual demand for ECO100 is currently around 120,000 MWh.

FISCAL IMPACT:

N/A



**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: July 20, 2017

BOARD MEETING DATE: July 27, 2017

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority (PCE) Board of Directors

FROM: Dan Lieberman, Director of Marketing and Public Affairs

SUBJECT: Adopt Resolution to Partner with the CPUC's One Thing for the Sun Campaign

BACKGROUND:

On August 21, 2017 there will be a partial solar eclipse in California, including in San Mateo County. The California Public Utilities Commission and the California Energy Commission launched the One Thing for the Sun campaign to encourage Californians to take action and reduce energy demand during the eclipse. Peninsula Clean Energy can show support for this initiative by becoming a partner.

DISCUSSION:

On August 21, 2017, a partial solar eclipse with travel across California from about 9:02am until about 11:54am. The sun will be obscured from 76% in Northern California to 62% in Southern California border area, and this reduction in solar radiation will directly affect the output of California's abundant solar energy resources. While our utilities and grid operator have all the tools necessary to manage the grid during the eclipse, the One Thing Under the Sun campaign is encouraging Californians to step in to allow our hard-working sun to take a break, rather than relying on expensive and inefficient natural gas peaking power plants.

One Thing for the Sun Partnership

In addition to individual pledges, the campaign is engaging with State and Local government, clean energy industry, advocacy organizations and business to form the One Thing for the Sun Partnership. Partners pledge to work with the California Public Utilities Commission, California Energy Commission and the California Independent System Operator to develop energy saving plans that will be deployed during the Eclipse. These plans range from smart thermostat companies designing air conditioner cycling programs that will reduce the need to use natural gas to local governments activating their energy efficiency and demand response capabilities across their buildings.

Why Become a 'One Thing Partner'?

The One Thing for the Sun Partnership is a unique opportunity for institutions from across California to come together to stand up for California's clean energy future during this once in 50 year celestial event to take to save energy and reduce GHG emissions. 'One Thing Partners' will benefit from a unique branding and awareness-raising opportunity. Every Californian will witness the Eclipse, and the Partnership will seek to leverage the significant media coverage of the Eclipse to raise awareness of California's clean energy leadership and the role that its citizens, companies, institutions and governments are playing in driving this future forward.

Next Steps

In correspondence with a CPUC staff member, PCE was given the following guidance: "If you (or other CCAs) want to be a partner, just let us know what you plan to do using the table at the end of the document, and send us a logo so we can put it on the partners page, and also a URL if you want the logo to point to your site. Just a communications/ outreach tactic is fine by us." A template form appears below. Therefore, PCE staff recommend becoming a partner, and pledge to promote this campaign in our newsletter, our website, at events, and in social media.

City of XYZ

Energy Savings Plan	Target Participants	Communications Plan
<i>Brief description of primary energy savings actions planned, including any planned coordination with CPUC, CEC, CAISO or Utilities</i>	<i>Overview of target audiences and participants of Energy Savings Action Plan</i>	<i>Overview of primary communications and outreach strategies to share Energy Savings Action Opportunities</i>
-Remotely program HVAC units across city owned buildings to reduce energy usage during eclipse -Send notice to all city workers to Take the Pledge -Work with CPUC, CAISO and Utilities to validate HVAC control strategy	-Planned outreach to 750 city employees -Planned outreach to building managers with directions to modify operations of HVAC during Eclipse	-Email notice to all City workers -City Council adopts Resolution -Feature One Thing for the Sun campaign in digital communications (city facebook page) -Host Energy Savings Action Plan on city sustainability website

FISCAL IMPACT:

No direct expense; minimal staff time required.

RESOLUTION NO. _____

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

* * * * *

**RESOLUTION TO PARTER WITH THE CALIFORNIA PUBLIC UTILITIES
COMMISSION’S ONE THING FOR THE SUN CAMPAIGN**

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

WHEREAS, On August 21, 2017, a partial solar eclipse will travel across California, obscuring the sun from 76% in Northern California to 62% in Southern California border area. The reduction in solar radiation will directly affect the output of both large scale photovoltaic (PV) electric power plants and rooftop solar;

WHEREAS, California has built a large amount of renewable energy electric power plants. Nearly 10,000 megawatts of commercially operational grid connected solar PV are currently operated in California, and more will soon be completed;

WHEREAS, Initial estimates show at the eclipse peak, for the California Independent System Operator’s (ISO) balancing authority area, commercial solar production will be reduced from an estimated 8,754 megawatts to 3,143 megawatts at the maximum partial eclipse and then return to 9,046 megawatts;

WHEREAS, Over 5,800 megawatts of customer or third party-owned rooftop solar installed on homes and businesses in the same areas will be affected;

WHEREAS, the California Independent System Operator plans for events such as this, where loss of power generation not only reduces the amount of electrical energy available to customers, but also produces imbalances that can cause other critical problems. In order to avoid that type of failure, the ISO will ensure that other power sources, like gas power plants or hydro facilities are held ready to step in, or cut off power to some customers;

WHEREAS, rather than relying primarily on expensive and inefficient natural gas peaking power plants, California citizens can unplug from the grid so that we can have cleaner air, keep our system reliable, and send a message to the rest of the country that we don't have to rely on fossil fuels as the only foundation of our electricity;

NOW, THEREFORE, Peninsula Clean Energy calls on all San Mateo residents and businesses to step forward and to do at least one thing to stand in for the solar power that we enjoy from our hard working sun, including turning air conditioning thermostats up 2 to 4 degrees, shutting down three power strips not supplying electricity to appliances in use, and avoid charging electric vehicles during the period from 9:00 am to noon on August 21. We further encourage local government agencies to be leaders in this effort and assess actions that can be taken at government-owned facilities to reduce demand for electricity for the duration of the eclipse.

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**PENINSULA CLEAN ENERGY AUTHORITY
Board Correspondence**

DATE: July 20, 2017

BOARD MEETING DATE: July 27, 2017

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority (PCE) Board of Directors

FROM: Joseph Wiedman, Senior Regulatory and Legislative Analyst

SUBJECT: Update on PCE's July Regulatory and Legislative Activities

BACKGROUND:

July was a busy month on the regulatory and legislative front. As discussed in more detail below, by the time of this month's Board meeting, four pleadings were filed at the California Public Utilities Commission (CPUC), and PCE engaged on legislative advocacy concerning two major bills at the California Legislature.

DISCUSSION:

CalCCA Activites

July 21st – CalCCA Regulatory Committee Protocol and Planning Workshop (Joe Wiedman attended) – the CalCCA Regulatory Committee met in San Francisco to review regulatory procedures and policies with the goal of streamlining processes now that the Committee has been operating under current protocols for three months.

Regulatory Advocacy

A.17-06-005 – PG&E ERRA Docket – The ERRA docket sets the Power Charge Indifference Adjustment (PCIA) for the coming year which is deeply impactful to all CCAs operating in PG&E's service territory. PCE has coordinated with MCE Clean Energy (MCE), Silicon Valley Clean Energy (SVCE), and Sonoma Clean Power (SCP) to file a joint protest of PG&E's application. Our protest raised four broad issues: (1) the PCIA is not calculated based on truly unavoidable costs because PG&E has not taken any action to mitigate "stranded" costs; (2) the calculation of the PCIA contains several errors; (3) the departing load forecast by PG&E appears to be inaccurate and needs to rely on publically available data; (4) the PCIA calculation needs to be transparent and the data should be made available to certain CCA staff for verification. A prehearing conference was held on July 12th to set the scope and schedule for the docket. A scoping memo has not been issued in the docket so it is unclear which issues raised above will stay in this docket and which will be moved to the CPUC's newly opened docket on PCIA reform – R.17-06-026.

R.16-02-007 – Integrated Resource Planning (IRP) – PCE continues to engage in the development of the CPUC's rules and regulations regarding integrated resource planning required under SB 350. PCE is primarily engaged in the docket via CalCCA, but is also independently engaged in the docket given the importance of the IRP process to future efforts at PCE. On July 12th reply comments on Energy Division's proposed processes for integrated resource planning were filed by CalCCA. CalCCA's comments focused on pushing back on certain stakeholders' arguments that all load serving entities (LSEs) should be required to file the same integrated resource plan documents. CalCCA argued that such an outcome is contrary to statute which places *approval* of a CCA's IRP with the CCA's governing board while the Commission *certifies* the CCA's IRP. Thus, uniform requirements for all LSE's does not comport with statute given differences in statutory standards of review. MCE and PCE filed a separate set of reply comments providing the CPUC with further details on the precise process and outcomes of that process that we would like to see in the IRP. CalCCA was unable to sign on to our ideas in time to incorporate them into CalCCA's filing.

R.15-02-020 – Renewable Portfolio Standard (RPS) Implementation – On July 21st, PCE submitted its 2017 RPS Procurement Plan to the CPUC. This document is filed each year and lays out our plans for meeting the RPS in the coming year.

PCIA Petition to Modify (Data Access) – On June 13th, CalCCA filed a Petition to Modify

certain CPUC decisions regarding procedures and policies for accessing utility confidential data. Responses to the Petition were filed on July 13th by Calpine and California's three large investor-owned utilities. Calpine generally supported the Petition while the utilities argued that the matter should be taken up in the Commission's newly opened rulemaking on PCIA reform – R.17-06-026.

Legislative Advocacy

SB 100 (DeLeon) – While the overall goals of SB 100 to increase California's RPS to 60% by 2030 and zero greenhouse gas (GHG) emissions for the electric sector by 2045 have remained stable, the roadmap for reaching these goals continues to be areas of deep discussion among all stakeholders at the Legislature. PCE has worked closely with CalCCA's lobbyists to ensure CCAs are actively engaged in the discussions. Senator DeLeon's staff has been extremely receptive to the concerns raised by CCAs regarding the path to these goals. The author invited CalCCA to offer testimony on SB 100 during hearings on July 12th (Assembly Utilities and Energy Committee) and July 13th (Assembly Natural Resources).

SB 366 (Leyva) – SB 366 would subsidize the three large investor-owned utilities Green Tariff Shared Renewables (GTSR) programs (100% renewable energy) using AB 32 funds so that low-income CARE program participants could participate in the GTSR program. CalCCA has concerns regarding the anticompetitive impact of subsidizing GTSR programs and has engaged proactively with the author's office and stakeholders to have our concerns addressed. SB 366 was held over until next session due to concerns by certain Assemblymembers about the structure of the bill and the need for another renewable energy program. CalCCA, with PCE leading, plans to continue to engage on the bill in the future so that the program can be expanded to include CCAs. CalCCA has not taken an official position on the bill.

AB 1405 (Mullin) and SB 338 (Skinner) – The language of both of these bills mirrors each other. Both bills seek to address the steep afternoon ramp in generation needs as solar production declines by requiring the CPUC to take various actions. CalCCA team has been working with both authors to address our concerns that the bill may inadvertently undermine CCA procurement authority. The authors and CalCCA worked out mutually agreeable language to address our concerns. Accordingly, CalCCA is now neutral on the bill.

SB 618 (Bradford) – SB 618 continues to struggle in the Assembly after seeing significant revisions due to CalCAA's advocacy in the Senate. Key Assemblymembers have stated that the bill does not appear to do much now that its main provisions have been deleted. CalCCA remains neutral on the bill.

FISCAL IMPACT:

Not applicable.



**REGULAR MEETING and SPECIAL MEETING of the Board of Directors of the
Peninsula Clean Energy Authority (PCEA)
Thursday, June 22, 2017
MINUTES**

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

CALL TO ORDER

Meeting was called to order at 6:34 pm.

ROLL CALL

Present: Dave Pine, County of San Mateo, *Chair*
Carole Groom, County of San Mateo
Jeff Aalfs, Town of Portola Valley, *Vice Chair*
Rick DeGolia, Town of Atherton
Greg Scoles, City of Belmont
Donna Colson, City of Burlingame
Rae P. Gonzalez, Town of Colma
Carlos Romero, City of East Palo Alto
Catherine Mahanpour, City of Foster City
Harvey Rarback, City of Half Moon Bay
Laurence May, Town of Hillsborough
Catherine Carlton, City of Menlo Park
Ann Schneider, City of Millbrae
John Keener, City of Pacifica
Ian Bain, City of Redwood City
Marty Medina, City of San Bruno
Cameron Johnson, City of San Carlos
Rick Bonilla, City of San Mateo
Pradeep Gupta, City of South San Francisco
Daniel Yost, Town of Woodside

Absent: City of Brisbane
City of Daly City

Staff: Jan Pepper, Chief Executive Officer
George Wiltsee, Director of Power Resources

Dan Lieberman, Director of Marketing and Public Affairs
Siobhan Doherty, Manager of Contracts
Joseph Wiedman, Senior Regulatory/Legislative Analyst
Kirsten Andrews-Schwind, Communications and Outreach Manager
Leslie Brown, Manager of Customer Care
Eric Wiener, Renewable Energy Analyst
David Silberman, General Counsel
Anne Bartoletti, Board Clerk/Executive Assistant to the CEO

A quorum was established.

PUBLIC COMMENT:

No public comment

ACTION TO SET THE AGENDA AND APPROVE CONSENT AGENDA ITEMS

Motion Made / Seconded: Bonilla / Yost

Motion passed unanimously 19-0 (Absent: Brisbane, Colma, Daly City)

CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: Chief Executive Officer

2. CONFERENCE WITH LABOR NEGOTIATORS

Agency Designated Representatives: Dave Pine and David Silberman

Unrepresented Employee: Chief Executive Officer

3. RECONVENE OPEN SESSION AND REPORT OUT OF A CLOSED SESSION

The Board gave direction to labor negotiators

REGULAR AGENDA

4. APPROVAL OF EMPLOYMENT CONTRACT AMENDMENT AND COMPENSATION ADJUSTMENT FOR CHIEF EXECUTIVE OFFICER

Motion to authorize the Chair to execute an Amended and Restated Employment Agreement with the CEO in a form approved by the General Counsel that:

1. Provides for a one-time \$30,000 bonus for 2016-17 performance and for retention
2. Provides for an increase in base pay from \$225,000 to \$275,000 effective May 27, 2017

3. Provides for a review of CEO performance and that a salary survey be conducted, to determine if further compensation adjustments are warranted
4. Makes minor modification to the benefits section to reflect current benefits provided

Motion Made / Seconded: Yost / Bonilla

Motion passed 15-2 (Opposed: Mahanpour, Medina. Absent: Brisbane, Daly City, Menlo Park, Millbrae, San Carlos)

5. CHAIR REPORT

Jeff Aalfs—Vice Chair—announced that the Silicon Valley Energy Summit would be taking place Friday June 23rd at Stanford University.

6. CEO REPORT

Jan Pepper—Chief Executive Officer—announced that the job posting for the Director of Finance and Administration had been extended to July 5th, and that postings would be going up next week for a Marketing Associate and two Outreach Fellows. Jan reported that the Audit and Finance Committee met on May 31st, and that an Auditor RFP (Request for Proposal) was issued on June 21 with proposals due on July 14th. Jan also reported that the Citizens Advisory Committee (CAC) met on June 15th, and that Dan Lieberman—Director of Marketing and Public Affairs—is chairing the CalCCA Marketing and Communication Subcommittee.

7. MARKETING AND OUTREACH REPORT

Kirsten Andrews-Schwind—Communications and Outreach Manager—reported on community outreach efforts, and Dan Lieberman—Director of Marketing and Public Affairs—reported on marketing efforts.

8. REGULATORY AND LEGISLATIVE REPORT

Joseph Wiedman—Senior Regulatory/Legislative Analyst—reported on regulatory and legislative efforts, including filing a motion to dismiss the IOU's (Investment Owned Utilities') PAM (Portfolio Allocation Methodology) application on May 30th.

9. APPROVE FINAL FISCAL YEAR 2017-2018 BUDGET

Jan Pepper reported that the Audit and Finance Committee reviewed and approved the proposed 2017-2018 Fiscal Year Budget when they met on May 31st. She presented a five-year financial projection and a 2017-2018 projection of personnel additions. She announced that actual revenues exceed projections based on low opt-out rates, and that they intend to pay down outstanding loans early. She requested the Board's approval of the proposed 2017-2018 Fiscal Year Budget.

PUBLIC COMMENT:

Mark Roest, SeaWave Battery.

Motion Made / Seconded: Groom / DeGolia

Motion passed unanimously 14-0 (Absent: County of San Mateo, Brisbane, Daly City, Menlo Park, Millbrae, San Bruno, City of South San Francisco, San Carlos)

10. PROCUREMENT UPDATE

George Wiltsee—Director of Power Resources—reported on renewable project evaluation factors other than price, and outlined the projects that have been evaluated. Eric Weiner—Renewable Energy Analyst—reported on transmission cost as a function of project location. George Wiltsee presented a list of energy contracts executed to date, and supply vs load projections for 2017 through 2021. Siobhan Doherty—Manager of Contracts—reported on resource adequacy (RA) requirements, types of RA, and the status of RA contracts.

PUBLIC COMMENT:

Unidentified man

13. CITIZENS ADVISORY COMMITTEE REPORT

Desiree Baer—representative member of the Citizens Advisory Committee—reported that the CAC met for the first time on May 31st and at that meeting members were sworn in, and received an introduction to the Brown Act requirements, local program criteria, and PCE's outreach needs. Desiree reported that at the next meeting they will appoint a Chair and will receive formal training on the Brown Act.

11. INTEGRATED RESOURCE PLAN (IRP) PROGRESS UPDATE

George Wiltsee outlined the primary purposes of the IRP, and PCE's 2017 IRP schedule. Joe Wiedman reported on the California Public Utilities Commission's (CPUC's) expected process for analyzing IRPs submitted by LSEs (Load Serving Entities).

12. PCE LOCAL PROGRAM CRITERIA DEVELOPMENT

Kirsten Andrews-Schwind reported on criteria for developing local programs that would help PCE meet policies and strategic goals.

PUBLIC COMMENT:

James Tuleya,
Diane Bailey, MenloSpark
Mark Roest, SeaWave Battery and

Ted Howard, PCE Citizens Advisory Committee
Michele, East Palo Alto

14. BOARD MEMBERS' REPORTS

ADJOURNMENT

Meeting was adjourned at 9:41 pm



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: July 20, 2017
BOARD MEETING DATE: July 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: Resource Adequacy (CalPeak Power LLC)

RECOMMENDATION:

Approve Resolution to Authorize the Chief Executive Officer to execute a WSPP (Western Systems Power Pool) Confirmation Letter for Purchase of Resource Adequacy from CalPeak Power, LLC. Delivery Term: January 2018 through December 2018, in an amount not to exceed \$1,000,000 (Action)

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 each LSE's 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.

DISCUSSION:

PCE, working with its consultant PEA, solicited proposals to supply PG&E Other RA for its 2018 needs (January-December). Proposals were received from three different suppliers.

CalPeak Power LLC offered the most competitive response to provide RA to meet a portion of PCE's PG&E Other RA requirements for 2018.

The Confirmation Letter for this transaction is in substantially the same form as others negotiated for RA. Consistent with PCE policy, the confirmation includes an exclusion that no coal resources will be used to provide the RA or replacement RA.

The Board is being asked to approve execution of a Confirmation Letter with CalPeak Power LLC, in a form 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 A CONFIRMATION LETTER WITH CALPEAK POWER LLC WITH
TERMS CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED BY THE
GENERAL COUNSEL AND FOR A DELIVERY TERM OF JANUARY 1 THROUGH
DECEMBER 31, 2018, IN AN AMOUNT NOT TO EXCEED \$1,000,000;**

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

WHEREAS, launch of service for Phase I occurred in October 2016, and launch
of service for Phase II occurred in April 2017; and

WHEREAS, Peninsula Clean Energy has ongoing regulatory commitments to
purchase Resource Adequacy (“RA”); and

WHEREAS, in June 2017, consistent with its mission of reducing greenhouse
gas emissions and offering customer choice at competitive rates, Peninsula Clean

Energy administered a competitive process to select one or more RA supply contractors; and

WHEREAS, one of the providers selected by Peninsula Clean Energy through this competitive process is **CALPEAK POWER LLC** (“Contractor”), based on its desirable offering of products, pricing, and terms; and

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

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Confirmation Letter for said purchase of RA from the Contractor.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the Confirmation Letter with the Contractor with terms consistent with those presented, in a form approved by the General Counsel and for a delivery term of January 1 through December 31, 2018, in an amount not to exceed \$1,000,000.

* * * * *

[CCO-113499]

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

This Confirmation Letter ("Confirmation") confirms the Transaction between CalPeak Power LLC, a Delaware company ("Seller") and Peninsula Clean Energy Authority, a California Joint Powers Authority ("Buyer"), and each individually a "Party" and together the "Parties", dated as of June 8, 2017 (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement dated June 20, 2017, as amended from time to time (the "WSPP Agreement"). The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

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

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

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

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

ARTICLE 2. UNIT INFORMATION

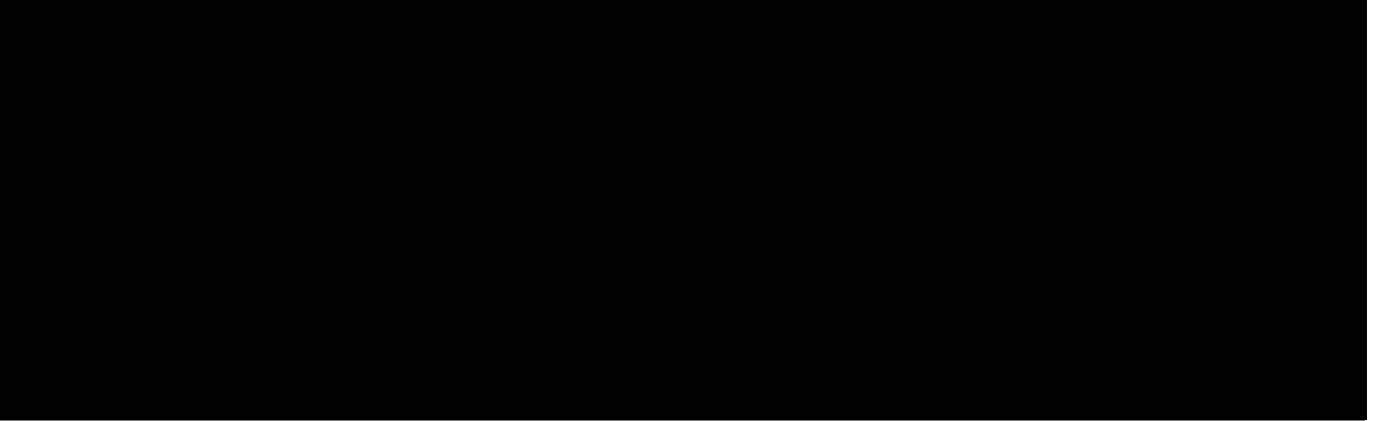
Name	Malaga Power Aggregate	CalPeak Power Panoche Unit 1
Location	Fresno, CA	Firebaugh, CA
CAISO Resource ID	MALAGA_1_PL1X2	PNOCHE_1_UNITA1
Unit SCID	TSC5	TSC6
Resource Type	Natural Gas Combustion Turbine	Natural Gas Combustion Turbine
Path 26 (North or South)	North	North
Local Capacity Area (if any, as of Confirmation Effective Date)	Greater Fresno	Greater Fresno
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	N/A	N/A
Run Hour Restrictions	N/A	N/A

ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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



ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

The Delivery Period shall be: January 1, 2018, through December 31, 2018, inclusive.

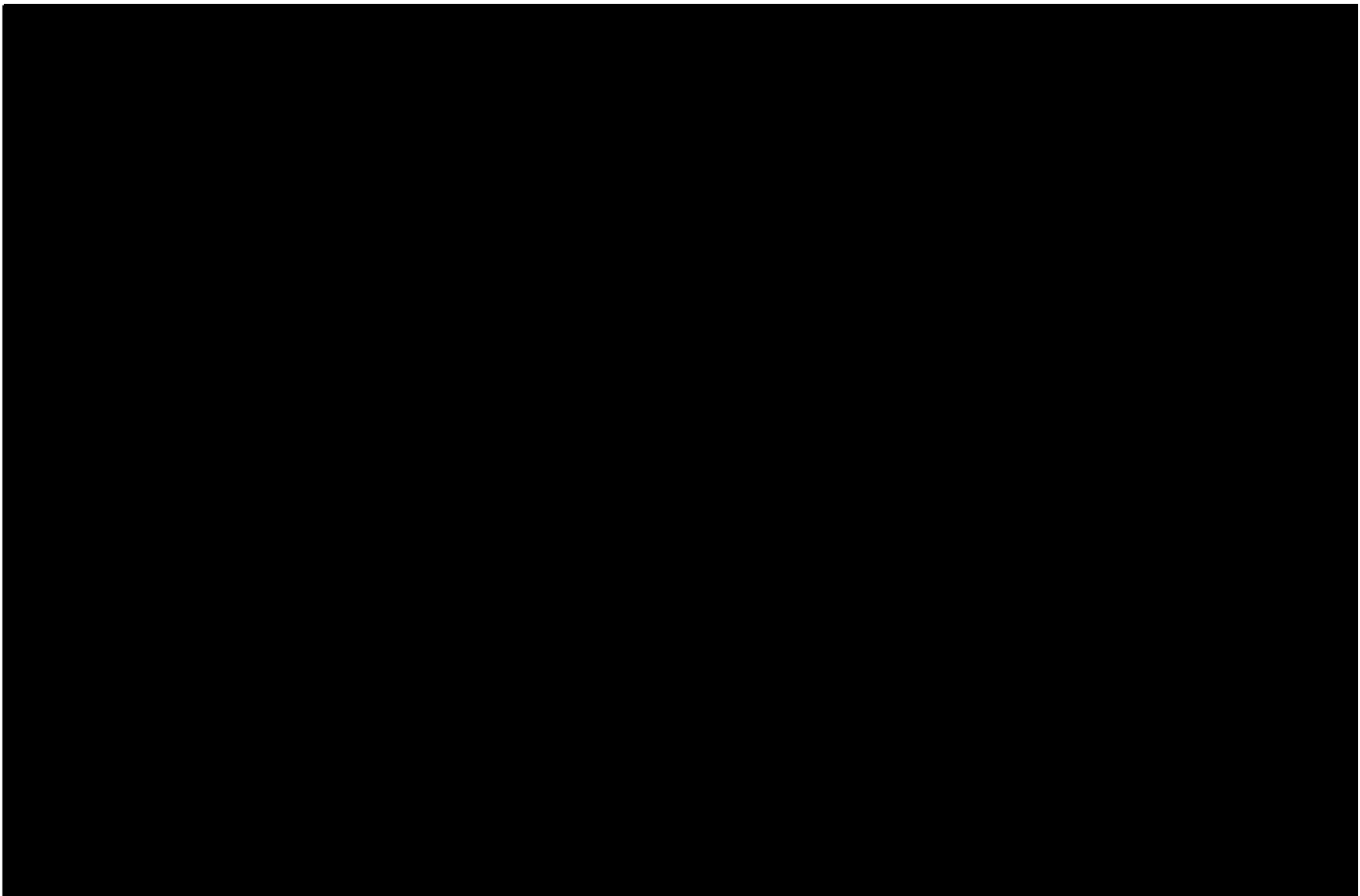
4.2 Delivery Point.

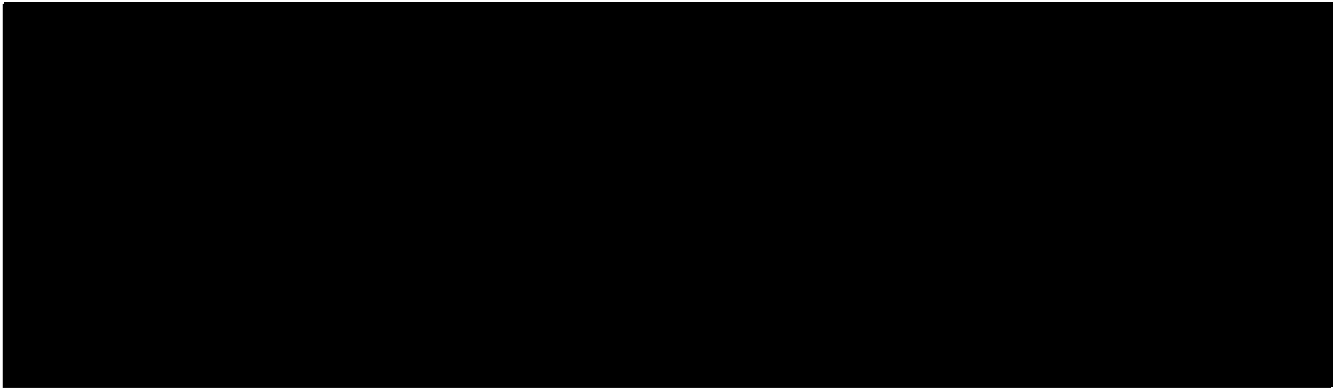
The Delivery Point for each Unit shall be the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

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

Contract Quantity (MWs)

Month/Year	MALAGA_1_PL1X2 Local and Flexible RAR Contract Quantity (MWs)	PNOCHE_1_UNITA1 Local and Flexible RAR Contract Quantity (MWs)	Total Local and Flexible RAR Contract Quantity (MWs)
January 2018			
February 2018			
March 2018			
April 2018			
May 2018			
June 2018			
July 2018			
August 2018			
September 2018			
October 2018			
November 2018			
December 2018			





4.6 Delivery of Product

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

4.7 Damages for Failure to Provide Designated RA Capacity

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

- (a) Buyer may, but shall not be required to, replace any portion of the Designated RA Capacity not provided by Seller with capacity having equivalent RA Attributes, and, if applicable, LAR Attributes and Flexible RA Attributes as the Designated RA Capacity not provided by Seller; provided, however, that if any portion of the Designated RA Capacity that Buyer is seeking to replace is Designated RA Capacity having solely RA Attributes and no LAR Attributes or Flexible RA Attributes, and no such RA Capacity is available, then Buyer may replace such portion of the Designated RA Capacity with capacity having any applicable Flexible RA Attributes and/or LAR Attributes ("Replacement Capacity") by entering into purchase transactions with one or more third parties, including, without limitation, third parties who have purchased capacity from Buyer so long as such transactions are done at prevailing market prices. Buyer shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity.
- (b) Seller shall pay to Buyer an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Buyer for any Replacement Capacity, and (B) each Capacity Replacement Price times the amount of the Designated RA Capacity neither provided by Seller nor purchased by Buyer pursuant to Section 4.7(a); and (ii) the Designated RA Capacity not provided for the applicable Showing Month times the Contract Price for that month. If Seller fails to pay these damages, then Buyer may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation pursuant to the WSPP Agreement.
- (c) In the event that Seller fails, or fails to cause a Unit's Scheduling Coordinator, to notify Buyer of a Planned Outage with respect to such Unit in accordance with Section 4.5(a), Seller agrees that it shall reimburse Buyer for the backstop capacity costs, if any, charged to Buyer by the CAISO due to Seller's failure to provide such notice, provided that (1) the amount that Seller is required to reimburse pursuant to this Section 4.7(c) shall in no event exceed the amount actually charged to Buyer by the CAISO pursuant to the Tariff for such failure; and (2) Buyer shall provide notice of such failure to Seller and afford Seller the same cure right afforded to Buyer by CAISO pursuant to the Tariff to procure Replacement Capacity prior to the backstop capacity costs being applied by CAISO.

4.8 Indemnities for Failure to Deliver Contract Quantity

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

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

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

4.9 Monthly RA Capacity Payment

In accordance with the terms of this Confirmation and Section 9 of the WSPP 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/Year	Local and Flexible RAR Capacity Price (\$/kW-month)
January 2018	
February 2018	
March 2018	
April 2018	
May 2018	
June 2018	
July 2018	
August 2018	
September 2018	
October 2018	
November 2018	
December 2018	

4.10 Allocation of Other Payments and Costs

Seller shall be entitled to receive and retain all revenues that Buyer is not expressly entitled to receive pursuant to this Agreement, including all revenues that Seller may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) revenue for ancillary services, (c) energy sales, (d) revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, Flexible RAR Showing, as may be applicable, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Buyer acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. Any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards. In accordance with Section 4.9 of this Confirmation and Section 9 of the WSPP 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 Seller does not remit to Buyer, and Seller shall pay such revenues received by it to Buyer if the Unit's Scheduling Coordinator, owner, or operator fails to remit those revenues to Buyer. If Seller or the Unit's Scheduling Coordinator, owner, or operator (as applicable) fails to pay such revenues to Buyer, Buyer may offset any amounts owing to it for such revenues against any future amounts it may owe to Seller under this Confirmation. If a centralized capacity market develops within the CAISO region, Buyer will have exclusive rights to offer, bid, or otherwise submit Designated RA Capacity provided to Buyer pursuant to this Confirmation for re-sale in such market, and retain and receive any and all related revenues.

ARTICLE 5. CAISO OFFER REQUIREMENTS

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

ARTICLE 6. [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, which are subject to agreement of such Parties, in each Party's sole discretion, to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by the CPUC, FERC, or other Governmental Body of competent jurisdiction to administer the applicable RAR, LAR and Flexible RAR, so as to maintain the purpose and intent of the Transaction agreed to by the Parties on the Confirmation Effective Date. The above notwithstanding, the Parties are aware that the CPUC and CAISO are considering changes to RAR and/or LAR in CPUC Rulemaking 11-10-023 and potentially other proceedings.

7.2 Seller Representations and Warranties

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

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

promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

ARTICLE 8. CONFIDENTIALITY

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

Seller acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Buyer acknowledges that Seller may submit information to Buyer that Seller 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). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical shall (to the extent permitted under applicable law) notify the Disclosing Party that such request has been made, by telephone call, letter sent via electronic mail, and/or by overnight carrier to the address, or email address listed at the end of the Agreement. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

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

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

ARTICLE 12. NO RECOURSE TO MEMBERS OF BUYER

Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Buyer will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Confirmation. Seller will have no rights and will not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Buyer or Buyer's constituent members, in connection with this Confirmation.

ARTICLE 13. COUNTERPARTS

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Confirmation by facsimile or electronic mail transmission (including PDF) shall be the same as delivery of a manually executed signature page.



ARTICLE 14. ENTIRE AGREEMENT; NO ORAL AGREEMENTS OR MODIFICATIONS

This Confirmation sets forth the terms of the Transaction into which the Parties have entered into and shall constitute the entire agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Transaction may be confirmed only through a Documentary Writing executed by both Parties, and no amendment or modification to this Transaction shall be enforceable except through a Documentary Writing executed by both Parties.

ACKNOWLEDGED AND AGREED TO AS OF THE CONFIRMATION EFFECTIVE DATE.

CalPeak Power LLC

Peninsula Clean Energy Authority

By:  

Name: William L. Felts

Title: Vice President

By: _____

Name: _____

Title: _____



PENINSULA CLEAN ENERGY
JPA Board Correspondence

DATE: July 20, 2017
BOARD MEETING DATE: July 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: Resource Adequacy (NRG Power Marketing LLC)

RECOMMENDATION:

Approve Resolution to Authorize the Chief Executive Officer to execute a WSPP (Western Systems Power Pool) Confirmation Letter for Purchase of Resource Adequacy from NRG Power Marketing LLC. Delivery Term: October 2017 through December 2017, in an amount not to exceed \$150,000 (Action)

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 each LSE's 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.

DISCUSSION:

PCE, working with its consultant PEA, solicited proposals to supply North System RA for its Q4 2017 needs (October-December). Proposals were received from two different suppliers.

NRG Power Marketing LLC offered the most competitive response to provide RA to meet PCE's remaining North System RA requirements for 2017.

PCE previously executed a Confirmation Letter for RA with NRG Power Marketing LLC and the Confirmation Letter for this transaction is in substantially the same form as the previous one negotiated with NRG Power Marketing LLC for RA. Consistent with PCE policy, the confirmation includes an exclusion that no coal resources will be used to provide the RA or replacement RA.

The Board is being asked to approve execution of a Confirmation Letter with NRG Power Marketing LLC, in a form 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 A CONFIRMATION LETTER WITH NRG POWER MARKETING LLC
WITH TERMS CONSISTENT WITH THOSE PRESENTED, IN A FORM APPROVED
BY THE GENERAL COUNSEL AND FOR A DELIVERY TERM OF OCTOBER 1
THROUGH DECEMBER 31, 2017, IN AN AMOUNT NOT TO EXCEED \$150,000;**

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

WHEREAS, launch of service for Phase I occurred in October 2016, and launch
of service for Phase II occurred in April 2017; and

WHEREAS, Peninsula Clean Energy has ongoing regulatory commitments to
purchase Resource Adequacy (“RA”); and

WHEREAS, in July 2017, consistent with its mission of reducing greenhouse gas emissions and offering customer choice at competitive rates, Peninsula Clean Energy administered a competitive process to select one RA supply contractors; and

WHEREAS, the provider selected by Peninsula Clean Energy through this competitive process is **NRG POWER MARKETING LLC** ("Contractor"), based on its desirable offering of products, pricing, and terms; and

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

WHEREAS, the Board wishes to delegate to the Chief Executive Officer authority to execute the aforementioned Confirmation Letter for said purchase of RA from the Contractor.

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the Board delegates authority to the Chief Executive Officer to execute the Confirmation Letter with the Contractor with terms consistent with those presented, in a form approved by the General Counsel and for a delivery term of October 1 through December 31, 2017, in an amount not to exceed \$150,000.

* * * * *

[CCO-113499]

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

This Confirmation Letter ("Confirmation") confirms the Transaction between NRG Power Marketing LLC ("Seller") and Peninsula Clean Energy, a California Joint Powers Authority ("Buyer") and each individually a "Party" and together the "Parties", dated as of July 11, 2017, (the "Confirmation Effective Date") in which Seller agrees to provide to Buyer the right to the Product, as such term is defined in Article 3 of this Confirmation.

This Transaction is governed by the Western System Power Pool Agreement effective June 20, 2017 (the "WSPP Agreement") between the Parties. The WSPP Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". Capitalized terms used but not otherwise defined in this Confirmation have the meanings ascribed to them in the WSPP Agreement or the Tariff (defined herein below).

ARTICLE 1. DEFINITIONS

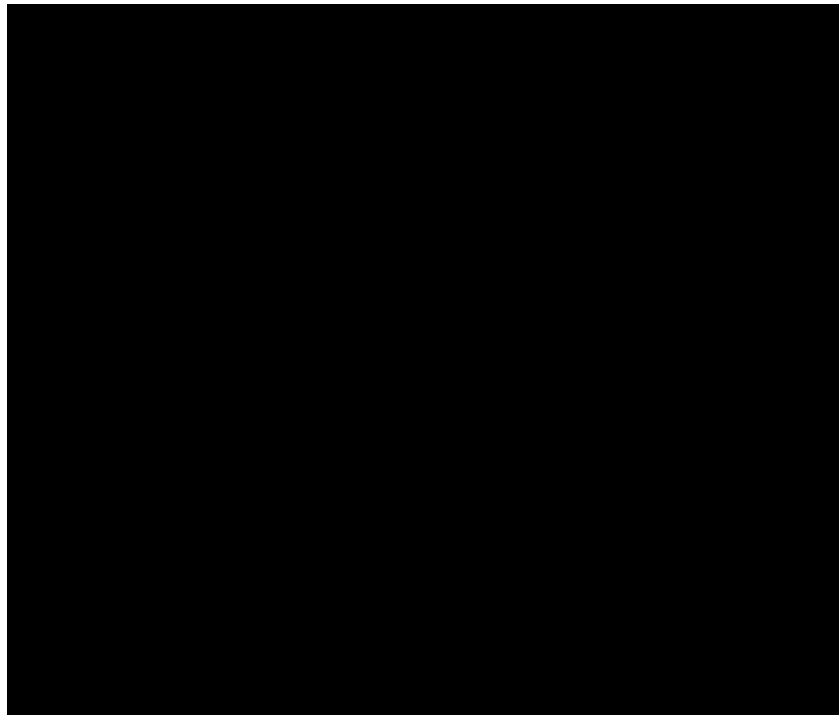
- 1.1 "Alternate Capacity" means any replacement Product which Seller has elected to provide to Buyer from a Replacement Unit in accordance with the terms of Section 4.5.
- 1.2 "Applicable Laws" means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by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

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

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

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

ARTICLE 2. UNIT INFORMATION



ARTICLE 3. RESOURCE ADEQUACY CAPACITY PRODUCT

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

3.1 RA Attributes, LAR Attributes and Flexible RA Attributes

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

3.2 Contingent Firm RA Product

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

ARTICLE 4. DELIVERY AND PAYMENT

4.1 Delivery Period

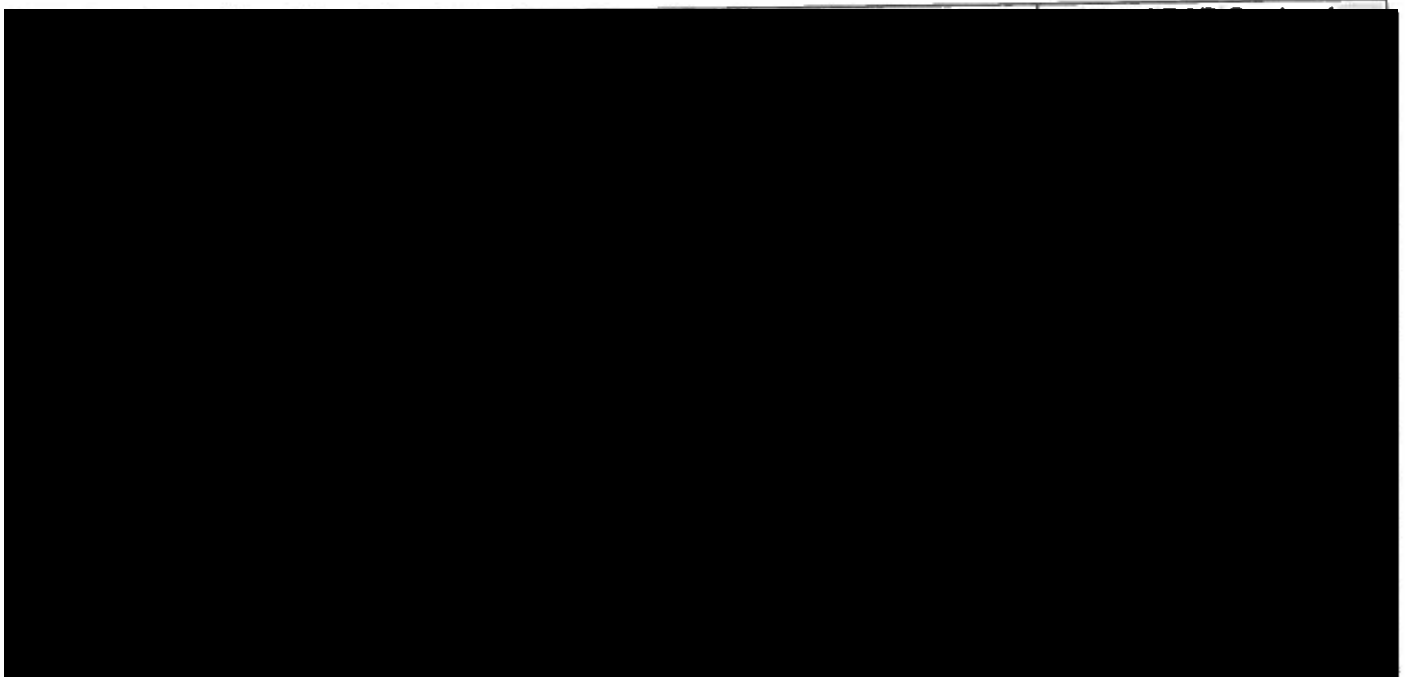
The Delivery Period shall be: October 1, 2017, through December 31, 2017, inclusive.

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)

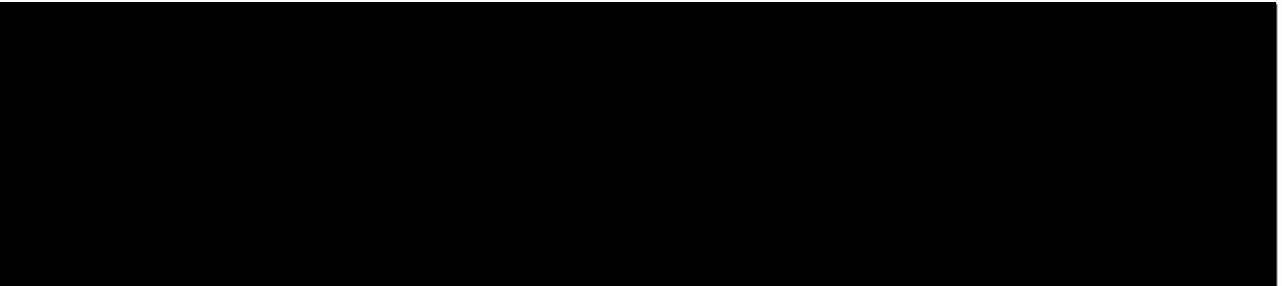


4.4 Adjustments to Contract Quantity

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

4.5 Notification Deadline and Replacement Units

- (a) The "**Notification Deadline**" in respect of a Showing Month shall be ten (10) Business Days before the earlier of the relevant deadlines for (a) the corresponding RAR Showings, Flexible RAR Showings and/or LAR Showings for such Showing Month, and (b) the CAISO Supply Plan filings applicable to that Showing Month.



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

4.6 Delivery of Product

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

4.7 Damages for Failure to Provide Designated RA Capacity

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

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

4.8 Indemnities for Failure to Deliver Contract Quantity

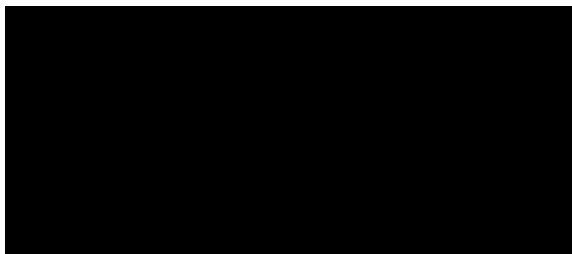
Subject to any adjustments made pursuant to Section 4.4, Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC or the CAISO, resulting from any of the following:

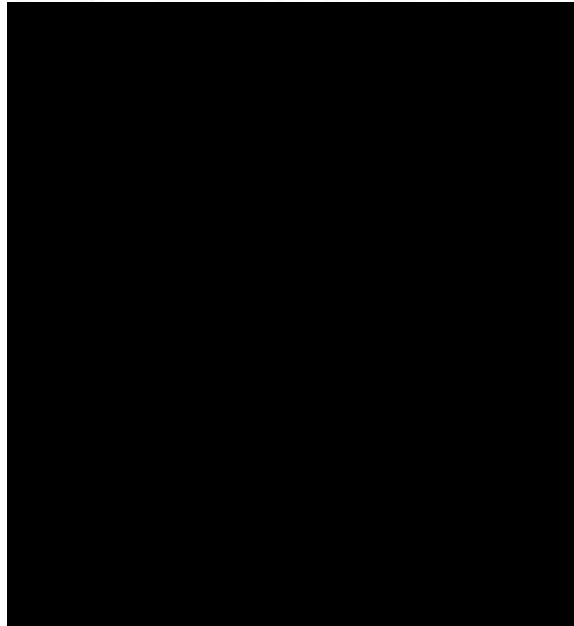
- (a) Seller's failure to provide any portion of the Designated RA Capacity due to a Non-Excusable Event;
- (b) Seller's failure to provide notice of the non-availability of any portion of Designated RA Capacity as required under Sections 3.2, 4.4 and 4.5; or
- (c) A Unit Scheduling Coordinator's failure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

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

4.9 Monthly RA Capacity Payment

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





4.10 Allocation of Other Payments and Costs

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

ARTICLE 5. CAISO OFFER REQUIREMENTS

During the Delivery Period, except to the extent any Unit is in an Outage, or is affected by an event other than a Non-Excusable Event, that results in a partial or full outage of that Unit, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Designated RA Capacity in compliance with the Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner,

or operator, as applicable, to perform all obligations under the Tariff that are associated with the sale of Designated RA Capacity hereunder. Buyer shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

ARTICLE 7. OTHER BUYER AND SELLER COVENANTS

7.1 Further Assurances

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

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

7.2 Seller Representations and Warranties

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

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Buyer, the CAISO, the CPUC, a LRA of competent jurisdiction, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity has been committed by Seller to any third party in order to satisfy such third party's applicable RAR, LAR or Flexible RAR or analogous obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity has been committed by Seller in order to satisfy RAR, LAR or Flexible RAR, or analogous obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area, or is under the control of CAISO;

- (e) The owner or operator of each Unit is obligated to maintain and operate each Unit using Good Utility Practice and, if applicable, in accordance with General Order 167 as outlined by the CPUC in the Enforcement of Maintenance and Operation Standards for Electric Generating Facilities Adopted May 6, 2004, and is obligated to abide by all Applicable Laws in operating such Unit; provided, that the owner or operator of any Unit is not required to undertake capital improvements, facility enhancements, or the construction of new facilities;
- (f) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (g) If Seller is the owner of any Unit, the aggregation of all amounts of applicable LAR Attributes, RA Attributes and Flexible RA Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (h) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's Scheduling Coordinator is obligated to, comply with Applicable Laws, including the Tariff, relating to RA Capacity, RAR, LAR and Flexible RAR;
- (i) Seller has notified the Scheduling Coordinator of each Unit that Seller has transferred the Designated RA Capacity to Buyer, and the Scheduling Coordinator is obligated to deliver the Supply Plans in accordance with the Tariff;
- (j) Seller has notified the Scheduling Coordinator of each Unit that Seller is obligated to cause each Unit's Scheduling Coordinator to provide to the Buyer, by the Notification Deadline, the Designated RA Capacity of each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period; and
- (k) Seller has notified each Unit's Scheduling Coordinator that Buyer is entitled to the revenues set forth in Section 4.10 of this Confirmation, and such Scheduling Coordinator is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

7.3 No Recourse Against Buyer's Member Agencies

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

ARTICLE 8. CONFIDENTIALITY

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

The Parties acknowledges that Peninsula Clean Energy is a public agency subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Peninsula Clean Energy acknowledges that the other party may submit information to Peninsula Clean Energy that the other party considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). The other party acknowledges that Peninsula Clean Energy may submit to the other party information that Peninsula Clean Energy considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Contract ("Requestor") for production, inspection and/or copying of information designated by a Disclosing Party as Confidential Information, the Receiving Party as soon practical but within three (3) business days of receipt of the

request, shall notify the Disclosing Party that such request has been made, by telephone call, letter sent via facsimile and/or by US Mail to the address and facsimile number listed on the cover page of the Contract. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action, after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

ARTICLE 9. BUYER'S RE-SALE OF PRODUCT

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

ARTICLE 10. MARKET BASED RATE AUTHORITY

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

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

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

NRG Power Marketing LLC

By: _____

Name: Matthew Samsel

Title: Vice President

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

Peninsula Clean Energy

By: _____

Name: _____

Title: _____

