

Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) REVISED BOARD RETREAT AGENDA

Saturday, September 25, 2021 9:00 a.m.

Zoom Link: https://pencleanenergy.zoom.us/j/85131570337
Meeting ID: 851-3157-0337
Passcode: tf054YRD
Phone: +1(669)900-9128

NOTE: Please see attached document for additional detailed teleconference instructions.

PCEA shall make every effort to ensure that its video conferenced meetings are accessible to people with disabilities as required by Governor Newsom's March 17, 2020 Executive Order N-29-20. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials should contact Nelly Wogberg, Board Clerk, at least 2 working days before the meeting at nwogberg@peninsulacleanenergy.com. Notification in advance of the meeting will enable PCEA to make best efforts to reasonably accommodate accessibility to this meeting and the materials related to it.

If you wish to speak to the Audit and Finance Committee, please use the "Raise Your Hand" function in the Zoom platform or press *6 if you phoned into the meeting. If you have anything that you wish to be distributed to the Audit and Finance Committee and included in the official record, please send to nwogberg@peninsulacleanenergy.com.

CALL TO ORDER / ROLL CALL

PUBLIC COMMENT

This item is reserved for persons wishing to address the Committee on any PCEA-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Committee are customarily limited to two minutes per speaker. The Committee Chair may increase or decrease the time allotted to each speaker.

ACTION TO SET AGENDA AND TO APPROVE CONSENT AGENDA ITEMS

1. Approval of the Minutes for the August 26, 2021 Meeting

REGULAR AGENDA

- 2. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase and Sale Agreement for Renewable Supply with Chaparral Solar, LLC, and any Necessary Ancillary Documents with a Delivery Term of 15 Years Starting at the Delivery Commencement Date on or About December 31, 2023, in an Amount Not to Exceed \$230 Million (Action)
- 2A. Adopt Findings Pursuant to AB 361 to Continue Fully Teleconferenced Board Meetings
 Due to Health Risks Posed by In-Person Meetings (Action)

- 3. Citizen's Advisory Committee Report to Recommend Amending Peninsula Clean Energy's Goal to be 100% Greenhouse Gas-Free by 2035 (5 Mins)
- 4. First Annual Strategic Plan Update (30-45 mins)
- 5. Peninsula Clean Energy's Strategic Priorities:
 - A. Discussion on Approach to Delivering 24/7 Renewable Energy by 2025 (1.5-2 hours)
 - B. Discussion of the Peninsula Clean Energy's Energy Program Focus on the 2045 State Goal of 100% Greenhouse-Gas Free (1 hour)

INFORMATIONAL REPORTS

- 6. Marketing, Outreach Activities, and Customer Care Monthly Report
- 7. Regulatory Policy Activities Monthly Report
- 8. Legislative Activities Monthly Report
- 9. Community Energy Programs Monthly Report
- 10. Energy Supply Procurement Monthly Report
- 11. California Community Power (CCP) Joint Powers Authority Report
- 12. Industry Acronyms and Terms

ADJOURNMENT

Public records that relate to any item on the open session agenda are available for public inspection. The records are available at the Peninsula Clean Energy offices or on PCEA's Website at: https://www.peninsulacleanenergy.com.

Instructions for Joining a Zoom Meeting via Computer or Phone

Best Practices:

- Please mute your microphone when you are not speaking to minimize audio feedback
- If possible, utilize headphones or ear buds to minimize audio feedback
- If participating via videoconference, audio quality is often better if you use the dial-in option (Option 2 below) rather than your computer audio

Options for Joining

- A. Videoconference with Computer Audio see Option 1 below
- B. Videoconference with Phone Call Audio- see Option 2 below
- C. Calling in via Telephone/Landline see Option 3 below

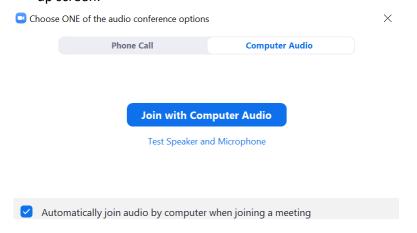
Videoconference Options:

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Option 1 Videoconference with Computer Audio:

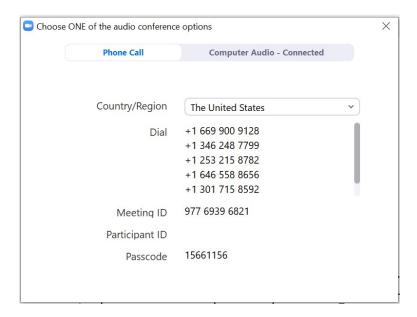
- 1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/85131570337
- 2. The Zoom application will open on its own or you will be instructed to open Zoom.
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- 4. Click the blue, "Join with Computer Audio" button
- 5. In order to enable video, click on "Start Video" in the bottom left-hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

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- 1. From your computer, click on the following link that is also included in the Meeting Calendar Invitation: https://pencleanenergy.zoom.us/j/85131570337
- 2. The Zoom Application will open on its own or you will be instructed to Open Zoom.
- 3. After the application opens, the pop-up screen below will appear asking you to choose ONE of the audioconference options. Click on the Phone Call option at the top of the pop-up screen.



- 1. Please dial +1 (669) 900-9128
- 2. You will be instructed to enter the meeting ID: 851-3157-0337 followed by #
- 3. You will be instructed to enter in your participant ID. Your participant ID is unique to you and is what connects your phone number to your Zoom account.
- 4. After a few seconds, your phone audio should be connected to the Zoom application on your computer.
- 5. In order to enable video, click on "Start Video" in the bottom left hand corner of the screen. This menu bar is also where you can mute/unmute your audio.

Audio Only Options:

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Dial +1 (669) 900-9128

You will be instructed to enter the meeting ID: 851-3157-0337 followed by #

You will be instructed to enter the meeting passcode 32888631 followed by #



Regular Meeting of the Board of Directors of the Peninsula Clean Energy Authority (PCEA) MINUTES

Thursday, August 26, 2021 | 6:30 p.m. Zoom Video Conference and Teleconference

CALL TO ORDER

Meeting was called to order at 6:31 p.m.

ROLL CALL

Present:

Dave Pine, County of San Mateo Carole Groom, County of San Mateo Rick DeGolia, Atherton, Chair Charles Stone, Belmont Coleen Mackin, Brisbane Donna Colson, Burlingame, Vice Chair Roderick Daus-Magbual, Daly City Carlos Romero, East Palo Alto Sam Hindi, Foster City Harvey Rarback, Half Moon Bay Tom Faria, Los Banos Betsy Nash, Menlo Park Ann Schneider, Millbrae Tygarjas Bigstyck, Pacifica Jeff Aalfs, Portola Valley Michael Smith, Redwood City Marty Medina, San Bruno Laura Parmer-Lohan, San Carlos Rick Bonilla, San Mateo James Coleman, South San Francisco

Pradeep Gupta, Director Emeritus John Keener, Director Emeritus

Absent:

Raquel Gonzalez, Town of Colma Laurence May, Town of Hillsborough Jennifer Wall, Town of Woodside

Staff:

Jan Pepper, Chief Executive Officer Andy Stern, Chief Financial Officer Leslie Brown, Director of Customer Care KJ Janowski, Director of Marketing and Community Relations Siobhan Doherty, Director of Power Resources Marc Hershman, Director of Government **Affairs** Rafael Reyes, Director of Community Energy **Programs** Jeremy Waen, Director of Regulatory Policy David Silberman, General Counsel Darren Goode, Public Relations Consultant Shayna Barnes, Operations Specialist Phillip Kobernick, Programs Manager Dave Fribush, DER Technical Advisor Nelly Wogberg, Board Clerk

A quorum was established.

PUBLIC COMMENT

None.

ACTION TO SET AGENDA and APPROVE CONSENT AGENDA ITEMS

MOTION: Director Bonilla moved, seconded by Director Stone to set the Agenda, and approve Agenda Item Numbers 1-4, and 6.

- 1. Approval of 2020 Power Content Label
- 2. Approval of a Renewal of Contract with Maher Accountancy
- 3. Approval of a Renewal of Contract with County of San Mateo Office of Sustainability for Climate Action Planning Technical Assistance
- 4. Approval of a Contract Amendment for David Fribush
- 6. Approval of the Minutes for the June 24, 2021 Meeting

MOTION PASSED FOR AGENDA ITEMS 1-4: 20-0 (Absent: Colma, Hillsborough, Woodside) **MOTION PASSED FOR AGENDA ITEM 6:** 19-0 (Absent: Colma, Hillsborough, Woodside; Abstain: Foster City)

Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Pine	Х			
San Mateo County	Groom	Х			
Atherton	DeGolia	Х			
Belmont	Stone	х			
Brisbane	Mackin	Х			
Burlingame	Colson	Х			
Colma	Gonzalez			Х	
Daly City	Daus-Magbual	Х			
East Palo Alto	Romero	Х			
Foster City	Hindi	х			Minutes
Half Moon Bay	Rarback	Х			
Hillsborough	May			Х	
Los Banos	Faria	Х			
Menlo Park	Nash	Х			
Millbrae	Schneider	Х			
Pacifica	Bigstyck	Х			
Portola Valley	Aalfs	Х			
Redwood City	Hale	Х			
San Bruno	Medina	х			

San Carlos	Parmer-Lohan	х		
San Mateo	Bonilla	х		
South San		х		
Francisco	Coleman			
Woodside	Wall		Х	
	Totals	20	3	1 (Abstaining
				on Minutes)

Chair DeGolia announced that Agenda Item Number 5, "Resolution Approving the Sixth Amended and Restated Agreement with Janis C. Pepper" will be heard following Agenda Item Number 9.

REGULAR AGENDA

7. Chair Report

Chair DeGolia reported that the Board Meeting in July was cancelled.

8. CEO Report

Jan Pepper, CEO, provided a staffing update, an update on the Distributed Energy Resources (DER) projects, an update on Power on Peninsula, an update on the Disadvantaged Communities – Green Tariff (DAC-GT) program in Los Banos, updates on legislative activities including SB 612, SB 68, and AB 843, and an update on upcoming Peninsula Clean Energy meetings including the remote Board Retreat on September 25th at 9:00 am.

9. Citizens Advisory Committee Report (Discussion)

Desiree Thayer, Citizens Advisory Committee (CAC) Chair, updated the Board on the CAC's July and August meetings. An item of interest to the Committee was the On-Bill Financing program where the Committee made a recommendation to the Board. Desiree introduced the new CAC Chair, Ray Larios and Vice Chair, Morgan Chaknova.

5. Resolution Approving the Sixth Amended and Restated Agreement with Janis C. Pepper (Action)

Chair DeGolia shared a statement on the process of reviewing Jan Pepper's employment agreement. Director Emeritus Pradeep Gupta acknowledged Jan Pepper's contributions to Peninsula Clean Energy.

MOTION: Director Bonilla moved, seconded by Director Romero to approve the Sixth Amended and Restated Agreement with Janis C. Pepper, extending the date of her term of employment by one (1) year from the current June 30, 2023, through June 30, 2024 and providing an increase in her annual base salary of five percent (5%) to \$357,210.00, effective July 1, 2021.

MOTION PASSED: 19-0 (Absent: Colma, Hillsborough, San Carlos, Woodsi	MOTION PASSED: 19-0	(Absent: Colma	, Hillsborough, San	Carlos, Woodside
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Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Dave Pine	Х			
San Mateo County	Carole Groom	Х			
Atherton	Rick DeGolia	Х			
Belmont	Charles Stone	Х			
Brisbane	Coleen Mackin	Х			
Burlingame	Donna Colson	Х			
Colma	Raquel Rae Gonzalez			Х	
Daly City	Roderick Daus-Magbual	Х			
East Palo Alto	Carlos Romero	Х			
Foster City	Sam Hindi	Х			
Half Moon Bay	Harvey Rarback	Х			
Hillsborough	Laurence May			Х	
Los Banos	Tom Faria	Х			
Menlo Park	Betsy Nash	Х			
Millbrae	Ann Schneider	Х			
Pacifica	Tygarjas Bigstyck	Х			
Portola Valley	Jeff Aalfs	Х			
Redwood City	Giselle Hale	Х			
San Bruno	Marty Medina	Х			
San Carlos	Laura Parmer-Lohan			Х	
San Mateo	Rick Bonilla	Х			
South San Francisco	James Coleman	х			
Woodside	Jennifer Wall			Х	
	Totals	19		4	

10. Approval of a Resolution Delegating Authority to Chief Executive Officer to Execute Agreements for Renewable Supply and Resource Adequacy with Geysers Power Company, LLC and any Necessary Ancillary Documents with a Resource Adequacy Term Beginning January 1, 2022 and a Power Delivery Term Beginning July 1, 2022, Both Ending June 30, 2032, in an Amount Not-to-Exceed \$210 Million (Action)

Chelsea Keys, Power Resources Manager, gave a presentation on the Geysers Geothermal Power Purchase Agreement including the contract structure, generation profile, and its fit within the Strategic Plan. Chelsea answered questions from Board Members on the environmental history of the plant, the amount of power procured, and the 24/7 availability of the power procured.

MOTION: Director Schneider moved, seconded by Director Groom to approve Resolution delegating authority to the Chief Executive Officer to Execute Agreements for Renewable Supply and Resource Adequacy with Geysers Power Company, LLC, and any necessary ancillary documents. The Agreements' terms are as follows: Resource Adequacy Delivery Term: January

1, 2022 through June 30, 2032; Power Delivery Term: July 1, 2022 through June 30, 2032, in an amount not to exceed \$210,000,000.

MOTION PASSED: 20-0 (Absent: Colma, Hillsborough, Woodside)

Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Dave Pine	Х			
San Mateo County	Carole Groom	Х			
Atherton	Rick DeGolia	Х			
Belmont	Charles Stone	Х			
Brisbane	Coleen Mackin	Х			
Burlingame	Donna Colson	Х			
Colma	Raquel Rae Gonzalez			Х	
Daly City	Roderick Daus-Magbual	Х			
East Palo Alto	Carlos Romero	Х			
Foster City	Sam Hindi	Х			
Half Moon Bay	Harvey Rarback	Х			
Hillsborough	Laurence May			Х	
Los Banos	Tom Faria	Х			
Menlo Park	Betsy Nash	Х			
Millbrae	Ann Schneider	Х			
Pacifica	Tygarjas Bigstyck	Х			
Portola Valley	Jeff Aalfs	Х			
Redwood City	Giselle Hale	Х			
San Bruno	Marty Medina	Х			
San Carlos	Laura Parmer-Lohan	Х			
San Mateo	Rick Bonilla	Х			
South San Francisco	James Coleman	х			
Woodside	Jennifer Wall			х	
	Totals	20		3	

11. Approval of Expanded Pilot of School District Energy/Sustainability Dashboards (Action)

KJ Janowski, Director of Marketing and Community Relations, gave a presentation on the expanded pilot of the school district energy/sustainability dashboard. Andra Yeghoian, Environmental Literacy and Sustainability Coordinator with the San Mateo County of Education, expanded on the benefits of the dashboard or multiple stakeholders and recapped the results of the pilot with the San Carlos School District. KJ shared information on additional school districts interested in joining the pilot, the pilot process, and projected costs.

MOTION: Director Parmer-Lohan moved, seconded by Director Pine to delegate authority to the Chief Executive Officer to finalize and execute a Contract with San Mateo County Office of Education (SMCOE) for up to \$249,660 over two (2) years to expand the school district energy and sustainability pilot that initially took place with the San Carlos School District in 2019-2020.

MOTION PASSED: 20-0 (Absent: Colma, Hillsborough, Woodside)

Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Dave Pine	Х			
San Mateo County	Carole Groom	Х			
Atherton	Rick DeGolia	Х			
Belmont	Charles Stone	Х			
Brisbane	Coleen Mackin	Х			
Burlingame	Donna Colson	Х			
Colma	Raquel Rae Gonzalez			Х	
Daly City	Roderick Daus-Magbual	Х			
East Palo Alto	Carlos Romero	Х			
Foster City	Sam Hindi	Х			
Half Moon Bay	Harvey Rarback	Х			
Hillsborough	Laurence May			Х	
Los Banos	Tom Faria	Х			
Menlo Park	Betsy Nash	Х			
Millbrae	Ann Schneider	Х			
Pacifica	Tygarjas Bigstyck	Х			
Portola Valley	Jeff Aalfs	Х			
Redwood City	Giselle Hale	Х			
San Bruno	Marty Medina	Х			
San Carlos	Laura Parmer-Lohan	Х			
San Mateo	Rick Bonilla	Х			
South San Francisco	James Coleman	Х			
Woodside	Jennifer Wall			х	
	Totals	20		3	

12. Approval of a Building Electrification On-Bill Financing Program (Action)

Rafael Reyes, Director of Energy Programs, gave a presentation on a building electrification on-bill financing program. Rafael shared current financing options and the benefits of an on-bill finance approach as well as some comparisons with existing programs in other jurisdictions, such as Sonoma Clean Power and Silicon Valley Clean Energy. Rafael proposed a timeline with a program launch of January 2022 with \$1 million loan capital. Rafael answered questions on administrative costs, mechanisms for recovering the balance of defaulted loans, and the partnership with BayREN Home+ program.

Public Comment: Diane Bailey

MOTION: Director Romero moved, seconded by Director Hale to approve an on-bill finance program with \$1 million loan capital.

MOTION PASSED: 20-0 (Absent: Colma, Hillsborough, Woodside)

Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Dave Pine	Х			
San Mateo County	Carole Groom	Х			
Atherton	Rick DeGolia	Х			
Belmont	Charles Stone	Х			
Brisbane	Coleen Mackin	Х			
Burlingame	Donna Colson	Х			
Colma	Raquel Rae Gonzalez			Х	
Daly City	Roderick Daus-Magbual	Х			
East Palo Alto	Carlos Romero	Х			
Foster City	Sam Hindi	Х			
Half Moon Bay	Harvey Rarback	Х			
Hillsborough	Laurence May			Х	
Los Banos	Tom Faria	Х			
Menlo Park	Betsy Nash	Х			
Millbrae	Ann Schneider	Х			
Pacifica	Tygarjas Bigstyck	Х			
Portola Valley	Jeff Aalfs	Х			
Redwood City	Giselle Hale	Х			
San Bruno	Marty Medina	Х			
San Carlos	Laura Parmer-Lohan	Х			
San Mateo	Rick Bonilla	Х			
South San Francisco	James Coleman	Х			
Woodside	Jennifer Wall			Х	
	Totals	20		3	

13. Approval of Peninsula Clean Energy's Standard Rate Making Methodology for Los Banos Customers (Action)

Leslie Brown, Director of Account Services, gave a presentation on Los Banos Rate Making Methodology. Leslie reviewed the current algorithm for San Mateo County rates, the Peninsula Clean Energy process for setting rates, and the findings of the Los Banos Rate Making Subcommittee.

Board Members expressed an appreciation for equity and fairness in this rate making methodology.

MOTION: Director Groom moved, seconded by Director Faria to approve a Resolution confirming Peninsula Clean Energy's rate making methodology to maintain a discount in generation charges for ECOplus rates compared to PG&E generation rates (currently set at a 5% discount).

MOTION PASSED: 20-0 (Absent: Colma, Hillsborough, Woodside)

Jurisdiction	Board Member	Aye	No	Absent	Abstain
San Mateo County	Dave Pine	Х			
San Mateo County	Carole Groom	Х			
Atherton	Rick DeGolia	Х			
Belmont	Charles Stone	Х			
Brisbane	Coleen Mackin	Х			
Burlingame	Donna Colson	Х			
Colma	Raquel Rae Gonzalez			Х	
Daly City	Roderick Daus-Magbual	Х			
East Palo Alto	Carlos Romero	Х			
Foster City	Sam Hindi	Х			
Half Moon Bay	Harvey Rarback	Х			
Hillsborough	Laurence May			Х	
Los Banos	Tom Faria	Х			
Menlo Park	Betsy Nash	Х			
Millbrae	Ann Schneider	Х			
Pacifica	Tygarjas Bigstyck	Х			
Portola Valley	Jeff Aalfs	Х			
Redwood City	Giselle Hale	Х			
San Bruno	Marty Medina	Х			
San Carlos	Laura Parmer-Lohan	Х			
San Mateo	Rick Bonilla	Х			
South San Francisco	James Coleman	Х			
Woodside	Jennifer Wall			Х	
	Totals	20		3	

14. Board Members' Reports (Discussion)

Betsy Nash spoke to thank Peninsula Clean Energy on supporting Menlo Park on electrifying buildings and asked for notes of support to the Menlo Park City Council.

Rick Bonilla reported on the Students for a Carbon Fee & Dividend Act Rally this past Saturday in San Mateo featuring Supervisor Dave Pine, Deputy Mayor Rick Bonilla, Senator Josh Becker and Assemblymember Kevin Mullin.

<u>ADJOURNMENT</u>

Meeting was adjourned at 8:50 p.m.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: September 17, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

Siobhan Doherty, Director of Power Resources

SUBJECT: Approve Resolution Delegating Authority to Chief Executive Officer

to Execute Power Purchase and Sale Agreement for Renewable Supply with Chaparral Solar, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Delivery Commencement Date on or about December 31, 2023, in

an amount not to exceed \$230 million.

RECOMMENDATION:

Approve Resolution Delegating Authority to Chief Executive Officer to Execute Power Purchase Agreement for Renewable Supply Chaparral Solar, LLC, and any necessary ancillary documents with a Power Delivery Term of 15 years starting at the Delivery Commencement Date on or about December 31, 2023, in an amount not to exceed \$230 million.

BACKGROUND:

The Board set a goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by 2025. Staff conducted a preliminary analysis of the necessary resources to attain this goal and found that Peninsula Clean Energy will need to procure renewable supply from solar resources paired with battery energy storage. Pairing solar with energy storage allows the project to shift power delivery from the middle of the day to the evening peak when it is needed. It would also provide flexibility to Peninsula Clean Energy's supply portfolio to store and deliver energy at times that would help us to meet our 24/7 renewable goal. The Chaparral project would be the first solar project paired with energy storage to be added to Peninsula Clean Energy's supply portfolio.

2020 Renewable Request for Offers

Peninsula Clean Energy launched a request for offers (RFO) in 2020 targeting procurement of renewable energy via long-term contracts, which provide better value

than short-term contracts, ensure compliance with the renewable portfolio standard (RPS) long-term contracting mandates, and expand the amount of renewable energy serving California.

Peninsula Clean Energy received a robust response to the RFO from 43 conforming renewable or renewable plus storage projects. Staff evaluated these projects based on value to Peninsula Clean Energy, development status, project viability, project team experience, compliance with workforce policy and environmental impact.

Staff conducted extensive analysis to identify the top projects to shortlist. The Chaparral project was determined to be in the top tier of projects that would provide the most value to Peninsula Clean Energy.

Staff reviewed shortlisted projects with the CEO and CFO and then entered into exclusive negotiations with the shortlisted projects. Staff retained Winston & Strawn law firm to support negotiations for this project. Peninsula Clean Energy has worked with Winston on the majority of our existing PPAs to date. Throughout 2021, Peninsula Clean Energy has been working with the project developer on negotiating the power contract.

Additionally, staff met with a Board subcommittee in February 2021 and June 2021 to review the status of the RFO and the shortlisted projects. Per Peninsula Clean Energy's Policy 15 Energy Supply Procurement Authority¹, any power procurement contracts greater than 5 years must be approved by the Board of Directors.

Overview of Project

Project Name	Chaparral Solar, LLC
Technology	Solar + Li-Ion Storage
Solar Capacity	102 MW
Storage Capacity	52 MW / 208MWh
Delivery Commencement Date	12/31/2023
Developer	Leeward Renewables
Location	Rosamond, Kern County, CA

The Chaparral project is a 102 MW solar and 52 MW / 208 MWh lithium-ion battery storage facility located near Rosamond, CA in Kern County. The Delivery Commencement Date is December 31, 2023. The project is expected to deliver enough energy to meet approximately 8% of Peninsula Clean Energy's energy needs and will provide Portfolio Content Category (PCC) 1 energy to meet Peninsula Clean Energy's RPS requirements.

The project has an executed interconnection agreement with Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to Peninsula Clean Energy in addition to energy benefits. The project will interconnect to SCE's Whirlwind

¹ Full policy is available here: https://www.peninsulacleanenergy.com/wp-content/uploads/2020/01/PCE-Policy-15-Revised-01-23-20-Procurement-Authority-FINAL.pdf

substation. Site control has been fully secured for the entirety of the proposed delivery term and a Conditional Use Permit is complete. The project is expected to start construction by October 2022.

Under the contract, Peninsula Clean Energy will pay for the output of the solar generating portion of the project at a fixed-price rate per MWh and will pay for the use of the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract (15 years). Peninsula Clean Energy is entitled to all product attributes from the facility, including energy, renewable energy, ancillary services, and resource adequacy.

Developer

The project is being developed by Leeward Renewable Energy (Leeward). Leeward is a U.S.-based renewable energy company that owns and operates a portfolio of 22 utility-scale projects across nine states with a total installed generating capacity of more than 2,000 MW. This portfolio includes the Buena Vista wind project, which Peninsula Clean Energy is contracting for the output from April 2017 through April 2022. Leeward also has 17 GW of projects under development representing over 100 projects.

Leeward is a portfolio company of OMERS Infrastructure, an investment arm of OMERS, Ontario Municipal Employees Retirement System, one of Canada's largest defined benefit pension plans with C\$105 billion in net assets (as of December 31, 2020).

In April 2021, Leeward completed the acquisition of First Solar's utility-scale project development platform including 10 GW of projects that First Solar was developing. Additionally, 50 employees from First Solar's development team joined Leeward.

Environmental Review

Peninsula Clean Energy staff worked with several environmental non-profits to develop a system for evaluating the environmental impact of projects. Specifically, we asked each bidder to provide a geospatial footprint of their project. During the evaluation period, staff studied the geospatial footprint of the project to evaluate whether the project is located in a restricted or high conflict area for renewable energy development. These areas include but are not limited to:

- Protected areas at the federal, state, regional, local level (e.g. Countydesignated conservation areas, BLM Areas of Critical Environmental Concern, critical habitat for listed species, national, state, county parks, etc.).
- Identified and mapped important habitat and habitat linkages, especially for threatened and endangered species (either state or federally listed).

Further, projects that are located in areas designated for renewable energy development or in areas that are not suitable for other developmental activities, such as EPA re-power sites, receive positive environmental scores.

For this project, the analysis showed that the project was not located in a protected area based on the USGS Protected Areas Database² (PAD-US). Additionally, the project is not located in an area not suitable for renewable energy development as identified by the Renewable Energy Transmission Initiative (RETI)³.

Additionally, we requested information to help us complete an environmental evaluation of the project site. Kern County was the lead agency for the California Environmental Quality Act (CEQA) process and the project's conditional use permit (CUP) application was deemed complete on August 13, 2018. The Draft Environmental Impact Report (DEIR) was published in January 2021 and the project received its CUP in April 2021.

Workforce Requirements

The project has signed a commitment letter to enter into a 5-craft project labor agreement for construction of the project. Additionally, Kern County Planning Department staff received letters of support for the project from Kern County Electrical Joint Apprenticeship and Training Committee (JATC), International Brotherhood of Electrical Workers Local Union No. 428, and Ironworkers Local 433.

DISCUSSION:

The Strategic Plan approved by the Board in 2020 set Peninsula Clean Energy's Priority One to "design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24x7 basis". Solar paired with storage will play a key role in meeting Peninsula Clean Energy's renewable energy goals.

This project will help Peninsula Clean Energy meet its customers' large renewable energy demand, while maintaining competitiveness. To date, Peninsula Clean Energy has entered into eight long-term renewable contracts, which make up approximately 34.5% of overall load, as shown in the table below:

Long-Term Renewable Contracts Contributing to Peninsula Clean Energy's Load

Project	RE MW	Status	Commercial Operation Date	Term (Years)	County	Approx. % of Load Served in 2025
Wright Solar	200	Operating	January-2020	25	Merced	14.4%
Mustang 2 Solar	100	Operating	November-2020	15	King	7.8%
Geysers Geothermal	35	Operating	July-2022	10	Sonoma & Lake	8.2%
		Constructi				
Sky River Wind	30	on	September-2021	20	Kern	3.1%
Hatchet Small Hydro	7.5	Operating	March-2017	20	Shasta	0.4%
Bidwell Small Hydro	2	Operating	March-2017	17	Shasta	0.3%
Roaring Small Hydro	2	Operating	March-2017	17	Shasta	0.2%

 $^{^2 \ \}mathsf{USGS} \ \mathsf{PAD\text{-}US:} \ \underline{\mathsf{https://www.usgs.gov/core-science-systems/science-analytics-and-synthesis/gap/science/protected-areas}$

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³ RETI: <u>https://reti.databasin.org/</u>

Clover Small Hydro	1	Operating	April-2018	15	Shasta	0.1%
Total Contracted						34.5%
		Developm				
Chaparral Solar	102	ent	December-2023	15		8.0%
Total With Pending						42.5%

The Chaparral project is a 102 MW renewable generating resource, covering an additional 8% of Peninsula Clean Energy's overall demand. This contract will enable Peninsula Clean Energy to come closer to reaching its internal goal to be 100% renewable as well as its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period.

FISCAL IMPACT:

The financial impact of adding the Chaparral project to Peninsula Clean Energy's portfolio of supply resources is a decrease in expected supply costs since procuring long-term and bundled resources are significantly less expensive than procuring short-term renewable products.

The fiscal impact of the Chaparral project will not exceed \$230 million over the 15-year term of the Agreement.

STRATEGIC PLAN:

The Chaparral project supports the following objectives in Peninsula Clean Energy's strategic plan:

- Priority 1: Design a power portfolio that is sourced by 100% renewable energy by 2025 that aligns supply and consumer demand on a 24/7 basis
- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

ATTACHMENTS:

Chaparral Solar Power Purchase Agreement (Redacted Version)

RESOLUTION NO.	
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PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION DELEGATING AUTHORITY TO CHIEF EXECUTIVE OFFICER TO EXECUTE POWER PURCHASE AND SALE AGREEMENT FOR RENEWABLE SUPPLY WITH CHAPARRAL SOLAR, LLC, AND ANY NECESSARY ANCILLARY DOCUMENTS WITH A POWER DELIVERY TERM OF 15 YEARS STARTING AT THE DELIVERY COMMENCEMENT DATE ON OR ABOUT DECEMBER 31, 2023, IN AN AMOUNT NOT TO EXCEED \$230 MILLION.

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

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

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

WHEREAS, Peninsula Clean Energy is purchasing energy, renewable energy, carbon-free energy, and related products and services (the "Products") to supply its customers; and

WHEREAS, consistent with its mission of reducing greenhouse gas emissions by expanding access to sustainable and affordable energy solutions, Peninsula Clean Energy seeks to execute a Power Purchase and Sale Agreement with Chaparral Solar, LLC (Contractor), to procure 102 MW of power generation and 52 MW of storage resource from the Chaparral solar plus storage project, based on Contractor's desirable offering of products, pricing, and terms; and

WHEREAS, the Chaparral project will contribute toward the Board's goal for Peninsula Clean Energy to procure 100% of its energy supply from renewable energy by providing 24/7 renewable generation for a term of fifteen years starting December 31, 2023; and

WHEREAS, staff is presenting to the Board for its review the Power Purchase and Sale Agreement, 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 Agreements and any other ancillary documents required for said purchase of power from the Contractor.

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

Execute the Agreements and any ancillary documents with the Contractor with terms consistent with those presented, in a form approved by the General Counsel; and for a power delivery term of up to fifteen years, in an amount not to exceed \$230 million.

* * * * * *

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Chaparral Solar, LLC, a Delaware limited liability company

Buyer: Peninsula Clean Energy Authority, a California joint powers authority

<u>Description of Generating Facility and Storage Facility</u>: A separately metered 102 MW portion of a larger solar photovoltaic electric generating facility located in Kern County, California (as further defined herein, the "Generating Facility"), plus a separately metered 208 MWh and 52 MW portion of a larger energy storage facility with at least four (4) hours of continuous discharging at the maximum rate of discharge, located at the same site as the Generating Facility in Kern County, California (as further defined herein, the "Storage Facility").

Milestones:

Milestone	Completion Date
Executed Interconnection Agreement	Complete
Procure Major Equipment	August 1, 2022
Obtain Conditional Use Permit	Complete
Expected Construction Start Date	October 1, 2022
Obtain Full Capacity Deliverability Status (or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity)	December 31, 2023
Guaranteed Delivery Commencement Date	December 31, 2023

Delivery Term: 15 Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (MWh)
1	
2	

Contract Year	Expected Energy (MWh)
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

Monthly Expected Energy:

Month	Expected Energy (MWh)
January	
February	
March	

Month	Expected Energy (MWh)
April	
May	
June	
July	
August	
September	
October	
November	
December	

<u>Guaranteed Storage Capacity</u>: 52 MW AC at four (4) hours of continuous discharging at the maximum rate of discharge (208 MWh).

Guaranteed PV Capacity: 102 MW AC capacity measured at the Delivery Point.

Guaranteed Interconnection Capacity: 102 MW

Contract Price:

The "Renewable Rate" shall be:

Contract Year	Renewable Rate (\$/MWh)
All	

The "Storage Rate" shall be as specified below:

Contract Years	Storage Rate (\$/kW-month)
All	

Product:

- x PV Energy
- x Discharging Energy
- x Green Attributes:
 - x Portfolio Content Category 1
 - ☐ Portfolio Content Category 2
- x Future Environmental Attributes
- x Capacity Attributes
- x Ancillary Services
- x Storage Product

- ☐ Energy Only Status
- X Full Capacity Deliverability Status (or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity)
 - a) If Full Capacity Deliverability Status is selected, provide the Expected FCDS Date: Delivery Commencement Date

b)	Guaranteed RA Amount:

Scheduling Coordinator: Buyer or Buyer's Agent

Development Security :	
Performance Security:	
<u>Damage Payment</u> : An amount equal to	l .

Notice Addresses:

Seller:

Chaparral Solar, LLC c/o Leeward Renewable Energy, LLC 6688 N. Central Expressway, Suite 500 Dallas, TX 75206 Attn: Legal Department legal@leewardenergy.com

with copy to:

Leeward Renewable Energy Operations 6688 N. Central Expressway, Suite 500 Dallas, TX 75206 Attn: Operations assetmgmt@leewardenergy.com

Scheduling:

Leeward Renewable Energy Operations 6688 N. Central Expressway, Suite 500 Dallas, TX 75206 Attn: Operations assetmgmt@leewardenergy.com

Buyer:

Peninsula Clean Energy Authority 2075 Woodside Road Redwood City, CA 94061 ATTN: Director of Power Resources

Phone No.: 650-260-0005

Email: contracts@peninsulacleanenergy.com

With a copy to:

Peninsula Clean Energy Authority 400 County Center, 6th Floor Redwood City, CA 94063

Attention: David Silberman, General Counsel

Fax No.: (650) 363-4034 Phone No.: (650) 363-4749

Email: dsilberman@smcgov.org

[Signatures on following page.]

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

SELLER Chaparral Solar, LLC	BUYER Peninsula Clean Energy Authority
By:	By: PCE Executive Officer
Title:	

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Form of Replacement RA Notice

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POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("<u>Agreement</u>") is entered into as of **September**______, 2021 (the "<u>Effective Date</u>"), between Seller and Buyer (each also referred to as a "<u>Party</u>" and collectively as the "<u>Parties</u>").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own or otherwise have control over, and operate the electric generating and energy storage facility as described in Exhibit A (the "Facility"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, all Capacity Attributes from the Storage Facility, and all Storage Product;

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

ARTICLE 1 DEFINITIONS

- 1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:
 - "AC" means alternating current.
 - "Accepted Compliance Costs" has the meaning set forth in Section 3.13.
 - "Adjusted Energy Production" has the meaning set forth in Exhibit F.
- "<u>Affiliate</u>" means, with respect to any Person, each Person that directly or indirectly Controls, is Controlled by, or is under common Control with such designated Person.
 - "Affiliate Manager" has the meaning set forth in Section 6.4(a).
 - "Aggregate Capability Constraint" has the meaning set forth in the CAISO Tariff.
- "<u>Agreement</u>" has the meaning set forth in the Preamble and includes any exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.
- "Ancillary Services" means ancillary services as defined in the CAISO Tariff that are associated with the Facility and its operating characteristics, and any related services, and include Frequency Regulation, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction (as each is defined in the CAISO Tariff).

- "Automated Dispatch System" or "ADS" has the meaning set forth in the CAISO Tariff.
- "Availability Incentive Payment" has the meaning set forth in the CAISO Tariff.
- "Available Generating Capacity" means the capacity from the Generating Facility, expressed in whole MWs, that is available at a particular time to generate Energy.
- "<u>Available Storage Capacity</u>" means the capacity from the Storage Facility, expressed in whole MWs, that is available at a particular time to charge and discharge Energy.
- "Bankrupt" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.
 - "Bid" has the meaning set forth in the CAISO Tariff.
- "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.
 - "Buyer" has the meaning set forth on the Cover Sheet.
- "<u>Buyer Bid Curtailment</u>" means any curtailment of the Generating Facility arising out of or resulting from the manner in which Buyer bids, offers or schedules the Generating Facility, the Energy or any Products, or in which Buyer fails to do so, where all of the following occurs:
- (a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to deliver less PV Energy from the Generating Facility than is reflected in the VER Forecast for the Generating Facility for a period of time;
- (b) for the same time period as referenced in (a), Buyer or the SC for the Facility:
 - (i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject to the reduction; or
 - (ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or
 - (iii) submitted a Self-Schedule for less than the full amount of VER Forecast for the Generating Facility; and

- (c) no other circumstances exist that constitute a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a).
- "Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce delivery of PV Energy by the amount, and for the period of time set forth in such order, for reasons unrelated to a Scheduled Maintenance, Forced Facility Outage, Force Majeure Event and/or Curtailment Order, which instruction may be communicated to Seller in writing by electronic notice or other commercially reasonable means.
- "<u>Buyer Curtailment Period</u>" means the period of time, as measured using current Settlement Intervals, during which Seller reduces delivery of PV Energy pursuant to or as a result of a (i) Buyer Bid Curtailment or (ii) a Buyer Curtailment Order.
 - "Buyer Default" means a failure by Buyer to perform its obligations hereunder.
 - "Buyer's WREGIS Account" has the meaning set forth in Section 4.9(a).
- "CAISO" means the California Independent System Operator Corporation or any successor entity performing similar functions.
- "CAISO Approved Facility Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy delivered by the Facility to the Delivery Point less Electrical Losses and Station Use, in accordance with the CAISO Tariff.
 - "CAISO Charges Invoice" has the meaning set forth in Section 4.3(d).
- "CAISO Grid" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.
- "CAISO Operating Order" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.
- "CAISO Tariff" means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
- "California Renewables Portfolio Standard" or "RPS" means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015) and 100 (2018) codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.
- "Capacity Attribute" means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate

and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits. Capacity Attributes shall also include all rights to provide and all benefits related to the provision of Ancillary Services (as defined in the CAISO Tariff).

"Capacity Damages" has the meaning set forth in Exhibit B.

- "<u>CEC</u>" means the California Energy Commission, or any successor agency performing similar statutory functions.
- "CEC Final Certification and Verification" means that the CEC has certified the Generating Facility as an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard, meeting all applicable requirements for certified facilities set forth in the RPS Eligibility Guidebook, Ninth Edition (or its successor), and that all Energy generated by the Generating Facility qualifies as generation from an Eligible Renewable Energy Resource.
- "CEC Precertification" means that the CEC has issued a precertification for the Generating Facility indicating that the planned operations of the Facility would comply with applicable CEC requirements for CEC Final Certification and Verification.
- "Change of Control", in the case of Seller, means any circumstance in which Seller's Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:
- (a) any ownership interest in Seller held by its Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards the Ultimate Parent's ownership interest in Seller unless the Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and
- (b) ownership interests in Seller owned directly or indirectly by any Lender (including any tax equity provider) shall be excluded from the total outstanding equity interests in Seller.
- "Charging Energy" means all PV Charging Energy and Grid Charging Energy, less Station Use and Electrical Losses, if any, delivered to the Storage Facility pursuant to a Charging Notice, as measured by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and, during the Recapture Period, all Charging Energy shall be solely PV Charging Energy.
- "Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer or the CAISO, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction shall be in accordance with Section 4.6 and the Operating Restrictions, and (b) during the Recapture Period only, if, during a period when the Storage Facility is instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable "Charging Notice", such "Charging Notice" shall (for purposes of this Agreement) be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt, any

Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

- "Co-located Resource" has the meaning set forth in the CAISO Tariff.
- "Commercial Operation" has the meaning set forth in the CAISO Tariff.
- "Compliance Actions" has the meaning set forth in Section 3.13.
- "Compliance Expenditure Cap" has the meaning set forth in Section 3.13.
- "Confidential Information" has the meaning set forth in Section 19.1.
- "Construction Start" has the meaning set forth in Exhibit B.
- "Construction Start Date" has the meaning set forth in Exhibit B.
- "Contract Price" means each of the Renewable Rate and the Storage Rate.
- "Contract Term" has the meaning set forth in Section 2.1.
- "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Delivery Commencement Date, and each subsequent Contract Year shall commence on the anniversary of the Delivery Commencement Date.
- "Control" (including, with correlative meanings, the terms "Controlled by" and "under common Control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast more than fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of more than fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.
- "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.
 - "Cover Sheet" means the cover sheet to this Agreement.
 - "CPM Soft Offer Cap" has the meaning set forth in the CAISO Tariff.
 - "CPUC" means the California Public Utilities Commission, or successor entity.
- "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements), or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating, in either case by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"Curtailment Order" means any of the following:

- a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail Energy deliveries for any reason other than a Buyer Bid Curtailment;
- b) a curtailment ordered by the Participating Transmission Owner or distribution operator (if the Facility is interconnected to distribution or sub-transmission system) for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's or distribution operator's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;
- c) a curtailment ordered by the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or
- d) a curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator.

For the avoidance of doubt, if Buyer or Buyer's SC submitted a Self-Schedule and/or an Energy Supply Bid in its final CAISO market participation in respect of a given time period that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced by or delivered from the Facility for such time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

"<u>Curtailment Period</u>" means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

"Daily Delay Damages" means an amount equal to

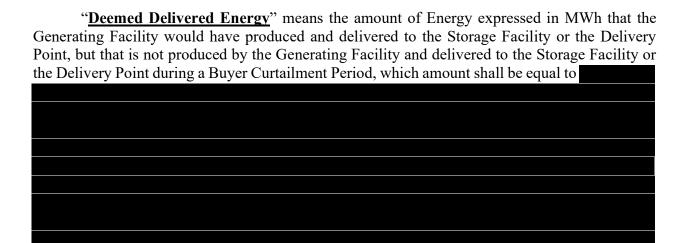
"<u>Damage Payment</u>" means a liquidated damages payment in the amount indicated in the Cover Sheet.

"Day-Ahead Forecast" has the meaning set forth in Section 4.4(c).

"Day-Ahead LMP" means the LMP for the Day-Ahead Market.

"Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

"Day-Ahead Schedule" has the meaning set forth in the CAISO Tariff.



[&]quot;<u>Defaulting Party</u>" has the meaning set forth in <u>Section 11.1(a)</u>.

"<u>Discharging Notice</u>" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MWh rate to a specified Stored Energy Level, provided that (a) any such operating instruction or updates shall be in accordance with <u>Section 4.6</u> and the Operating Restrictions, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit,

[&]quot;<u>Deficient Month</u>" has the meaning set forth in <u>Section 4.9(e)</u>.

[&]quot;<u>Delivery Commencement</u>" has the meaning set forth in <u>Exhibit B</u>.

[&]quot;<u>Delivery Commencement Date</u>" has the meaning set forth in <u>Exhibit B</u>.

[&]quot;Delivery Commencement Delay Damages" means an amount equal to

[&]quot;Delivery Point" means the Pnode designated by the CAISO for the Facility.

[&]quot;<u>Delivery Term</u>" shall mean the period of Contract Years specified on the Cover Sheet, beginning on the Delivery Commencement Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

[&]quot; $\underline{\textbf{Development Cure Period}}$ " has the meaning set forth in $\underline{\textbf{Exhibit B}}$.

[&]quot;<u>Development Security</u>" means (i) cash or (ii) a Letter of Credit in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.7.

[&]quot;<u>Discharging Energy</u>" means all Energy delivered to the Delivery Point from the Storage Facility, net of Station Use and Electrical Losses, as measured by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as PV Charging Energy or Grid Charging Energy.

such "Discharging Notice" shall (for purposes of this Agreement) be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer issues a further modified Discharging Notice. For the avoidance of doubt any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

"Early Termination Date" has the meaning set forth in Section 11.2(a).

"Effective Date" has the meaning set forth on the Preamble.

"<u>Electrical Losses</u>" means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of PV Energy to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, and (iii) delivery of Discharging Energy to the Delivery Point.

"<u>Eligible Intermittent Resources Protocol</u>" or "<u>EIRP</u>" has the meaning set forth in the CAISO Tariff.

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

"Energy" means metered electrical energy measured in MWh.

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

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

"Excess MWh" has the meaning set forth in Section 3.3(c).

"Excused Event" has the meaning set forth in Exhibit L.

"Expected Construction Start Date" has the meaning set forth on the Cover Sheet.

"Expected Energy" has the meaning set forth in Section 4.8.

"Expected FCDS Date" means the date set forth in the deliverability section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity.

"<u>Facility</u>" means the Generating Facility and the Storage Facility, as described more fully in Exhibit A attached hereto.

"Facility Energy" means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the CAISO Approved Facility Meter, which CAISO Approved Facility Meter will be adjusted to the extent required in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"Flexible Capacity" has the meaning set forth in the CAISO Tariff.

"<u>Flexible Resource Adequacy Benefits</u>" means the attributes, however defined, of a resource that can be used to satisfy the flexible resource adequacy obligations of a load serving entity, including Flexible Capacity.

"FMM Schedule" has the meaning set forth in the CAISO Tariff.

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

"Forced Facility Outage" means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating or delivering power to the Delivery Point or providing Storage Product and that is not the result of a Force Majeure Event.

"<u>Forward Certificate Transfers</u>" has the meaning set forth in the WREGIS Operating Rules.

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

"Full Network Model" has the meaning set forth in the CAISO Tariff.

"Future Environmental Attributes" shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant

rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

"Generating Facility" means the separately metered 102 MW portion of the photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver PV Energy to the Delivery Point or to the Storage Facility, including Seller's rights and interests in Shared Facilities; provided that the "Generating Facility" does not include the Storage Facility or the portions of Shared Facilities other than Seller's rights and interests thereto.

"Generating Facility Meter" means the CAISO approved revenue quality meter or meters (with a 0.3 accuracy class) that qualifies under CEC and WREGIS rules for determining the amount of PCC1 Renewable Energy Credits generated by the Generating Facility and that can be used by CAISO as the Qualified Reporting Entity for reporting meter data to WREGIS, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment, and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of PV Energy generated by the Generating Facility and calculated as delivered to Buyer at (i) the Delivery Point or (ii) the Storage Facility as PV Charging Energy. For clarity, the Facility may contain multiple measurement devices and calculations that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, that "Governmental Authority" shall not in any event include any Party.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (Sox), nitrogen oxides (Nox), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment or production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility

that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

"Green Tag Reporting Rights" means the right of a purchaser of renewable energy to report ownership of accumulated "green tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"Grid Charging Energy" means Charging Energy supplied from the CAISO Grid.

"Guaranteed Construction Start Date" has the meaning set forth in Exhibit B.

"<u>Guaranteed Delivery Commencement Date</u>" has the meaning set forth on the Cover Sheet, as such date may be extended in accordance with <u>Exhibit B</u>.

"Guaranteed Energy Production" has the meaning set forth in Section 4.8.

"<u>Guaranteed Interconnection Capacity</u>" means the interconnection rights provided under the Interconnection Agreement in the amount set forth on the Cover Sheet.

"Guaranteed PV Capacity" means the amount set forth on the Cover Sheet, as may be adjusted pursuant to $Exhibit\ B$.

"Guaranteed RA Amount" has the meaning set forth on the Cover Sheet.

"Guaranteed Round Trip Efficiency" has the meaning set forth in Exhibit P.

"Guaranteed Storage Availability" has the meaning set forth in Section 4.12(a).

"Guaranteed Storage Capacity" has the meaning set forth on the Cover Sheet, as may be adjusted pursuant to Exhibit B.

"Guarantor" means, with respect to Seller,

or (b) any other Person in Buyer's sole and

reasonable discretion.

"Guaranty" means a guaranty from a Guarantor in a form reasonably acceptable to Buyer.

"Hybrid Resource" has the meaning set forth in the CAISO Tariff.

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

"Indemnified Party" has the meaning set forth in Section 17.1.

"Indemnifying Party" has the meaning set forth in Section 17.1.

"<u>Initial Synchronization</u>" means the initial delivery of Energy from the Facility to the interconnection point specified in the Interconnection Agreement.

"Installed PV Capacity" means the actual generating capacity of the Facility, measured at the Facility Pnode and adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed PV Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

"Installed Storage Capacity" means the maximum dependable operating capability of the Storage Facility to discharge electric energy for four (4) consecutive hours at the maximum discharge rate (up to but not in excess of the Guaranteed Storage Capacity), as measured in MW(ac) at the Delivery Point, that achieves Delivery Commencement, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

"Interconnection Agreement" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

"Interconnection Capacity Limit" means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point.

"<u>Interconnection Facilities</u>" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System (or PTO's distribution system, as applicable) in accordance with the Interconnection Agreement.

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

"Internal Revenue Service Requirements" means those requirements set forth in Section 48 of the Internal Revenue Code and associated regulations promulgated by the Internal Revenue Service that pertain to the eligibility of energy property to qualify for the federal investment tax credit.

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

"Joint Powers Agreement" means that certain Joint Powers Agreement dated February 29, 2016 under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"<u>Law</u>" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority, and includes the CAISO Tariff.

"Lender" means, collectively, (A) in the case of Seller, any Person (i) providing senior or subordinated construction, interim, back-leverage, or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility, and/or (iv) acting as issuing bank for any Letter(s) of Credit issued pursuant hereto as Development Security or Performance Security, and (B) in the case of Buyer, any Person (i) providing senior or subordinated short-term or long-term debt or equity financing or refinancing for or in connection with the business or operations of Buyer, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form, and any trustee or agent acting on their behalf, and/or (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations.

"Letter(s) of Credit" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's, or (b) being reasonably acceptable to Buyer, in either case in a form substantially similar to the letter of credit set forth in Exhibit K.

"Licensed Professional Engineer" means an independent, professional engineer (a) reasonably acceptable to Buyer, (b) who has been retained by, or for the benefit of, the Lenders, as their "independent engineer" for the purpose of financing the Facility, or (c) who (i) is licensed to practice engineering in the State of California, (ii) has training and experience in the power industry specific to the technology of the Facility, (iii) is licensed in an appropriate engineering discipline for the required certification being made, and (iv) unless otherwise approved by Buyer, is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility.

"Local Capacity Area" has the meaning set forth in the CAISO Tariff.

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

<u>"Local Capacity Area Resource Adequacy Benefits"</u> means the attributes, however defined, of a Local Capacity Area Resource that can be used to satisfy the local resource adequacy obligations of a load serving entity.

"Locational Marginal Price" or "LMP" has the meaning set forth in the CAISO Tariff.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"Lost Output" has the meaning set forth in Exhibit F.

"<u>Main Power Transformer</u>" means the Facility's main step-up transformer as depicted on the one-line diagram set forth in <u>Exhibit A</u>.

"<u>Milestones</u>" means the development activities for significant permitting, interconnection, financing and construction milestones set forth in the Cover Sheet.

"Minimum Round Trip Efficiency" has the meaning set forth in Exhibit P.

"Monthly Storage Availability" has the meaning set forth in Exhibit L.

"Moody's" means Moody's Investors Service, Inc., or its successor.

"<u>MW</u>" means megawatts measured in alternating current, unless expressly stated in terms of direct current.

"<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"Negative LMP" means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than zero dollars (\$0).

"Negative LMP Costs" has the meaning set forth in Section 3.3(c).

"Net Qualifying Capacity" or "NQC" has the meaning set forth in the CAISO Tariff.

"Network Upgrades" has the meaning set forth in the CAISO Tariff.

"Non-Availability Charge" has the meaning set forth in the CAISO Tariff.

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

"<u>Notice</u>" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail).

"Operating Restrictions" means the requirements and limitations set forth on Exhibit N.

"Other Facility(ies)" means the electric generating or energy storage facility(ies), other than the Facility, utilizing any facilities shared with the Facility to enable delivery of energy from each such other generating or storage facility to the Delivery Point, together with all materials, equipment systems, structures, features and improvements necessary to produce electric energy at each such other generating or storage facility, but (i) with respect to the Shared Facilities, excluding Seller's interests therein and (ii) excluding the real property on which each such other generating or storage facility is, or will be located, land rights and interests in land.

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

"Participating Transmission Owner" or "PTO" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is the Southern California Edison Company.

"Party" has the meaning set forth in the Preamble.

"Performance Measurement Period" has the meaning set forth in Section 4.8.

"<u>Performance Security</u>" means (i) cash, (ii) a Letter of Credit, or (iii) a Guaranty, in the amount specified on the Cover Sheet, deposited with Buyer in conformance with Section 8.8.

"Performance Security End Date" has the meaning set forth in Section 8.8.

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

"Pnode" has the meaning set forth in the CAISO Tariff.

"Portfolio Content Category" means PCC1, PCC2 or PCC3, as applicable.

"Portfolio Content Category 1" or "PCC1" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Portfolio Content Category 2" or "PCC2" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

"Portfolio Content Category 3" or "PCC3" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

"Product" has the meaning set forth on the Cover Sheet.

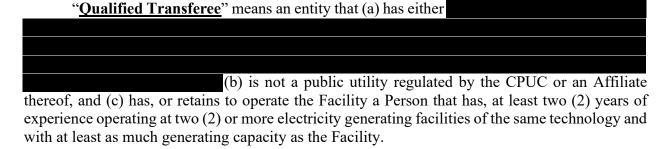
"Progress Report" means a progress report including the items set forth in Exhibit G.

"Prudent Operating Practice" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry in the Western United States for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"<u>PV Charging Energy</u>" means Charging Energy that is supplied from the Generating Facility.

"<u>PV Energy</u>" means all Energy produced by the Generating Facility, as measured by the Generating Facility Meter after adjustment to exclude (a) all Electrical Losses, and (b) all Energy that serves Station Use or is stored in the Storage Facility to serve Station Use.

"Qualified Reporting Entity" has the meaning set forth in the WREGIS Operating Rules.



"Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

"RA Deficiency Amount" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.9(b).

- "RA Guarantee Date" means the Delivery Commencement Date.
- "RA Plan" has the meaning set forth for "Resource Adequacy Plan" in the CAISO Tariff.
- "RA Shortfall" has the meaning set forth in Section 3.9(b).
- "RA Shortfall Month" means the applicable calendar month following the RA Guarantee Date during which Seller fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder for purposes of calculating an RA Deficiency Amount under Section 3.9(b).
 - "RA Substitute Capacity" has the meaning set forth in the CAISO Tariff.
 - "Real-Time LMP" means the LMP for the Real-Time Market at the Delivery Point.
 - "Real-Time Market" has the meaning set forth in the CAISO Tariff.
 - "Recapture Period" means the period of time ending on the date this is
 - "Remedial Action Plan" has the meaning set forth in Section 2.4.
- "Renewable Energy Credit" has the meaning set forth in California Public Utilities Code Section 399.12(h), as may be amended from time to time or as further defined or supplemented by Law.
- "Renewable Energy Incentives" means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, provided in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.
- "Renewable Rate" has the meaning set forth on the Cover Sheet, as may be adjusted by Section 3.3.
 - "Replacement Green Attributes" has the meaning set forth in Exhibit F.
- "Replacement RA" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Storage Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer and,

Replacement RA shall not be provided from any generating facility or unit that utilizes coal or coal materials as a source of fuel.

"Resource Adequacy Benefits" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in 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, 15-06-063, 16-06-045, 17-06-027, 19-10-021, and any subsequent CPUC ruling or decision or by any other entity including CAISO, and shall include System Resource Adequacy Benefits, Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits associated with the Facility.

"Resource ID" has the meaning set forth in the CAISO Tariff.

"Round Trip Efficiency" has the meaning set forth in Exhibit P.

"Round Trip Efficiency Adjustment" has the meaning set forth in Exhibit P.

"<u>S&P</u>" means the Standard & Poor's Financial Services, LLC (a subsidiary of The McGraw-Hill Companies, Inc.) or its successor.

"Schedule" has the meaning set forth in the CAISO Tariff.

"<u>Scheduled Energy</u>" means the PV Energy, Charging Energy, and/or Discharging Energy reflected in a final Day-Ahead Schedule, FMM Schedule, and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time.

"<u>Scheduled Maintenance</u>" means scheduled maintenance on all or a portion of the Facility scheduled in accordance with Section 6.1.

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

"Security Interest" has the meaning set forth in Section 8.9.

"Self-Schedule" has the meaning set forth in the CAISO Tariff.

"Seller" has the meaning set forth on the Cover Sheet.

"Seller's WREGIS Account" has the meaning set forth in Section 4.9(a).

"Settlement Amount" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0).

"Settlement Interval" has the meaning set forth in the CAISO Tariff.

"<u>Settlement Period</u>" has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

"Shared Facilities" means the gen-tie lines, transformers, substations, switchyard, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from Seller's Facility (which is excluded from Shared Facilities) to the Delivery Point, that are used in common with Other Facilities, as applicable.

"Shared Facilities Agreement" has the meaning set forth in Section 6.4(a).

"Shared Facilities Counterparty" means any counterparty to a Shared Facilities Agreement with Seller.

"Showing Deadline" means the initial deadline that a Scheduling Coordinator must meet to submit its RA Plan, as established by CAISO or any other Governmental Authority. For illustrative purposes only, the CAISO monthly Showing Deadline is approximately 45 days prior to the RA delivery month.

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

"Station Use" has the meaning given in the tariff of the retail provider of energy for the Facility and reflects (a) the electric energy that is used within the Facility (including to power the lights, motors, control systems, thermal regulation equipment and other electrical loads) and that is necessary for operation of the Facility; and (b) the electric energy that is consumed within the Facility's electric energy distribution system as losses (other than any losses that are Electrical Losses).

"Storage Availability Adjustment" has the meaning set forth in Exhibit L.

"Storage Capacity" means the maximum dependable operating capability of the Storage Facility (expressed in MW AC) to discharge electric energy at the maximum discharge rate that can be sustained for four (4) consecutive hours, as the same is to be established as of the Delivery Commencement Date and adjusted from time to time pursuant to Exhibit M to reflect the results of the most recently performed Storage Capacity Test; provided that the Storage Capacity shall not at any time exceed the lesser of (a) the Guaranteed Storage Capacity, and (b) the Storage Facility's then current Pmax in the Storage Facility's CAISO's Master Data File and Resource Data Template (or successor data systems).

"Storage Capacity Payment" has the meaning set forth in Section 3.3(d).

"Storage Capacity Test" or "SCT" means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Exhibit M.

"Storage Facility" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment and Seller's rights and interests in Shared Facilities required to deliver the Storage Product, but excluding any portions of Shared Facilities other than Seller's rights and interests thereto.

"Storage Facility Meter" means the CAISO approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of (i) PV Charging Energy, (ii) Grid Charging Energy, and (iii) Discharging Energy. For clarity, the Facility may include multiple measurement devices and calculations that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and calculations and the aggregated data of all such measurement devices and calculations, taken together.

"Storage Integrity Test" means a test of the Storage Facility, other than a Storage Capacity Test, conducted to demonstrate achievement of the values and attributes in Exhibit P in accordance with Prudent Operating Practice and at times reasonably agreed to between the Parties, or pursuant to a binding notice from CAISO, the PTO or any other Governmental Authority.

"<u>Storage Product</u>" means (a) the ability of the Storage Facility to accept and store Charging Energy and to deliver Discharging Energy in accordance with the terms of this Agreement, (b) Capacity Attributes, if any, and (c) Storage Capacity, including, for the avoidance of doubt, Ancillary Services, in each case arising from or relating to the Storage Facility.

"Storage Rate" has the meaning set forth on the Cover Sheet.

"Stored Energy" means the electric energy in the Storage Facility available to be discharged as Discharging Energy.

"Stored Energy Level" means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

"Supplementary Storage Capacity Test Protocol" has the meaning set forth in Exhibit $\underline{\mathbf{M}}$.

"Supply Plan" has the meaning set forth in the CAISO Tariff.

"System Emergency" means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

"System Resource Adequacy Benefits" means the attributes, however defined, of a resource that can be used to satisfy the resource adequacy obligations of a load serving entity, other than Flexible Resource Adequacy Benefits and Local Capacity Area Resource Adequacy Benefits.

"<u>Tangible Net Worth</u>" means the tangible assets (for example, not including intangibles such as goodwill and rights to patents or royalties) that remain after deducting liabilities as determined in accordance with generally accepted accounting principles.

"<u>Tax</u>" or "<u>Taxes</u>" means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

"Terminated Transaction" has the meaning set forth in Section 11.2(a).

"Termination Payment" has the meaning set forth in Section 11.3.

"<u>Transmission System</u>" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

" <u>Ultimate Parent</u> " means, in the case of Seller,
provided that after a Change of Control of Seller pursuant to Section 14.2 where
owns, directly or indirectly through one or more intermediate
entities, more than fifty percent (50%) of the outstanding equity interests in Seller,
shall be the Ultimate Parent for all purposes hereunder.

"<u>Variable Energy Resource Forecast</u>" or "<u>VER Forecast</u>" means, for a given period, the final forecast of the Energy to be produced by the Facility prepared by the CAISO in accordance with the Eligible Intermittent Resources Protocol.

"WECC" means the Western Electricity Coordinating Council or its successor.

"<u>WREGIS</u>" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"WREGIS Certificate Deficit" has the meaning set forth in Section 4.9(e).

"<u>WREGIS Certificates</u>" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"<u>WREGIS Operating Rules</u>" means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

- 1.2 **<u>Rules of Interpretation</u>**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;
- (f) a reference to a Person includes that Person's successors and permitted assigns;
- (g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars, and references to a LMP shall mean the LMP at the Delivery Point unless expressly provided otherwise;
- (k) the expression "and/or" when used as a conjunction shall connote "any or all of";
- (l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating

Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

- (a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term").
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under <u>Article 19</u> shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.
- 2.2 <u>Conditions Precedent</u>. The Delivery Term shall not commence until Seller completes each of the following conditions:
- (a) Seller shall have delivered to Buyer certificates from a Licensed Professional Engineer substantially in the form of <u>Exhibits I-1</u> and <u>I-2</u>;
- (b) Authorization to parallel the Facility was obtained by the Participating Transmission Owner prior to the Delivery Commencement Date.
- (c) The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by the Delivery Commencement Date.
 - (d) The CAISO has provided notification supporting Commercial Operation.
- (e) Buyer, or its designee, is the Scheduling Coordinator for the Facility; provided that if this requirement is not met because of Buyer's (or its designee's) actions or failure to take actions, and this is the only requirement for Delivery Commencement that has not been met, Seller shall be entitled to a day for day extension of the Guaranteed Delivery Commencement Date for such Buyer (or its designee) actions or failure to act.
- (f) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

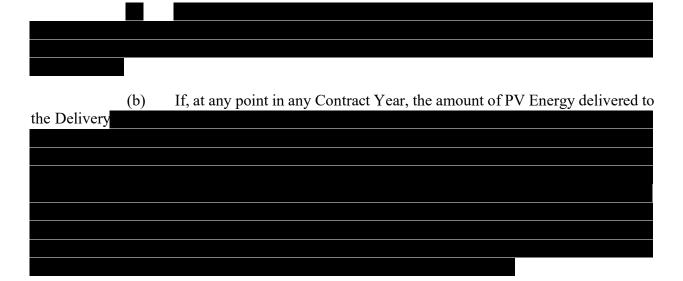
- (g) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement, including all modifications and amendments thereto, delivered to Buyer;
- (h) Seller shall have delivered to Buyer a copy of all environmental impact reports, the conditional use permit for the Facility, and a certificate signed by an authorized representative of Seller stating that Seller is in material compliance with the requirements of the conditional use permit and describing any material non-compliance with the requirements of the conditional use permit (for purposes of this Section 2.2(h) "material non-compliance with the requirements of the conditional use permit" means such non-compliance with the conditional use permit as would be reasonably likely have an adverse impact on Seller's performance under this Agreement);
 - (i) Seller has received CEC Precertification;
- (j) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, Qualified Reporting Entity service agreements, and other appropriate documentation required for Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
- (k) Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has ability to offer Bids into CAISO Day-Ahead Markets and Real-Time Markets in respect of each of the Generating Facility and the Storage Facility.
- (l) Seller shall have completed all necessary steps to provide Ancillary Services from the Facility, including completing the certification and testing requirements in Section 8.3.4 and Appendix K of the CAISO Tariff with respect to the provision of Ancillary Services;
- (m) Seller has delivered to Buyer, to the extent available as of the Delivery Commencement Date, (i) any solar resource report prepared by a third party consultant with respect to the Facility, and (ii) any report by an independent engineer in connection with the financing of the construction or permanent operation of the Facility;
 - (n) Seller has delivered the Performance Security to Buyer; and
- (o) Seller has paid Buyer for all Daily Delay Damages and Delivery Commencement Delay Damages owing under this Agreement, if any (provided that any Development Security amounts drawn by Buyer to satisfy such amounts shall be credited against such payment obligation and provided, further, that in no event shall Seller be required to pay Daily Delay Damages and Delivery Commencement Delay Damages in excess of an amount that is equal to

- 2.3 Progress Reports. The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation of the Facility, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. Seller shall also provide Buyer with any reasonably requested documentation (subject to reasonable confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.
- Remedial Action Plan. If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, Seller shall submit to Buyer, within ten (10) Business Days of such third missed Milestone completion date (or the ninetieth (90th) day after the missed Milestone completion date, as applicable), a remedial action plan ("Remedial Action Plan"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), and Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Delivery Commencement Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Delivery Commencement Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Construction Start Date or the Guaranteed Delivery Commencement Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).
- Facility Configuration. The Parties agree that the Facility configuration will be as a Hybrid Resource in accordance with the CAISO Tariff with a single CAISO Resource ID and a separate Generating Facility Meter and Storage Facility Meter. Seller shall design the Facility metering and equipment (although not necessarily the software associated therewith) to accommodate reconfiguration to function as a Co-located Resource using the best available information at the time of meter installation. After the Recapture Period, Buyer may request that Seller convert the Facility from a Hybrid Resource to a Co-located Resource with separate CAISO Resource IDs and separate CAISO approved revenue quality meters for each of the Storage Facility and Generating Facility in accordance with the CAISO Tariff. Seller shall provide an estimate of the costs and expenses anticipated to be incurred to effect such conversion for Buyer's review within thirty (30) days after Buyer's request for the conversion. Thereafter, Buyer may elect to proceed with the conversion by approving such costs and expenses. If Buyer approves the costs and expenses for reimbursement, the conversion shall be completed promptly within the timeline in the CAISO's administrative process and Buyer shall reimburse Seller for its reasonable and documented costs and expenses incurred to effectuate the conversion of the Facility from a Hybrid Resource to a Co-located Resource configuration. In addition to the other limitations specified in this Section 2.5, if such request or such conversion of the Storage Facility from a hybrid solar and storage facility to a storage facility co-located with solar is not permitted by CAISO or any Governmental Authority, could require a material modification of the Facility, or reasonably could

be expected to have an adverse impact on the expected economic benefit to Seller arising out of this Agreement that is not compensated for by Buyer, Seller shall provide notice of the same to Buyer with a reasonably detailed explanation and Seller shall not be required to effectuate the conversion. If such request or such conversion of the Storage Facility from a hybrid solar and storage facility to a storage facility co-located with solar would require an amendment to this Agreement, the Parties shall negotiate in good faith to amend this Agreement.

ARTICLE 3 PURCHASE AND SALE

- Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the Contract Price, all of the Product produced by the Facility. Buyer shall re-sell all of the Energy purchased hereunder (other than Charging Energy), and may, at its sole discretion, resell or use for another purpose all or a portion of the remainder of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. The Parties acknowledge that it is anticipated that the Facility will be constructed and completed in advance of the Delivery Commencement Date and that Seller will market Energy and other attributes from the Facility prior to the Delivery Commencement Date to another buyer. Except for Deemed Delivered Energy, Buyer has no obligation to pay Seller for any Product that is not delivered to the Delivery Point as a result of any circumstance, including an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement RA under Section 3.9.
- 3.2 <u>Sale of Green Attributes</u>. Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all of the Green Attributes produced by the Facility during the Delivery Term.
- 3.3 <u>Compensation</u>. Buyer shall compensate Seller for the Product in accordance with this <u>Section 3.3</u>.



(c) If during any Settlement Interval, Seller delivers PV Energy in excess of the
product of the Installed PV Capacity and the duration of the Settlement Interval, expressed in hours
("Excess MWh"), then the price applicable to all such Excess MWh in such Settlement Interval
shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller
shall pay to Buyer an amount equal to the absolute value of the Negative LMP times the number
of such Excess MWh ("Negative LMP Costs").



3.4 **Imbalance Energy**.

- (a) Buyer and Seller recognize that from time to time the amount of Facility Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. Subject to Section 3.4(b), during the Delivery Term, to the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.
- (b) If Seller is not in compliance with EIRP or any applicable provisions of this Agreement, including Section 4.4(d), or if Imbalance Energy results from any outage or reduction in the availability of the Facility that is not communicated to Buyer at least one hour prior to the deadline to submit Schedules to CAISO, then Seller will be responsible for and shall pay directly or promptly reimburse Buyer (and Buyer may offset amounts owed to Seller) for the aggregate Imbalance Energy charges assessed, net of the aggregate Imbalance Energy revenues earned, during such period of noncompliance and reasonably attributable to such noncompliance within the applicable Contract Year. At Buyer's request, Seller will cooperate with Buyer to develop a written administrative protocol to effectuate the Parties' agreement with respect to Imbalance Energy and scheduling.
- 3.5 <u>Ownership of Renewable Energy Incentives</u>. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 Future Environmental Attributes.

- (a) The Parties acknowledge and agree that as of the Effective Date, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Buyer shall have the right to obtain such Future Environmental Attributes without any adjustment to the Contract Price paid by Buyer under this Agreement. Subject to Section 3.13, Seller shall take all reasonable actions necessary to realize the full value of such Future Environmental Attributes for the benefit of Buyer, and shall cooperate with Buyer in Buyer's efforts to do the same.
- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any incremental expenses incurred by Seller associated with providing such Future Environmental Attributes; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

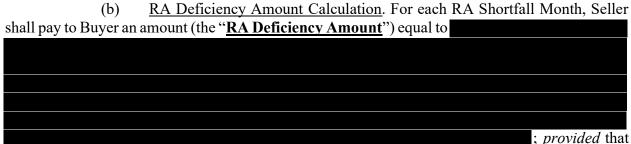
3.7 Reserved.

- 3.8 <u>Capacity Attributes</u>. Seller shall request Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status or Partial Capacity Deliverability Status.
- (a) Subject to <u>Section 3.13</u>, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility throughout the Delivery Term.
- (b) Subject to Section 3.13, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, subject to Section 3.13, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.
- (c) Subject to <u>Section 3.13</u>, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

- (d) For the duration of the Delivery Term, Seller shall maintain an interconnection capacity under its Interconnection Agreement of at least the amount of the Guaranteed Interconnection Capacity.
- (e) If, as a result of Scheduled Maintenance or otherwise, CAISO requires RA Substitute Capacity in connection with Seller's provision of Resource Adequacy Benefits to Buyer from the Facility, Seller shall provide such RA Substitute Capacity in accordance with applicable CAISO requirements. Seller acknowledges and agrees that any failure by Seller to provide such RA Substitute Capacity may result in CAISO rejecting or cancelling Scheduled Maintenance or other outage of the Facility. Buyer shall notify Seller within three (3) Business Days after becoming aware of an obligation by Seller to provide RA Substitute Capacity. Upon request by Seller, Buyer shall use commercially reasonable efforts to secure, on Seller's behalf, RA Substitute Capacity; provided that Seller shall reimburse Buyer for all out-of-pocket costs, including broker and outside counsel costs, associated with such RA Substitute Capacity.

3.9 **Resource Adequacy Failure**.

(a) <u>RA Deficiency Determination</u>. Notwithstanding Seller's obligations set forth in <u>Section 4.3</u> or anything to the contrary herein, the Parties acknowledge and agree that if Seller has indicated that the Facility will have Full Capacity Deliverability Status or Partial Capacity Deliverability Status for the entire Guaranteed Interconnection Capacity on the Cover Sheet, but has failed to obtain such status for the Facility by the RA Guarantee Date, or if Seller otherwise fails to provide Resource Adequacy Benefits in an amount equal to or greater than the Guaranteed RA Amount as required hereunder, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer or provide Replacement RA for the Capacity Attributes that Seller failed to convey to Buyer.



Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA up to the RA Shortfall, provided that any Replacement RA capacity is (A) communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit Q at least seventy-five (75) days before the applicable CPUC operating month and (B) is delivered to Buyer at least ten (10) Business Days before the CPUC and CAISO Showing Deadline for the operating month for the purpose of annual and monthly RA Plan reporting.

3.10 <u>CEC Certification and Verification</u>. Subject to <u>Section 3.13</u>, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Precertification and CEC Final Certification and Verification for the Facility. Seller shall obtain CEC Precertification by the Delivery Commencement Date. Within thirty (30) days after the Delivery Commencement Date, Seller shall apply with the CEC for CEC

Final Certification and Verification. Within one hundred eighty (180) days after the Delivery Commencement Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the CEC Final Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Precertification or CEC Final Certification and Verification for the Facility. For the first one hundred eighty (180) days of the Delivery Term, provided that Seller has obtained and maintained CEC Precertification, Buyer shall pay Seller the Renewable Rate for PV Energy according to Section 3.3 regardless of whether Seller has obtained CEC Final Certification and Verification. If Seller has not obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Delivery Commencement Date, Buyer will compensate Seller for PV Energy at the lower of (i) the Renewable Rate, as adjusted according to Section 3.3, or (ii) the Day-Ahead LMP, for the remainder of the Delivery Term, or until Seller obtains CEC Final Certification and Verification. If Seller obtains CEC Final Certification and Verification after one hundred eighty (180) days after the Delivery Commencement Date, Buyer will thereafter begin paying Seller the Renewable Rate for PV Energy according to Section 3.3, and, if such CEC Final Certification and Verification relates back to all PV Energy delivered by Seller during the Delivery Term, will reimburse Seller for the difference between (x) any reduced amounts paid to Seller for PV Energy under this Section 3.10 due to Seller's failure to obtain CEC Final Certification and Verification within one hundred eighty (180) days after the Delivery Commencement Date, and (y) the amount that would have been paid to Seller had Seller timely obtained CEC Final Certification and Verification within one hundred eighty (180) days after the Delivery Commencement Date. If Seller has not obtained CEC Final Certification and Verification within one (1) year of the Delivery Commencement Date, then an Event of Default shall occur, Buyer shall have all remedies available under this Agreement, including under Section 11.2, and, in the event that Buyer terminates this Agreement under Section 11.2, Seller shall reimburse Buyer, in addition to any other amounts owed, in an amount equal to the difference between (a) the amount paid by Buyer to Seller for PV Energy during the first one hundred eighty (180) days of the Delivery Term, and (b) the amount that would have been paid if the price for energy delivered during the first one hundred eighty (180) days of the Delivery Term were the Day-Ahead LMP.

- 3.11 <u>Eligibility</u>. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Generating Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Generating Facility's output delivered to Buyer to the Delivery Point and to the Storage Facility as PV Charging Energy qualifies under the requirements of the California Renewables Portfolio Standard and Portfolio Content Category 1. To the extent a change in Law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.
- 3.12 <u>California Renewables Portfolio Standard</u>. Subject to <u>Section 3.13</u>, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by California statute or by the CPUC or CEC from time to time.

3.13 <u>Compliance Expenditure Cap</u>. If Seller establishes to Buyer's reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller's cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller's obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b), (c), and (d), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at cumulatively during

the Delivery Term ("Compliance Expenditure Cap"):

- (a) CEC Certification and Verification;
- (b) Green Attributes;
- (c) Future Environmental Attributes; and,
- (d) Capacity Attributes.

Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "Compliance Actions."

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and reasonable documentation of such costs from Seller.



- 3.14 <u>Guaranteed Interconnection Capacity</u>. Seller shall enable the Aggregate Capability Constraint and sub-Aggregate Capability Constraints with CAISO so as to ensure that the Buyer has the exclusive right to use the Guaranteed Interconnection Capacity.
- 3.15 <u>Project Configuration and Grid Charging</u>. After the Recapture Period, if Buyer elects to provide Charging Energy from a source other than the Generating Facility, including Grid Charging Energy, (i) Buyer will be responsible for the costs of Energy (including transmission thereof to the Delivery Point) relating to the charging of the Storage Facility from a source other than the Generating Facility (not including Imbalance Energy costs for which Seller is otherwise responsible), and (ii) PV Energy delivered by Seller to the Delivery Point will be fully paid for by Buyer (unless Buyer is otherwise not required to pay for such PV Energy hereunder). For the avoidance of doubt, any use of Grid Charging Energy shall also count towards any daily or annual cycling restrictions for the Storage Facility contained herein.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

- (a) <u>Energy</u>. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall make available and Buyer shall accept at the Delivery Point all Product. Each Party shall perform all obligations under this Agreement, including all generation, scheduling, and transmission services, in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice.
- (b) <u>Green Attributes</u>. Seller hereby provides and conveys all Green Attributes associated with the Facility as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility. Seller shall, at Buyer's request and at Seller's sole expense, take all actions and execute all documents or instruments necessary to ensure that the Facility is certified in the Center for Resource Solutions Green-e certification program, or successor program.
- (c) <u>Station Use</u>. Seller may serve Station Use from Energy produced by the Facility only to the extent permissible in accordance with the CAISO Tariff and subject to the following requirements and restrictions:
- (i) Seller shall not bill Buyer and Buyer will not pay Seller for any Energy that serves Station Use, and Seller shall bear all costs associated with Energy that serves Station Use, including (A) any PV Energy that serves Station Use or is stored in the storage Facility to serve Station Use, (B) any Stored Energy or Discharging Energy that serves Station Use during

periods when such service is permissible in accordance with the CAISO Tariff; and/or (C) any CAISO costs or Imbalance Energy costs incurred to serve Station Use;

- (ii) Seller shall be responsible for the accurate metering and accounting for Energy used to serve Station Use to ensure that records and invoices to Buyer are accurate and do not improperly bill Buyer for Energy that serves Station Use;
- (iii) Seller shall ensure that any use of Stored Energy or Discharging Energy to serve Station Use complies with and does not interfere with or impair Buyer's or the CAISO's dispatch of or schedule for the Facility, and if Seller fails to comply with such requirements, then, without prejudice to Buyer's other rights and remedies hereunder, Seller shall reimburse Buyer for (A) any charges, costs, and penalties imposed by the CAISO for the Storage Facility's failure to comply with dispatch instructions, the CAISO schedule, or any CAISO requirements; and (B) any loss of revenue if the CAISO adjusts dispatch instructions due to the use of Energy to serve Station Use, in each case only to the extent imposed or incurred as a direct result of Seller's use of Energy to serve Station Use;
- (iv) Any use of Energy for Station Use shall not (A) reduce Seller's obligations to achieve the Guaranteed Storage Availability and Guaranteed Round Trip Efficiency, or (B) count toward limits specified in the Operating Restrictions; and
- (v) Seller shall provide to Buyer upon Buyer's request all records and data, including detailed meter, charging, discharging, and state of charge data, that may be necessary or useful for Buyer to verify that service of Station Use occurred in compliance with this Section 4.1(c), and to calculate and verify the accuracy of invoices and amounts required to be reimbursed hereunder.

4.2 Title and Risk of Loss.

- (a) <u>Energy</u>. Title to and risk of loss related to the Facility Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to Grid Charging Energy shall pass and transfer from Buyer to Seller at the Delivery Point.
- (b) <u>Green Attributes</u>. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 Scheduling Coordinator Responsibilities.

(a) <u>Buyer as Scheduling Coordinator for the Facility</u>. Subject to the immediately following sentence, upon Initial Synchronization of the Facility to the CAISO Grid, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point. At least thirty (30) days prior to the Delivery Commencement Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of the Delivery Commencement Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO

all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Delivery Commencement Date. On and after the Delivery Commencement Date, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. The Parties shall cooperate reasonably, and cause their third party scheduling coordinators, as applicable, to cooperate reasonably, prior to the Delivery Commencement Date to ensure that the Product may be delivered as of the Delivery Commencement Date (including submitting Supply Plans before the Delivery Commencement Date designating Buyer as the owner of the Resource Adequacy Benefits as of the Delivery Commencement Date).

- (b) <u>Notices</u>. During the Delivery Term, Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, Forced Facility Outages, Forced Facility Outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.
- CAISO Costs and Revenues. Prior to the Delivery Commencement Date, (c) Seller shall be responsible for all CAISO costs (including penalties, Imbalance energy costs or revenues, or other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Energy Scheduled or delivered from the Facility. During the Delivery Term, except as otherwise set forth below and in Sections 3.4(b) and 3.7, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties or fees resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility during the Delivery Term). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller's responsibility.
 - (d) <u>CAISO Settlements</u>. During the Delivery Term, Buyer (as Seller's SC)

shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement, including Section 3.4(b). CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under Section 4.3(e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

- (e) <u>Dispute Costs</u>. During the Delivery Term, Buyer (as Seller's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.
- (f) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.
- (g) <u>Master Data File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent, not to be unreasonably withheld.
- (h) <u>NERC Reliability Standards</u>. During the Delivery Term, Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.
- 4.4 <u>Forecasting</u>. Seller shall provide the forecasts described below. Seller's Available Generating Capacity forecasts shall include availability and updated status of key equipment for the Generating Facility. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and expected Energy of the Generating Facility and Available Storage Capacity of the Storage Facility accurately and to transmit such information in a format reasonably

acceptable to Buyer (or Buyer's designee).

- (a) <u>Annual Forecast of Expected PV Energy</u>. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.
- (b) <u>Monthly Forecast of Available Capacity</u>. No less than thirty (30) days before the beginning of Delivery Commencement, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer's designee (if applicable) a non-binding forecast of the hourly Available Generating Capacity and Available Storage Capacity in each case for each day of the following month in a form reasonably acceptable to Buyer.
- (c) <u>Daily Forecast of Available Capacity</u>. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, Seller shall provide Buyer with a non-binding forecast of the Available Generating Capacity (or if requested by Buyer, the expected PV Energy) and Available Storage Capacity for each hour of the immediately succeeding day ("<u>Day-Ahead Forecast</u>"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of the Available Generating Capacity (or if requested by Buyer, the expected PV Energy) and Available Storage Capacity.
- Real-Time Available Capacity. During the Delivery Term, Seller shall notify Buyer of any changes in Available Generating Capacity and/or Available Storage Capacity of one (1) MW or more, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity and/or Available Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity and/or Available Storage Capacity, as applicable, the expected end date and time of such event, the expected Available Generating Capacity and/or Available Storage Capacity, as applicable, in MW, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These notices and changes to Available Generating Capacity and/or Available Storage Capacity shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.4(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) <u>Hybrid Resource Forecast Requirements</u>. Seller shall provide such additional information regarding the Facility as is needed by Buyer or the CAISO to fully make use of Hybrid Resource functionality, or as is otherwise reasonably requested by Buyer.

4.5 <u>Dispatch Down/Curtailment</u>.

- (a) <u>General</u>. Seller agrees to reduce the Generating Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment. Buyer has no obligation to purchase or pay for any Product delivered in violation of any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, or for any Product that could not be delivered to the Delivery Point due to a Force Majeure Event.
- (b) <u>Buyer Curtailment.</u> Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a Dispatch Notice delivered to Seller, which also shall be deemed to terminate any outstanding Discharging Notices, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with all Buyer Curtailment Periods at the applicable Renewable Rate.
- (c) <u>Failure to Comply</u>. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is an amount equal to the absolute value of the Negative LMP, if any, for the Buyer Curtailment Period or Curtailment Period, times the amount of MWh of Facility Energy delivered to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, and (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.6 **Charging and Discharging Energy**.

- (a) During the Delivery Term, Buyer will be the Scheduling Coordinator for the Storage Facility and will have sole and exclusive rights to charge and discharge the Storage Facility and to bid and schedule the Storage Facility in CAISO markets, subject to the terms of this Agreement, including the Operating Restrictions. During the Recapture Period the Storage Facility shall be charged using only PV Charging Energy and shall not be charged using Grid Charging Energy. Seller shall install such switches, equipment, software or other technology as is required under the CAISO Tariff so that CAISO will not allow the Storage Facility to be charged using Grid Charging Energy during the Recapture Period.
- (b) Seller shall comply with Charging Notices and Discharging Notices that comply with the terms of this Agreement. Upon receipt of a valid Charging Notice, Seller shall deliver the PV Charging Energy to or accept the Grid Charging Energy at the Storage Facility, as applicable, in accordance with the terms of this Agreement (including the Operating Restrictions),

at the times and in the quantities specified in such Charging Notice. Upon receipt of a valid Discharging Notice, Seller shall deliver the Discharging Energy to the Delivery Point in accordance with the terms of this Agreement (including the Operating Restrictions), at the times and in the quantities specified in such Discharging Notice.

- (c) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including Operating Restrictions, and the forecasted availability of PV Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.
- (d) Seller shall not charge the Storage Facility during the Contract Term other than pursuant to a valid Charging Notice or in connection with a Storage Capacity Test or Storage Integrity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. If, during the Contract Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (except as permitted in the first sentence of this Section 4.6(d)), or (ii) charges the Storage Facility in violation of the first or second sentence of Section 4.6(b), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(b), and without limiting any of Buyer's other rights under this Agreement:
 - (i) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility;
 - (ii) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy) (including PV Energy if used as Charging Energy);
 - (iii) the Monthly Storage Availability calculation shall be affected to the extent specified in Exhibit L.
- (e) Subject to compliance with the CAISO Tariff, other applicable Laws and the Operating Restrictions, Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.
- (f) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice or in connection with a Storage Capacity Test or Storage Integrity Test (for which Seller may request a Charging Notice from Buyer), or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority. Discharging for Station Use may occur only as specified in Section 4.1(c). In the case of a Storage Integrity Test, Buyer shall pay for costs associated with the Charging Energy (including PV Charging Energy at the

Renewable Rate, if applicable) and may retain any revenue from the discharge of such energy (adjusted for efficiency losses) pursuant to a valid Discharging Notice. If, during the Contract Term, Seller (i) discharges the Storage Facility to a Stored Energy Level less than the Stored Energy Level provided for in the Discharging Notice (except as permitted in the first or second sentence of this Section 4.6(f)), or (ii) discharges the Storage Facility in violation of the first or second sentence of this Section 4.6(f), then, in addition to any other costs and charges for which Seller is responsible, including Imbalance Energy costs and other amounts specified in Section 4.3(b), and without limiting any of Buyer's other rights under this Agreement:

- (i) Buyer shall retain any positive revenues received from CAISO or otherwise associated with such discharge;
- (ii) Seller shall be responsible for and reimburse Buyer for all energy costs associated with charging the Storage Facility to the Stored Energy Level specified by Buyer before the discharge; and
- (iii) the Monthly Storage Availability calculation shall be affected to the extent specified in $\underline{\text{Exhibit } L}$.
- Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Discharging Notices applicable to such Settlement Interval (but not over Charging Notices which are consistent with such Curtailment Orders, Buyer Curtailment Orders, or Buyer Bid Curtailments), and Seller shall have no liability for violation of this Section 4.6 or any Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment, or other instruction or direction from a Governmental Authority or the PTO unless caused by Seller's fault or negligence. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment, or Curtailment Order consistent with the Operating Restrictions.
- (h) Notwithstanding any other provision of this Agreement, during the Recapture Period:
 - (i) the Storage Facility shall only be charged using PV Charging Energy and shall not be charged using any Grid Charging Energy; provided, that if CAISO requires Seller to charge the Storage Facility using Grid Charging Energy, Seller shall comply with such CAISO requirements and Buyer will not be liable for any damages, costs, or losses of Seller or any third party, including as relates to loss of tax or other financial benefits or incentives, arising therefrom;
 - (ii) Buyer shall not instruct Seller to charge the Storage Facility using Grid Charging Energy unless, in Buyer's role as Scheduling Coordinator for the Facility, as required by CAISO. Seller shall not be required to comply with any instruction, order, Charging Notice, or other communication requesting or requiring the Storage Facility to be charged from any source other than the Generating Facility, unless required by CAISO, and

the Parties shall cooperate to address and resolve any of the foregoing to be consistent with this Section 4.6(h);

- (iii) Seller shall be responsible for designing, constructing, operating, and maintaining the Facility in a manner that both complies with this Section 4.6(h) and includes the physical components that will accommodate a future Buyer request to charge the Storage Facility with Grid Charging Energy after the Recapture Period; and
- (iv) Buyer, in its role as Scheduling Coordinator, shall use commercially reasonable efforts and cooperate with Seller to prevent a CAISO-directed order to use Grid Charging Energy during the Recapture Period.
- 4.7 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1 or Exhibit F:
- (a) <u>Facility Maintenance</u>. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by Scheduled Maintenance on the Facility previously agreed to between Buyer and Seller.
- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration and extent (if known) of any Forced Facility Outage.
- (c) <u>System Emergencies and other Interconnection Events</u>. Seller shall be permitted to reduce deliveries of Product during any period of and to the extent required by System Emergency, Buyer Curtailment Period, or upon Notice of a Curtailment Order, or pursuant to the terms of the Interconnection Agreement or applicable tariff. In the event of a System Emergency, anticipated System Emergency, or other event or circumstance in which CAISO determines that there is or may be an imminent need for Energy supplies on the CAISO Grid, Seller shall use reasonable efforts to make the Product fully available, including by cancelling or deferring any Facility maintenance.
- (d) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during and to the extent required by any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
- 4.8 <u>Expected Energy and Guaranteed Energy Production</u>. The quantity of PV Energy that Seller expects to be able to deliver to Buyer at the Delivery Point or the Storage Facility during each Contract Year is set forth on the Cover Sheet ("<u>Expected Energy</u>"). Seller shall be required to deliver to Buyer at the Delivery Point or the Storage Facility an amount of PV Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("<u>Performance Measurement Period</u>"). "<u>Guaranteed Energy Production</u>" means an amount of PV Energy, as measured in MWh, equal to

for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any

Performance Measurement Period only to the extent that Seller was unable to deliver PV Energy as a result of any Force Majeure Events, Buyer Default, Curtailment Periods and Buyer Curtailment Periods; to effectuate the foregoing excuse, Seller shall be deemed to have delivered to Buyer (1) the Deemed Delivered Energy in respect of Buyer Curtailment Periods, and (2) an amount of Energy determined in accordance with Exhibit F in respect of Lost Output. In addition, for purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer, in the first Contract Year of each Performance Measurement Period following a Performance Measurement Period as to which Seller has paid damages calculated in accordance with Exhibit F, the Energy in the amount equal to the greater of the amount of PV Energy actually delivered in such Contract Year, less Excess MWh, or of the Expected Energy for such Contract Year. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F.

- 4.9 <u>WREGIS</u>. Seller shall, at its sole expense, but subject to <u>Section 3.13</u>, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all PV Energy delivered to the Delivery Point or to the Storage Facility as PV Charging Energy, as measured by the Generating Facility Meter, are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification, issuance, and transfer of such WREGIS Certificates to Buyer, and Buyer shall be given sole title to all such WREGIS Certificates. In addition:
- (a) Prior to the Delivery Commencement Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the accounts of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account") Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account. Buyer shall be responsible for establishing and maintaining Buyer's WREGIS Account and all expenses associated therewith.
- (b) Seller shall cause CAISO to be designated as the Qualified Reporting Entity for the Facility. Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy for such calendar month as evidenced by the Generating Facility's metered data.

- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under <u>Section 8.2</u>, Buyer shall make an invoice payment for a given month in accordance with <u>Section 8.2</u> before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this <u>Section 4.9</u>. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with <u>Section 8.2</u>.
- A "WREGIS Certificate Deficit" means any deficit or shortfall in (e) WREGIS Certificates issued to Buyer for a calendar month as compared to the PV Energy delivered to the Delivery Point or to the Storage Facility as PV Energy, as measured by the Generating Facility Meter, for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit occurs, then the amount of PV Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, that the foregoing reduction shall not apply to the extent the WREGIS Certificate Deficit was caused by the fault or negligence of Buyer; provided, further, however, that Buyer shall pay Seller for any PV Energy that is delivered by Seller without corresponding WREGIS Certificates at a price equal to the lesser of (i) the Renewable Rate, or (ii) the Day-Ahead LMP. Without limiting Seller's obligations under this Section 4.9, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. Seller shall use commercially reasonable efforts to rectify any WREGIS Certificate Deficit as expeditiously as possible.
- (f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this <u>Section 4.9</u> after the Effective Date, the Parties promptly shall modify this <u>Section 4.9</u> as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy in the same calendar month.
- (g) Seller warrants that all necessary steps to allow the Renewable Energy Credits to be issued to Buyer and tracked in WREGIS will be taken prior to the first delivery under the contract.
- 4.10 <u>Financial Statements</u>. If Seller has provided a Guaranty for Buyer's benefit, Seller shall provide to Buyer, within sixty (60) days of the end of Seller's Guarantor's first, second, and third fiscal quarters, and within one hundred twenty (120) days of the end of the Seller's Guarantor's fiscal year, as applicable, unaudited quarterly and annual audited financial statements of Seller's Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

4.11 Access to Data and Installation and Maintenance of Weather Station.

(a) Commencing on the Delivery Commencement Date, and continuing throughout the Delivery Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer,

throughout the Delivery Term, which changes Buyer determines are necessary to forecast output from the Facility, and/or comply with Law:

- (i) real time, read-only access to meteorological measurements, transformer availability, any other facility availability information, and, if applicable, all parameters necessary for use in the equation under item (vi) of this list;
- (ii) real time, read-only access to PV Energy, Charging Energy, Discharging Energy, Facility Energy, Storage Facility state-of-charge, and battery rack and inverter status (online or offline) information and meteorological measurements collected by the supervisory control and data acquisition (SCADA) system for the Facility; provided that if Buyer is unable to access the Facility's SCADA system, then upon written request from Buyer, Seller shall provide such information and meteorological measurements to Buyer in 1 minute intervals in the form of a flat file to Buyer through a secure file transport protocol (FTP) system with an e-mail back up for each flat file submittal;
- (iii) read-only access to the Generating Facility Meter, Storage Facility Meter, and CAISO Approved Facility Meter and all Facility meter data at the Site;
- (iv) instantaneous data measurements at sixty (60) second or increased frequency for the following parameters, which measurements shall be provided by Seller to Buyer in a consolidated data report at least once every five minutes via flat file through a secure file transport protocol (FTP) system with an e-mail backup: (i) back panel temperature (ii) global horizontal irradiance, (iii) plane of array irradiance (if the panels are fixed) or direct normal irradiance (if the panels are tracking), (iv) wind speed, (v) peak wind speed (within one minute), (vi) wind direction, (vii) ambient air temperature, (viii) dewpoint air temperature or relative humidity, (ix) horizontal visibility, (x) precipitation (rain rate), (xi) precipitation (running 30 day total), and (xii) barometric pressure; and
- (v) an equation, updated on an ongoing basis to reflect the potential generation of the Generating Facility as a function of insolation (and, if applicable, other weather factors). Such equation shall take into account the expected availability of the Generating Facility. Seller shall reasonably cooperate with any request from Buyer to adjust the equation due to results that are inconsistent with the observed Generating Facility output.

For any month in which the above information and access was not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Generating Facility's and Storage Facility's monthly actual available capacity in a form reasonably acceptable to Buyer.

(b) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 4.11(a), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(c) <u>Installation, Maintenance and Repair.</u>

- (i) Seller, at its own expense, shall install and maintain at least one (1) stand-alone meteorological station at the Site to monitor and report the meteorological data required in Section 4.11(a) of this Agreement. Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 4.11(a) of this Agreement.
- (ii) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Buyer's designee to enable Buyer to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.
- (iii) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice; provided that if Seller is unable to repair or replace such equipment within five (5) days, then Seller shall make such repair or replacement as soon as reasonably practical; provided further that Seller shall not be relieved from liability for any Imbalance Energy costs incurred under Section 3.4(b) during this additional period for repair or replacement.
- (iv) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is reestablished.
- (d) Seller agrees and acknowledges that Buyer may seek and obtain from third parties any information relevant to its duties as Scheduling Coordinator for Seller, including from the Participating Transmission Operator. Seller shall execute within a commercially reasonable timeframe upon request such instruments as are reasonable and necessary to enable Buyer to obtain from the Participating Transmission Operator information concerning Seller and the Facility that may be necessary or useful to Buyer in furtherance of Buyer's duties as Scheduling Coordinator for the Facility.
- (e) No later than ninety (90) days before the Delivery Commencement Date, Seller shall provide one (1) year, if available, but no less than six (6) months, of recorded meteorological data to Buyer in a form reasonably acceptable to Buyer from a weather station at the Site. Such weather station shall provide, via remote access to Buyer, all data relating to (i) the parameters (other than back panel temperature) identified in Section 4.11(a)(v) above (all data, except peak values, should be 1-second samples averaged into 10-minute periods); (ii) elevation, latitude and longitude of the weather station; and (iii) any other data reasonably requested by Buyer.

- 4.12 **Storage Availability and Efficiency.** The provisions of this <u>Section 4.12</u> apply during the Delivery Term.
- (a) <u>Storage Availability</u>. During the Delivery Term, the Storage Facility shall maintain an Monthly Storage Availability (calculated in accordance with <u>Exhibit L</u>) during each month of no less than (the "<u>Guaranteed Storage Availability</u>"). If, in any month after the Delivery Commencement Date, the Monthly Storage Availability is less than the Guaranteed Storage Availability, then, except as provided in <u>Section 11.1(b)(vii)</u>, Buyer's sole and exclusive remedy for such shortfall shall be the application of the Storage Availability Adjustment to reduce the Storage Capacity Payment due for the Storage Product as provided in <u>Section 3.3(d)</u>.
- (b) Round Trip Efficiency. During the Delivery Term, the Storage Facility shall maintain a Round Trip Efficiency (calculated in accordance with Exhibit P) during each month of no less than the Guaranteed Round Trip Efficiency. If, in any month during the Delivery Term, the Round Trip Efficiency is less than the Guaranteed Round Trip Efficiency, then, except as provided in Section 11.1(b)(viii), Buyer's sole and exclusive remedy (and Seller's sole and exclusive liability) for such shortfall shall be the adjustment of the monthly Storage Capacity Payment for the Storage Product as provided in Section 3.3(d).

4.13 **Storage Capacity Tests.**

- (a) Prior to the Delivery Commencement Date, Seller shall schedule and complete a Storage Capacity Test in accordance with <u>Exhibit M</u>. Thereafter, Seller and Buyer shall have the right to conduct additional Storage Capacity Tests in accordance with <u>Exhibit M</u>.
- (b) Buyer shall have the right to send one or more representatives to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representatives witnessing any Storage Capacity Test.
- (c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit M. If the actual capacity determined pursuant to a Storage Capacity Test deviates from the then current Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity) shall become the new Storage Capacity, effective as of the first day of the month following the completion of the Storage Capacity Test, for all purposes under this Agreement, including compensation under Section 3.3(d) until the next such Storage Capacity Test.
- 4.14 **Storage Facility Modifications**. Seller shall not modify or supplement all or any part of the Storage Facility without Buyer's prior written consent, which consent shall be not be unreasonably withheld, conditioned or delayed; provided that Seller may, without Buyer's consent, conduct the foregoing only to the extent they are routine maintenance, augmentation, improvement, replacements, or repairs undertaken in accordance with Prudent Operating Practice that do not change the Storage Facility's ability to meet the performance specifications of this Agreement or the Operating Restrictions and do not have any impact on Buyer's ability to receive Product from the Facility or charge or discharge the Storage Facility in the manner provided for in this Agreement; provided further that Seller shall provide Buyer with prior written notice of any

augmentation of the Storage Facility or replacement of any inverter comprising or involving five percent (5%) or more of the Installed Storage Capacity.

- 4.15 <u>Ancillary Services</u>. Seller shall maintain compliance with the applicable certification and testing requirements in Section 8.3.4 and Appendix K of the CAISO Tariff and otherwise maintain the ability to provide Ancillary Services.
- 4.16 <u>Workforce Agreement</u>. The Parties acknowledge that in connection with Buyer's energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, or similar agreement, providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.

ARTICLE 5 TAXES

- Allocation of Taxes and Charges. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to delivery or making available to Buyer, including on Energy prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy or other Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.
- 5.2 <u>Cooperation</u>. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 <u>Maintenance of the Facility</u>. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of

Product.

- (a) Subject to the terms and conditions of this Agreement, Seller shall have the right to perform scheduled maintenance on the Facility, including scheduled maintenance on all or a portion of the Facility. Seller shall, to the extent feasible and consistent with Prudent Operating Practice, arrange for any non-emergency maintenance that reduces the Available Generating Capacity and/or Available Storage Capacity of the Facility by more than to occur only between October 1 and May 31 of each year, unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the months of June through September or (iii) the Parties agree otherwise in writing. Seller shall provide Buyer with its schedule of Scheduled Maintenance no later than September 1 prior to each calendar year. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to adjusting the timing of Scheduled Maintenance. Seller may modify its schedule of Scheduled Maintenance upon reasonable advance notice to Buyer, subject to reasonable requests of Buyer and consistent with Section 4.4 and this Section 6.1.
- (b) Seller shall use commercially reasonable efforts to schedule maintenance outages (i) within a single month, rather than across multiple months, (ii) during periods in which CAISO does not require resource substitution or replacement, and (iii) otherwise in a manner to avoid reductions in the Resource Adequacy Benefits available from the Facility to Buyer, provided that Seller shall not be required to consolidate preventative maintenance activities into a single month where such consolidation is inconsistent with vendor-recommended maintenance schedules.
- Maintenance of Health and Safety. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.
- 6.3 <u>Permits and Approvals</u>. As between Buyer and Seller, Seller shall obtain any required permits and approvals in connection with the development, construction, and operation of the Facility, including without limitation, environmental clearance under the California Environmental Quality Act or other environmental law, from the local jurisdiction where the Facility will be constructed.

6.4 Shared Facilities.

(a) Seller shall obtain and maintain throughout the Delivery Term any and all interconnection and transmission service rights and permits required to effect delivery of all Facility Energy to the Delivery Point. During the Delivery Term, the Interconnection Agreement shall provide for sufficient interconnection capacity to ensure that at all times there is available or allocable solely to the Facility interconnection capacity that is no less than the Guaranteed PV Capacity. The Parties acknowledge that the Facility may deliver Energy through Shared Facilities

and that ownership and use of any Shared Facilities may be subject to a co-tenancy or similar sharing agreement (collectively, "Shared Facilities Agreement(s)"), under which Shared Facilities Agreements an Affiliate of Seller may act as a manager on behalf of Seller ("Affiliate Manager"). If there are Shared Facilities, Seller shall ensure that, during the startup period of the Facility and throughout the Delivery Term, Seller shall have sufficient interconnection capacity and rights under or through the Interconnection Agreement and the Shared Facilities Agreements, if any, to interconnect the Facility with the CAISO Grid and fulfill its obligations under this Agreement. In connection with the Interconnection Agreement and the Shared Facilities Agreements, if any, the following shall apply:

- (i) The Shared Facilities Agreements (if any) shall provide that:
- (A) the Affiliate Manager and any Shared Facilities Counterparty shall fully indemnify Seller for any liability arising out of its respective acts or omissions in regards to its respective performance obligations under the Shared Facilities Agreement in which such party is a counterparty with Seller,
- (B) Seller shall have the right to correct, remedy, mitigate, or otherwise cure any omission, failure, breach or default by the Affiliate Manager or any Shared Facilities Counterparty that would negatively impact Seller's obligations under any Shared Facilities Agreement in which Seller is a counterparty, and
- (C) any instruction from the CAISO or the Participating Transmission Owner to curtail energy deliveries in a manner that does not specify the curtailment levels applicable to the Facility or any Other Facility(ies) shall be allocated between the Facility and any Other Facility(ies) that have achieved Commercial Operation on a pro rata basis based upon their respective installed generating capacity for the applicable period, except (1) when such pro rata allocation would be in violation of the applicable curtailment instruction, or (2) to the extent that the need for the curtailment can be attributed to the Facility or any Other Facility.
- (ii) Seller shall, or shall cause any Shared Facilities Counterparty to, apply for and expeditiously seek FERC's acceptance of any Shared Facilities Agreement(s), if required.
- (iii) Except with respect to an assignment or collateral assignment of the Interconnection Agreement, Shared Facilities or Shared Facilities Agreement(s) to a Person to which this Agreement is assigned pursuant to Article 14 or Article 15, Seller shall not assign or transfer Seller's rights or obligations under the Interconnection Agreement or any Shared Facilities Agreement that would limit or otherwise adversely affect the Guaranteed Interconnection Capacity or that would otherwise impact Seller's ability to satisfy its obligations under this Agreement, to any Person without the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided that consent to an assignment of this Agreement to a Person shall also be deemed a consent to the assignment or other transfer by Seller of its interest in the Shared Facilities to such Person.
 - (b) As between Buyer and Seller under this Agreement, Seller shall be

responsible for all costs and charges directly caused by, associated with, or allocated to Seller, any Shared Facilities Counterparty or the Affiliate Manager under the Shared Facilities Agreement, if any, and the CAISO Tariff, in connection with the interconnection of the Facility to the Participating Transmission Owner's electric system and transmission of electric energy from the Facility to the Participating Transmission Owner's electric system.

(c) Seller shall, as counterparty to the Interconnection Agreement, or shall cause any Shared Facilities Counterparty, as applicable, to comply with the CAISO Tariff, including securing and maintaining in full force and effect all required CAISO agreements, certifications and approvals, and ensuring that the Aggregate Capability Constraint is in effect.

ARTICLE 7 METERING

7.1 **Metering**.

- Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), the Facility shall have a single CAISO Resource ID and a separate Generating Facility Meter and Storage Facility Meter. Seller shall measure the following using CAISOapproved meters and CAISO-approved methodologies: the amount of Facility Energy produced by the Facility; the amount of PV Energy produced by the Generating Facility; the amount of Charging Energy and Discharging Energy; and the amount of Grid Charging Energy. The CAISO Approved Facility Meter shall be installed on the high side of the Seller's transformer and maintained at Seller's cost. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to each of the Generating Facility, the Storage Facility, and the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.
- (b) The foregoing Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Buyer (as the Scheduling Coordinator) violating, or incurring any costs, penalties, or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties become incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs, or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed,

conditioned, or withheld. In the case of preceding <u>clause (iii)</u>, until the Parties agree on an alternative approach, Seller shall be responsible for all CAISO costs, penalties, and charges that result from Seller's compliance with the automatic adjustments of Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement, and in connection with any automatic adjustment to a Discharging Notice set forth in the definition of Discharging Notice, if any such automatic adjustment is prohibited by CAISO, then Seller shall instead reduce deliveries of PV Energy to the Delivery Point as necessary to avoid exceeding the Interconnection Capacity Limit and such reductions shall be treated as Lost Output.

7.2 Meter Verification. If Seller has reason to believe there may be a meter malfunction, Seller may test the meter. Once per Contract Year, upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- <u>Invoicing</u>. Seller shall deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly billing period. Each invoice shall provide Buyer (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Generating Facility and the Storage Facility for any Settlement Period during the preceding month, the amount of Product in MWh produced by the Facility as read by the Generating Facility Meter, Storage Facility Meter, and CAISO Approved Facility Meter, the amount of Replacement RA delivered to Buyer, the calculation of Deemed Delivered Energy and Adjusted Energy Production, and the Renewable Rate applicable to such Product; (b) records and calculations sufficient to show the calculation of the Storage Capacity Payment, including calculations of any applicable Storage Availability Adjustment and Round Trip Efficiency Adjustment; and (c) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount. Invoices shall be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.
- 8.2 **Payment**. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to

the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "<u>Interest Rate</u>"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

- 8.3 <u>Books and Records</u>. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.
- 8.4 Payment Adjustments; Billing Errors. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.
- 8.5 Billing Disputes. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement pursuant to Section 16.2, or adjust any invoice for any arithmetic or computational error, within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a party other than the Party seeking the adjustment and such party corrects its information after the twelvemonth period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

- 8.6 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to $\underline{\text{Exhibits B}}$ and $\underline{\text{F}}$, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.
- Agreement, including the obligations of Seller to pay liquidated damages to Buyer as provided in this Agreement, Seller shall deliver Development Security to Buyer in the amount of after the Effective Date. Buyer will have the right to draw upon the Development Security if Seller fails to pay liquidated damages owed to Buyer pursuant to Exhibit B to this Agreement, or if Seller fails to pay a Damage Payment or Termination Payment owed to Buyer pursuant to Section 11.2. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security up to an amount equal to in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement within five (5) Business Days after such draw, other than to satisfy a Damage Payment or a Termination Payment. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.
- 8.8 Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Delivery Commencement Date, Seller shall maintain the Performance Security in full force and in the amount of effect and Seller shall replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement within five (5) Business Days after such draw, other than to satisfy a Termination Payment. Seller shall maintain the Performance Security in full force and effect until the date on which the following have occurred ("Performance Security End Date"): (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. Provided that no Event of Default has occurred and is continuing with respect to Seller, Seller may replace or change the form of Performance Security to another form of Performance Security from time to time upon reasonable prior written notice to Buyer.
- 8.9 <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("<u>Security Interest</u>") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to <u>Sections 8.7</u> and <u>8.8</u> and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest

in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

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

- (a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect:
- (b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and
- (c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on the Cover Sheet or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
- Acceptable Means of Delivering Notice. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition**.

- (a) "<u>Force Majeure Event</u>" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic, including new governmental restrictions that have not previously been instituted related to the disease designated COVID-19 or the related virus designated SARS-CoV-2 or any mutations thereof; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
- Notwithstanding the foregoing, the term "Force Majeure Event" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price, or Seller's ability to sell Energy at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (viii) variations in weather, including wind, rain and insolation, within one in fifty (1 in 50) year occurrence; (ix) interconnection facilities or network upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Delivery Commencement Date except to the extent such inability is caused by a Force Majeure Event; or (x) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve the Delivery Commencement Date following the Guaranteed Delivery Commencement Date due to a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

- 10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. Buyer shall not be obligated to pay for any Product that Seller was not able to deliver as a result of Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require acceleration of labor supply or resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.
- 10.3 <u>Notice</u>. In addition to any Notices required pursuant to <u>Exhibit B</u> in connection with a potential Development Cure Period, in the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.
- 10.4 <u>Termination Following Force Majeure Event</u>. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in <u>Section 2.1(b)</u>, and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

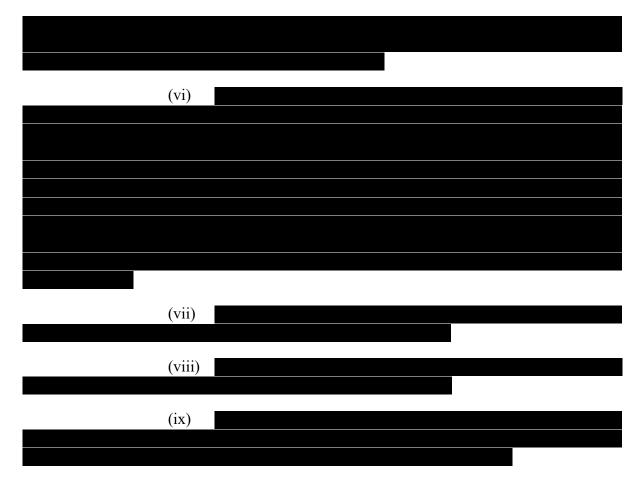
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "Event of Default" shall mean,

- (a) with respect to a Party (the "<u>Defaulting Party</u>") that is subject to the Event of Default the occurrence of any of the following:
 - (i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;
 - (ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when expressly deemed made or

repeated under the terms of this Agreement, and such default is not remedied within thirty (30) days after Notice thereof;

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	(iii) the failure by such Party to perform any material covenant of obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;
	(iv) such Party becomes Bankrupt;
C	(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with $\underline{14.2}$ or $\underline{14.3}$, as applicable; or
c f p	(vi) such Party consolidates or amalgamates with, or merges with or nto, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity rails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
follo	(b) with respect to Seller as the Defaulting Party, the occurrence of any of the owing:
	(i) if at any time, Seller delivers or attempts to deliver to the Delivery Point for sale under this Agreement Energy that was not generated or discharged by the Facility;
b	(ii) the failure by Seller to achieve the Construction Start Date, within after the Guaranteed Construction Start Date, or the failure by Seller to achieve Delivery Commencement within after the Guaranteed Construction Start Date, or the failure after the Guaranteed Construction Start Date, or the failure after the Guaranteed Construction Start Date, or the failure after the Guaranteed Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the failure of Seller to achieve Delivery Commencement within the Construction Start Date, or the Seller to achieve Delivery Commencement within the Construction Start Date, or the Seller to achieve Delivery Commencement within the Construction Start Date (Seller to achieve Delivery Commencement Date).
	(iii) the failure by Seller to obtain CEC Final Certification and Verification within one year of the Delivery Commencement Date in accordance with <u>Section 3.10</u> ;
o E	(iv) if, in the first six (6) months or the second six (6) months of the first Contract Year, the Adjusted Energy Production amount is not at least of the Expected Energy amount for such Contract Year, and Seller fails to demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a egitimate reason for the failure to meet the
_	(v)



- (x) failure by Seller to satisfy the collateral requirements pursuant to <u>Sections 8.7</u> or <u>8.8</u>, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within five (5) Business Days after Notice thereof;
- (xi) if at any time Seller owns, operates or manages any equipment, facility, property or other asset, other than the Facility (or assets reasonably related to the development, financing, ownership or operation thereof), or engages in any business or activity other than the development, financing, ownership or operation of the Facility;
- (xii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor, solely with respect to the Performance Security, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice from Buyer of the occurrence of any of the following events:
 - (A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least "A-" by S&P or "A3" by Moody's;

- (B) the issuer of such Letter of Credit becomes Bankrupt;
- (C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;
- (D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit:
- (E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;
- (F) such Letter of Credit fails or ceases to be in full force and effect at any time; or
- (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
- (xiii) with respect to any Guaranty provided by Seller for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer (1) cash, (2) a substitute Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, or (3) a replacement Guaranty from a Guarantor, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) if any representation or warranty made by Seller's Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
 - (B) the failure of the Seller's Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) Seller's Guarantor becomes Bankrupt;
 - (D) The Guarantor shall fail to meet the criteria in the definition of Guarantor;

- (E) the failure of Seller's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder;
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or
- (G) Seller's Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of the Guaranty.
- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") shall have the following rights:
- (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
- (b) upon the Early Termination Date, to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (in the case of an Event of Default by Seller under Section 11.1(b)(ii) and subject to the collective limitation of liability contained in Section 11.2) or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);
 - (c) to withhold any payments due to the Defaulting Party under this Agreement;
 - (d) to suspend performance; and/or
- (e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto;

11.3 <u>Termination Payment</u>. The Termination Payment ("<u>Termination Payment</u>") for a Terminated Transaction shall be the Settlement Amount plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount, other than a Terminated Transaction for which the Damage Payment is specified as liquidated damages for such termination. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-

Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

- 11.4 <u>Notice of Payment of Termination Payment</u>. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes With Respect to Termination Payment</u>. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.
- 11.6 <u>Rights And Remedies Are Cumulative</u>. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this <u>Article 11</u> shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.
- 11.7 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 <u>No Consequential Damages</u>. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS

FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS, AND (UNLESS EXPRESSLY STATED TO THE CONTRARY) AN EXCLUSIVE REMEDY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

- 13.1 <u>Seller's Representations and Warranties</u>. As of the Effective Date, Seller represents and warrants as follows:
- (a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
- (b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.
- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
 - (e) The Facility is located in the State of California.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.
- (b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all

covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

- (c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
- (d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by Laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.
- (e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.
- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- 13.3 <u>General Covenants</u>. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:
- (a) It shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
- (b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
- (c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 14

ASSIGNMENT

- 14.1 <u>General Prohibition on Assignments</u>. Except as provided below and in <u>Article 15</u>, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.
- 14.2 <u>Permitted Assignment; Change of Control of Seller</u>. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; or (b) subject to <u>Section 15.1</u>, a Lender as collateral. Any Change of Control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this <u>Article 14</u> and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided, that no consent shall be required

or (b) a Change of Control of Seller in connection with a financing of the Facility by a Lender (including the exercise of a Lender's remedies under its financing agreements). Seller shall give Buyer written notice of any future assignment or Change of Control no less than five (5) Business Days before its occurrence. For any assignment by Seller that is not a Change of Control and that does not require Buyer's consent, Seller shall provide to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests or other written proof of such assignment that provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment.

14.3 Permitted Assignment; Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, provided, that in each of the foregoing situations, the assignee (a) has a Credit Rating of Baa2 or higher by Moody's or BBB or higher by S&P, and (b) is a community choice aggregator or publicly-owned electric utility with retail customers located in the state of California; provided, further, that in each such case, no fewer than fifteen (15) Business Days before such assignment Buyer (x) notifies Seller of such assignment, (y) if such assignment is other than by merger or change of control, provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b), and

Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice as required under clause (x) above and assumption agreement by the assignee as required under clause (y) above, if applicable (it being understood that the instrument required under clause (z) above is not applicable to this sentence), have been received by Seller and by any such other Person party to

any consent to assignment or such other document entered into pursuant to Section 15.2(b).

ARTICLE 15 LENDER ACCOMMODATIONS

- Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.
- 15.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:
- (a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with <u>Section 11.2</u> and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.
- (b) The other Party shall cooperate with the granting Party or any Lender to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that the non-granting Party recognizes the Lender's security interest and such other provisions as may be reasonably requested by the granting Party or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by the granting Party, and that the non-granting Party shall have no obligation to modify this Agreement or to reduce is benefits or increase its risks or burdens under this Agreement.
- (c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; *provided* that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.
- 15.3 <u>Cure Rights of Lender</u>. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in <u>Sections 11.1</u> or <u>11.2</u> hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any

Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).

ARTICLE 16 DISPUTE RESOLUTION

- 16.1 Governing Law. This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this agreement. The Parties agree that any litigation arising with respect to this Agreement is to be venued in the Superior Court for the county of San Mateo, California.
- Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.
- 16.3 <u>Attorneys' Fees</u>. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17 INDEMNIFICATION

17.1 **Indemnification**.

(a) Each Party (the "<u>Indemnifying Party</u>") agrees to indemnify, defend and hold harmless the other Party and its directors, officers, employees, agents, attorneys, consultants and representatives (collectively, the "<u>Indemnified Party</u>") from and against all third-party claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any third party (collectively the "<u>Indemnifiable Event</u>") to the extent such Indemnifiable Event arises out of, results from, or is caused by (i) the negligence act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Seller or any of its subcontractors or anyone

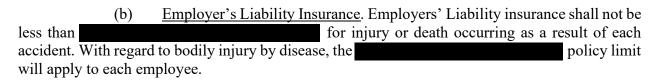
that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Buyer's use of the Product, deliverables or other items provided by the Seller pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement.

- (b) Nothing in this <u>Section 17.1</u> shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.
- Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18 INSURANCE

18.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Such insurance shall contain standard cross-liability and severability of interest provisions.



- (c) <u>Workers Compensation Insurance</u>. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law.
- (d) <u>Business Auto Insurance</u>. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.
- (e) <u>Construction All-Risk Insurance</u>. For new facilities or existing facilities that are to be re-powered before Delivery Commencement, Seller shall maintain or cause to be maintained during the construction or re-powering of the Facility prior to the Delivery Commencement Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.
- (f) <u>Subcontractor Insurance</u>. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage, in each case, with limits determined to be appropriate by Seller. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to <u>clauses</u> (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).
- Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage (except cancellation due to non-payment of premiums, which shall require ten (10) days prior Notice). Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.
- (h) Failure to Comply with Insurance Requirements. If Seller fails to secure and/or pay the premiums for any of the policies of insurance required herein, or fails to maintain such insurance, upon sixty (60) days written notice to Seller of noncompliance, Buyer may, in addition to any other rights it may have under this Agreement or at law or in equity, secure such policies or policies of insurance for the account of Seller and charge Seller for the premiums paid therefore, or withhold the amount thereof from sums otherwise due from Buyer to Seller. Neither the Buyer's rights to secure such policy or policies nor the securing thereof by Buyers shall

constitute an undertaking by Buyer on behalf of or for the benefit of Seller or others to determine or warrant that such policies are in effect.

ARTICLE 19 CONFIDENTIAL INFORMATION

- Information," whether oral or written, and whether delivered by Seller to Buyer or by Buyer to Seller: (a) proposals and negotiations of the Parties in the negotiation of this Agreement; (b) the terms and conditions of this Agreement; and (c) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" or words of similar import before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.
- Duty to Maintain Confidentiality. The Party receiving Confidential Information shall treat it as confidential, and shall adopt reasonable information security measures to maintain its confidentiality, employing the higher of (a) the standard of care that the receiving Party uses to preserve its own confidential information, or (b) a standard of care reasonably tailored to prevent unauthorized use or disclosure of such Confidential Information. Confidential Information may be disclosed by the recipient if and to the extent such disclosure is required (a) by Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Party that originally discloses Confidential Information may use such information for its own purposes, and may publicly disclose such information at its own discretion. Notwithstanding the foregoing, Seller acknowledges that Buyer is required to make portions of this Agreement available to the public in connection with the process of seeking approval from its board of directors for execution of this Agreement. Buyer may, in its discretion, redact certain terms of this Agreement as part of any such public disclosure, and will use reasonable efforts to consult with Seller prior to any such public disclosure. Seller further acknowledges that Buyer is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.). Upon request or demand from any third person not a Party to this Agreement for production, inspection and/or copying of this Agreement or other Confidential Information provided by Seller to Buyer, Buyer shall, to the extent permissible, notify Seller in writing in advance of any disclosure that the request or demand has been made; provided that, upon the advice of its counsel that disclosure is required, Buyer may disclose this Agreement or any other requested Confidential Information, whether or not advance written notice to Seller has been provided. Seller shall be solely responsible for taking whatever steps it deems necessary to protect Confidential Information that is the subject of any Public Records Act request submitted by a third person to Buyer.
- 19.3 <u>Irreparable Injury; Remedies</u>. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this <u>Article 19</u> may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding <u>Section 12.2</u>, consequential

damages.

- 19.4 <u>Disclosure to Lender</u>. Notwithstanding anything to the contrary in this <u>Article 19</u>, Confidential Information may be disclosed by Seller to any Affiliate, investor or potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this <u>Article 19</u> to the same extent as if it were a Party.
- 19.5 <u>Disclosure to Credit Rating Agency</u>. Notwithstanding anything to the contrary in this <u>Article 19</u>, Confidential Information may be disclosed by either Party to any nationally recognized credit rating agency (e.g., Moody's Investors Service, Standard & Poor's, or Fitch Ratings) in connection with the issuance of a credit rating for that Party or its Affiliates, provided that any such credit rating agency agrees in writing to maintain the confidentiality of such Confidential Information.
- 19.6 <u>Public Statements</u>. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such press release.

ARTICLE 20 MISCELLANEOUS

- 20.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- 20.2 <u>Amendments</u>. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.
- 20.3 <u>No Waiver</u>. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.
- 20.4 <u>No Agency, Partnership, Joint Venture or Lease</u>. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or

any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

- 20.5 <u>Severability</u>. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.
- 20.6 <u>Mobile-Sierra</u>. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956).
- 20.7 <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.
- 20.8 <u>Facsimile or Electronic Delivery</u>. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by facsimile or other electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.
- 20.9 <u>Binding Effect</u>. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 20.10 <u>No Recourse to Members of Buyer</u>. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors of Buyer or its constituent members, in connection with this Agreement.

20.11 Change in Electric Market Design. If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. If a change to any Law occurs after the Effective Date, including any rule or requirement of WREGIS, that impacts the number or quality of Resource Adequacy Benefits or Green Attributes (including Renewable Energy Credits) available to Buyer from the Facility, then Buyer may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date, it being understood that (i) Buyer is to receive the maximum amount of Resource Adequacy Benefits and Green Attributes available from the Facility and (ii) Seller's ongoing compliance costs associated with the provision of Resource Adequacy Benefits and Green Attributes available from the Facility, among other things, are subject to the Compliance Expenditure Cap. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) this Agreement shall remain in full force and effect, subject to any necessary changes, if any, agreed to by the Parties or determined through dispute resolution.

EXHIBIT A

DESCRIPTION OF THE FACILITY

Facility Name: Chaparral Solar, LLC

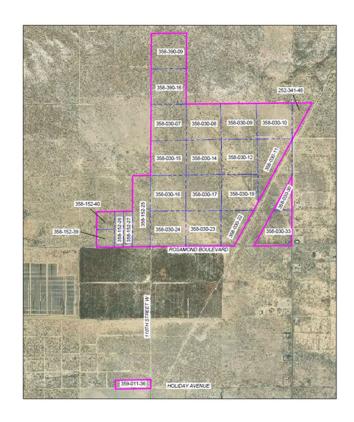
Site Name: Chaparral Solar

Site Address: 11137 Rosamond Blvd., Rosamond, CA 93560

GPS Coordinates: Lat 34.8707647° or 34°52'14.75" N

Long -118.3195044° or 118°19'10.22" W

Site Map:



APNs: 358-152-39, 358-152-40, a portion of 252-341-48, 358-152-25, 358-

152-26, 358-152-27, 358-390-09, 358-390-16, 358-030-07, 358-030-08, 359-030-09, 358-030-10, 358-030-11, 358-030-12, 358-030-14, 358-030-15, 358-030-16, 358-030-17, 358-030-19, 358-030-22, 358-030-23, 358-030-24, 358-030-30, 358-030-33, 359-

011-36

County: Kern County, California

Guaranteed PV Capacity: 102 MW AC (net, at the Delivery Point)

Guaranteed Storage Capacity: 52 MW AC (net, at the Delivery Point)

Maximum Stored Energy Level at Delivery Commencement Date (MWh): 208 MWh

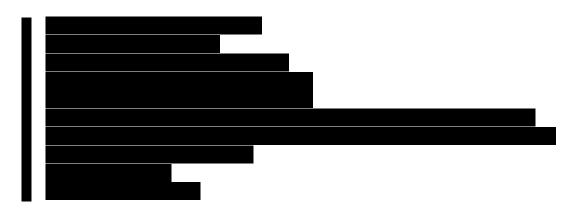
Maximum Charging Capacity at Delivery Commencement Date: 52 MW

Maximum Discharging Capacity at Delivery Commencement Date: 52 MW

Guaranteed Efficiency Rate: See Exhibit P

Ramp Rate: See Exhibit N

Generation Technology:



Storage Technology: Lithium-ion battery

Pnode/Delivery Point: the Pnode designated by the CAISO for the Facility at the

Whirlwind 220kV substation

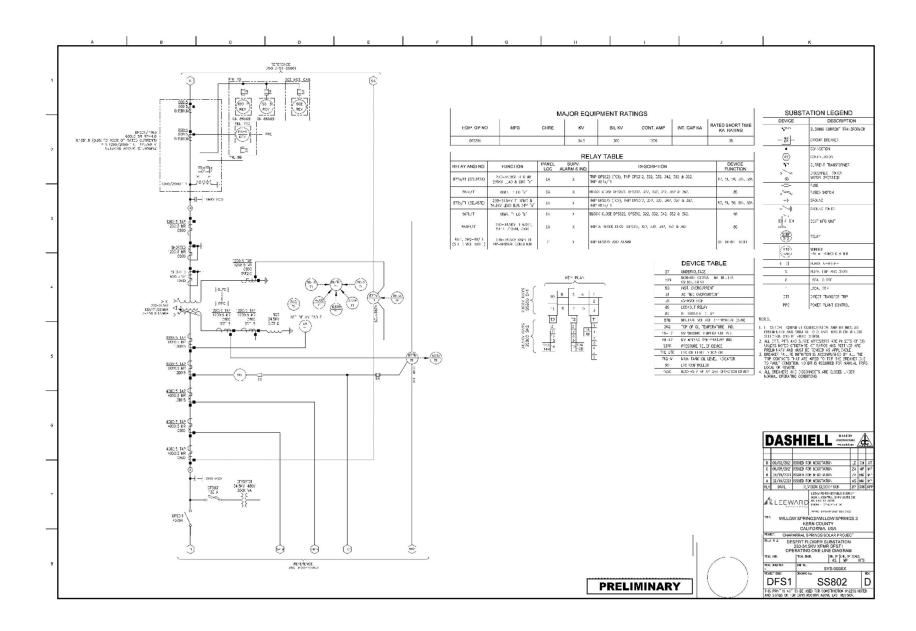
Point of Interconnection: Whirlwind 220kV substation

Description of Interconnection Facilities and Metering: See one-line diagram attached as Attachment 1.

CAISO Queue Number: Q1319

Attachment 1

One-Line Diagram



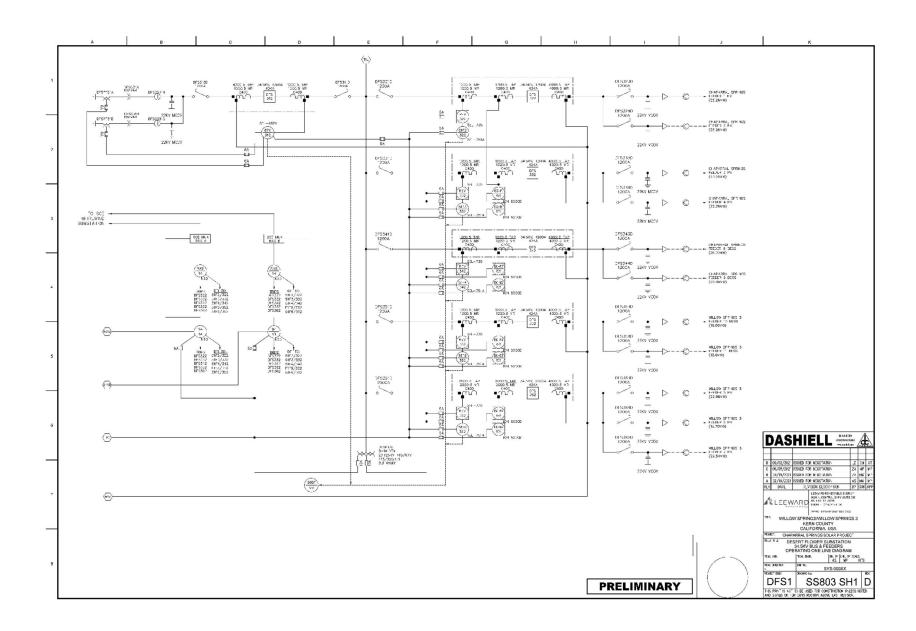


Exhibit A - 5

EXHIBIT B

FACILITY CONSTRUCTION AND DELIVERY COMMENCEMENT

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility by January 15, 2023 (as such date may be extended by the Development Cure Period, the "<u>Guaranteed Construction Start Date</u>"). Seller shall demonstrate the beginning of construction through execution of Seller's engineering, procurement and construction contract, Seller's issuance of a notice to proceed under such contract, mobilization to site by Seller and/or its designees, and the physical movement of soil at the Site ("<u>Construction Start</u>"). On the date of the beginning of construction (the "<u>Construction Start Date</u>"), Seller shall deliver to Buyer a certificate substantially in the form attached as <u>Exhibit J</u> hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay, provided that the total Daily Delay Damages payable by Seller to Buyer shall be capped at an amount equal to . No Daily Delay Damages shall accrue during the pendency of any Development Cure Period (as defined below). Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller . On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall be Buyer's sole and exclusive remedy for the first of the delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) following a failure to achieve Construction Start within after the Guaranteed Construction Start Date, not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.
- 2. <u>Delivery Commencement</u>. "<u>Delivery Commencement</u>" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in <u>Section 2.2</u> of the Agreement and (ii) Seller has provided Notice to Buyer that Delivery Commencement has been achieved and specifying the "placed in service" date per Internal Revenue Service Requirements of the Facility. The "<u>Delivery Commencement Date</u>" shall be the later of (x) the Guaranteed Delivery Commencement Date or (y) the date on which Delivery Commencement is achieved.

- a. Seller shall cause Delivery Commencement for the Facility to occur by the Guaranteed Delivery Commencement Date (as such date may be extended on a dayfor-day basis by the Development Cure Period (defined below)). Seller shall notify Buyer that it intends to achieve Delivery Commencement at least thirty (30) days before the anticipated Delivery Commencement Date.
- b. If Seller achieves Delivery Commencement by the Guaranteed Delivery Commencement Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after the Delivery Commencement Date.
- c. If Seller does not achieve Delivery Commencement by the Guaranteed Delivery Commencement Date, Buyer shall retain Daily Delay Damages, as applicable, and Seller shall pay Delivery Commencement Delay Damages to Buyer for each day after the Guaranteed Delivery Commencement Date until the Delivery Commencement Date, subject to the collective limitation of liability contained in Section 11.2, provided further that the total Delivery Commencement Delay Damages payable by Seller to Buyer shall be capped at an amount equal to No Delivery Commencement Delay Damages shall accrue during the pendency of any Development Cure Period (as defined below). Delivery Commencement Delay Damages shall be payable to Buyer by Seller until the Delivery Commencement Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Delivery Commencement Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's retention of Daily Delay Damages and receipt of Delivery Commencement Delay Damages, subject to the collective limitation of liability contained in <u>Section 11.2</u>, shall be Buyer's sole and exclusive remedy for the failure to achieve the Delivery Commencement Date on or before the Guaranteed Delivery Commencement Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) following a failure to achieve Delivery Commencement within after the Guaranteed Delivery Commencement Date, not limit Buyer's right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
- 3. Termination for Failure to Timely Achieve Construction Start or Delivery Commencement. If the Facility has not achieved Construction Start within after the Guaranteed Construction Start Date, or Delivery Commencement within after the Guaranteed Delivery Commencement Date, Buyer may elect to terminate this Agreement pursuant to Sections 11.1(b)(ii) and 11.2(a), which termination shall become effective as provided in Section 11.2(a).
- 4. <u>Extension of the Guaranteed Dates</u>. The Guaranteed Construction Start Date and the Guaranteed Delivery Commencement Date shall be extended on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of each of the following delays:
 - a. a Force Majeure Event occurs; or

	b. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Delivery Commencement Date.
	Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(b) above) shall not exceed for any reason and, without limiting the provisions of Section 10.3, no extension shall be given to the extent that (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines; (ii) Seller failed to provide prompt written notice to Buyer of a delay due to a Force Majeure Event, but in no case more than thirty (30) days after Seller became aware of an actual delay (not including Seller's receipt of generic notices of potential delays due to a Force Majeure Event) affecting the Facility, except that in the case of a delay occurring within sixty (60) days of the Guaranteed Delivery Commencement Date, or after such date, Seller must provide written notice within seven (7) Business Days of Seller becoming aware of such delay; or (iii) Seller failed, upon written request from Buyer, to provide documentation demonstrating to Buyer's reasonable satisfaction that the delay was the result of a Force Majeure Event and did not result from Seller's actions or failure to take commercially reasonable actions.
5.	Failure to Reach Guaranteed PV Capacity or Guaranteed Storage Capacity. If, at Delivery Commencement, the Installed PV Capacity is at least of the Guaranteed PV Capacity but less than the Guaranteed PV Capacity, or the Installed Storage Capacity is at least of the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity but less than the Guaranteed Storage Capacity, Seller shall have one hundred twenty (120) days after the Delivery Commencement Date to install additional generating and/or storage capacity such that the Installed PV Capacity and/or the Installed Storage Capacity, as applicable, is increased, but not to exceed the Guaranteed PV Capacity or Guaranteed Storage Capacity. If Seller installs additional storage or generating capacity pursuant to the immediately preceding sentence, Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-2 hereto specifying the new Installed PV Capacity and Installed Storage Capacity. In the event that as of the date of such certificate, the Installed PV Capacity is still less than the Guaranteed PV Capacity or the Installed Storage Capacity is still less than the Guaranteed Storage Capacity, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to and the Guaranteed PV Capacity or the Installed PV Capacity as of such date to the original Guaranteed PV Capacity or the Installed Storage Capacity as of such date to the original Guaranteed Storage Capacity, as applicable.
6.	Buyer's Right to Draw on Development Security. If Seller fails to timely pay any Daily Delay Damages or Delivery Commencement Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security up to as provided in Section 8.7.

EXHIBIT C [RESERVED]

EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

Peninsula Clean Energy Authority 2075 Woodside Road Redwood City, CA 94061

Attn: Director of Power Resources

Phone No.: 650-260-0005

Email: contracts@peninsulacleanenergy.com

SELLER:

Chaparral Solar, LLC c/o Leeward Renewable Energy, LLC 6688 N. Central Expressway, Suite 500 Dallas, TX 75206 Attn: Legal Department legal@leewardenergy.com

with copy to:

Leeward Renewable Energy Operations 6688 N. Central Expressway, Suite 500 Dallas, TX 75206 Attn: Operations assetmgmt@leewardenergy.com

EXHIBIT E

[RESERVED]

EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with <u>Section 4.8</u>, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

 \underline{A} = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

 $\underline{\mathbf{B}}$ = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh



 \underline{D} = the Renewable Rate, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period.

Additional Definitions:

"<u>Adjusted Energy Production</u>" shall mean the sum of the following: PV Energy + Deemed Delivered Energy + Lost Output – Excess MWh.

"Lost Output" means the sum of PV Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using an equation provided by Seller, as approved by Buyer in its reasonable discretion, to reflect the potential generation of the Generating Facility as a function of Available Generating Capacity, solar insolation and panel temperature, and using relevant Facility availability, weather, historical and other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

EXHIBIT G

PROGRESS REPORTING FORM

Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Delivery Commencement Date, Seller shall provide to Buyer a written Progress Report in the form specified below.

Each Progress Report must include the following items:

- 1. Executive summary.
- 2. Facility description.
- 3. Site plan of the Facility.
- 4. Description of any material planned changes to the Facility or the Site.
- 5. Schedule showing progress on achieving each of the Milestones.
- 6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
- 7. Forecast of activities scheduled for the current calendar quarter.
- 8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 9. List of issues that are reasonably likely to affect Seller's Milestones.
- 10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
- 11. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
- 12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
- 13. Any other documentation reasonably requested by Buyer.

EXHIBIT H [RESERVED]

EXHIBIT I-1

FORM OF DELIVERY COMMENCEMENT DATE CERTIFICATE

This certification ("Certification") of Delivery Commencement is delivered by [Licensed Professional Engineer] ("Engineer") to Peninsula Clean Energy Authority ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

out not otherwise defined herein shall have the re Agreement.	•
Engineer hereby certifies and represents to	Buyer the following:
(1) The Generating Facility and the Storag interconnected, fully integrated and synchronized	ge Facility are fully operational, reliable and with the Transmission System.
2) Seller has installed equipment for the Geness than of the Guaran	erating Facility with a nameplate capacity of no teed PV Capacity.
Seller has installed equipment for the Storachan of the Guaranteed	age Facility with a nameplate capacity of no less Storage Capacity.
(4) Seller has commissioned all equipment in specifications.	accordance with its respective manufacturer's
Delivery Commencement Date demonstrating pe	the Generating Facility at the Delivery Point, as
Commencement Date demonstrating that the Stor	of the Guaranteed Storage e and discharge energy, all within the operational
EXECUTED by [LICENSED PROFESSIONAL	ENGINEER
his, 20	
	[LICENSED PROFESSIONAL ENGINEER]
	By:
	Its:
	Date:

EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by [Licensed Professional Engineer] ("Engineer") to PENINSULA CLEAN ENERGY AUTHORITY ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Generating Facility performance test under Seller's EPC contract for the Generating Facility demonstrated peak Generating Facility electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("Installed PV

Capacity").

The initial Storage Facility performance test under Seller's EPC contract for the Storage Facility demonstrated peak Storage Facility electrical output of __ MW AC at the Delivery Point ("Installed Storage Capacity").

EXECUTED by ILICENSED PROFESSIONAL ENGINEER!

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]			
this	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER]
			By:
			Its:
			Date:

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification ("Certification") of the Construction Start Date is delivered by [SELLER ENTITY] ("Seller") to PENINSULA CLEAN ENERGY AUTHORITY ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following: 1. the engineering, procurement and construction contract related to the Facility was executed on ____; 2. the Limited Notice to Proceed with the construction of the Facility was issued on (attached); 3. the Construction Start Date has occurred; the precise Site on which the Facility is located is, which must be within the boundaries 4. of the previously identified Site: (such description shall amend the description of the Site in Exhibit A). IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the day of _____. [SELLER ENTITY]

Date:_____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

	Date: Bank Ref.: Amount: US\$[XXXXXXX] Expiry Date:
Beneficiary:	
Peninsula Clean Energy Authority	
[Address]	
Ladies and Gentlemen:	
issue our Irrevocable Standby Letter of Cr of Peninsula Clean Energy Authority, A aggregate sum of U.S. \$[XXXXXXX] (Ur to that certain [Agreement] dated as of Beneficiary. This Letter of Credit shall b	we, [insert bank name and address] ("Issuer") hereby redit No. [XXXXXXX] (the "Letter of Credit") in favor address, for an amount not to exceed the nited States Dollars [XXXXXXX] and 00/100), pursuant (the "Agreement") between Applicant and secome effective immediately and shall have an initial act to the automatic extension provisions herein.
	lable to you against your draft(s) drawn on us at sight, o. [XXXXXXX] accompanied by your dated statement

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer in person, by courier or by fax at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit

A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

The document(s) required may also be presented by fax at facsimile no. (xxx) xxx-xxx on or before the expiry date (as may be extended below) on this Letter of Credit in accordance with the terms and conditions of this Letter of Credit. No mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents without the need of originally signed

documents.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service that we elect not to permit this Letter of Credit to be so extended, in which case it will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXXX-XXXX] and have this Letter of Credit available.

Bank Name]	
[Insert officer name]	
[Insert officer title]	

DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:		
The undersigned, a duly authorized representative of Peninsula Clean Energy Authority, Address as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of [XXXXXXX] (the "Applicant"), hereby certifies to the Bank as follows:		
1. Applicant and Beneficiary are party to that certain Agreement dated as of [XXXXXXX] (the "Agreement").		
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$		
or		
Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$, which equals the full available amount under the Letter of Credit, because the Bank has provided notice of its intent to not extend the expiry date of the Letter of Credit and Applicant failed to provide acceptable replacement security to Beneficiary at least thirty (30) days prior to the expiry date of the Letter of Credit.		
3. The undersigned is a duly authorized representative of Peninsula Clean Energy Authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.		
You are hereby directed to make payment of the requested amount to Peninsula Clean Energy Authority by wire transfer in immediately available funds to the following account:		
[Specify account information]		
Peninsula Clean Energy Authority		
Name and Title of Authorized Representative Date		

EXHIBIT L

MONTHLY STORAGE AVAILABILITY

1. Monthly Storage Availability.

(a) For each monthly period after the Delivery Commencement Date, Seller shall calculate the "Monthly Storage Availability" using the formula set forth below:

where:

$$Monthly \ Storage \ Availability \ (\%) = \frac{MONTHLYHRSm - UNAVAILHRSm}{MONTHLYHRSm}$$

where:

m = relevant monthly period for which availability is calculated;

MONTHLYHRSm =the total number of hours for the monthly period;

UNAVAILHRSm = the sum of the following without duplication: (i) the total number of hours in the monthly period during which the Storage Facility was unavailable to be dispatched, in whole or in part, to deliver Storage Product for any reason; (ii) the total number of hours in the monthly period during which the Storage Facility failed to comply with a valid Charging Notice or Discharging Notice that complies with this Agreement, including any such failure to charge or discharge at the times, in the quantities, and at the levels specified in such Charging Notice or Discharging Notice; and (iii) the total number of hours in the monthly period during which the Storage Facility was charged or discharged other than pursuant to a valid Charging Notice or Discharging Notice that complies with this Agreement, or pursuant to a notice from the CAISO, any PTO, or any other Governmental Authority; provided that it shall not include any hours in which the Storage Facility was unavailable (on a prorated basis) to deliver the Storage Product as a result of an Excused Event. Any unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. For the avoidance of doubt when determining partial compliance with respect to this UNAVAILHRSm calculation: partial availability in part (i) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility was not available for dispatch, partial compliance in any hour for part (ii) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility failed to comply, and partial compliance in any hour for part (iii) will result in prorated unavailability hours based on the portion of the hour during which the Storage Facility was charged or discharged without a valid notice. For the avoidance of doubt, any hours where only a portion of the Storage Facility was unavailable to be dispatched shall be prorated based on the amount of the Storage Facility that was available to be dispatched during such interval.

"Excused Event" means any period of time during which the Storage Facility was unavailable (on a prorated basis) to deliver Storage Product as a result of (i) limitations contained in the Operating Restrictions, (ii) a Storage Capacity Test or measurement of Round Trip Efficiency (as described in Exhibit P), in each case, performed at Buyer's request, or (iii) a Scheduled Maintenance of the Storage Facility not to exceed in any given Contract Year (prorated for any Scheduled Maintenance where the Storage Facility is only partially unavailable in a given period of time). For the avoidance of doubt, all hours of unavailability of the Storage Facility, in whole or in part, attributable to an Excused Event are removed for purposes of the calculation of Monthly Storage Availability.

- 2. <u>Storage Availability Adjustment</u>. The "<u>Storage Availability Adjustment</u>" shall be calculated as follows and applied to the Storage Capacity Payment due for the next month after the end of the monthly period for which the Monthly Storage Availability is calculated.
- (a) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

Storage Availability Adjustment = 100% (expressed as a decimal)

(b) If the Monthly Storage Availability is less than the Guaranteed Storage Availability but greater than or equal to then:

Storage Availability Adjustment =

(c) If the Monthly Storage Availability is less than

Storage Availability Adjustment = 0

EXHIBIT M

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

- A. <u>Delivery Commencement Date Storage Capacity Test</u>. Upon no less than ten (10) Business Days' Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Delivery Commencement Date. Such initial Storage Capacity Test shall be performed in accordance with this <u>Exhibit M</u> and shall establish the initial Storage Capacity hereunder based on the actual capacity of the Storage Facility determined by such Storage Capacity Test.
- B. <u>Subsequent Storage Capacity Tests</u>. Following the Delivery Commencement Date, but not more than once per Contract Year, upon no less than ten (10) Business Days' Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test and to update the Storage Facility's PMax and other relevant information and values in the CAISO's Master Data File and Resource Data Template (or successor data systems). In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test (and to update the Storage Facility's PMax and other relevant information and values as specified above) at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test or any other guaranteed operational characteristics are not being met. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. Test Results and Re-Setting of Storage Capacity. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.12(c) of this Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test (up to, but not in excess of, the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) pursuant to Exhibit B) shall become the new Storage Capacity, effective as of the first day of the month following completion of the Storage Capacity Test for calculating the payment for the Storage Product and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

Each Storage Capacity Test (including the initial Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this <u>Exhibit M</u>. For ease of reference, a Storage Capacity Test is sometimes referred to in this <u>Exhibit M</u> as a "<u>SCT</u>". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

- A. <u>Test Elements</u>. Each SCT shall include the following test elements:
 - Electrical output at Maximum Discharging Capacity at the Storage Facility Meter and concurrently at the CAISO Approved Facility Meter (MW);
 - Electrical input at Maximum Charging Capacity at the Storage Facility Meter (MW);
 - Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
 - Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
 - Amount of Energy required to go from 0% to 100% of Storage Capacity charging at a rate equal to the Maximum Charging Capacity;
 - Amount of Energy released from 100% to 0% of Storage Capacity discharging at a rate equal to the Maximum Discharging Capacity; and
 - Storage Facility response time from the time instruction for charge or discharge to actual charge and discharge.
 - B. <u>Parameters</u>. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:
 - (1) Time;
 - (2) Charging Capacity;
 - (3) Discharging Capacity;
 - (4) Stored Energy Level (MWh);
 - (5) Station Use.
 - C. <u>Site Conditions</u>. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
 - (3) Ambient air temperature (°F).
 - D. Test Showing. Each SCT must demonstrate that the Storage Facility:

- (1) successfully started;
- operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
- (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
- (4) is able to ramp upward and downward at the contract Ramp Rate;
- (5) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
- (6) is able to deliver Discharging Energy to the Delivery Point as measured by the CAISO Approved Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) <u>General</u>. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity.
- (ii) <u>Abnormal Conditions</u>. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (iii)<u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.
- (iv) Ambient Temperature. For tests requested by Buyer (and not for any CAISO-initiated test, which shall occur when directed by CAISO), the average ambient temperature, based on an aggregate of 1-minute resolution data collected throughout the SCT, must be within the range of 8 33 degrees Celsius.
- F. <u>Incomplete Test</u>. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

- G. <u>Final Report</u>. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
 - (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
 - (3) the level of Installed Storage Capacity, Charging Capacity, Discharging Capacity, Charging Ramp Rate, Discharging Ramp Rate, and Stored Energy Level determined by the SCT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit M with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("Supplementary Storage Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit M.
- I. Adjustment to Storage Capacity. The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge (up to, but not in excess of, the product of (i) the Guaranteed Storage Capacity, as such Guaranteed Storage Capacity may have been adjusted (if at all) under this Agreement, multiplied by (ii) 4 hours) shall be divided by four hours to determine the Storage Capacity, which shall be expressed in MW AC, and shall be the new Storage Capacity in accordance with Section 4.13(c) of this Agreement.
- J. Following the initial Storage Capacity Test conducted prior to the Delivery Commencement Date, upon request of Seller, Buyer shall consider in good faith an alternate methodology for conducting a Storage Capacity Test by reference to the

operational data reflecting the net output of the Storage Facility from the point of interconnection. Upon Seller's request, Seller and Buyer shall work in good faith to establish a mutually acceptable methodology for demonstrating the Storage Capacity through such operational data. If Buyer and Seller mutually agree in writing on an alternate methodology, such alternate methodology shall become the Storage Capacity Test used to establish the Storage Capacity for all purposes of this Agreement, including compensation under <u>Section 3.3</u>.

EXHIBIT N

OPERATING RESTRICTIONS

Maximum Cycle Limits: Number of times Buyer may fully charge and discharge the Storage

Facility. A full charge will be deemed to have occurred when the cumulative amount of energy added to the Storage Facility over the course of a calendar year equals the Maximum Stored Energy Level. This could occur in one continuous charge or over multiple charges, even if some energy is discharged in between. The inverse is true

for a full discharge.

Annual: 365 cycles

Ramp Rates: Dmin to Dmax: up to 100%/s

Cmin to Cmax: up to 100%/s

Dmax to Dmin: up to 100%/s

Cmax to Cmin: up to 100%/s

Frequency ramp rate: 100% MW/Hz

Regulation ramp rate (MW/min): 0-100 MW/min

System Response Time: Idle to Dmax: <1s

Idle to Cmax: <1s

Dmax to Cmax: <1s

Cmax to Dmax: <1s

Dmin to Cmin: <1s

Cmin to Dmin: <1s

Other Operating Limits: Maximum annual average state of charge per Contract Year: 50%

Minimum resting state of charge in each rolling 90 day period: 5%

Prior to the Commercial Operation Date, Seller (or Seller's Affiliate that is counterparty to any equipment supply agreement) shall use commercially reasonable efforts to negotiate with its battery vendor an increase in the maximum annual average SOC included in Seller's battery warranty and, if successful, shall amend this Agreement to reflect such increased value, provided that "commercially reasonable efforts" shall not mean that Seller's

Affiliates are required to make material concessions to any battery vendor with respect to any other energy storage facility owned by such Affiliates in order to achieve the foregoing.

Maximum Stored Energy Level:	208 MWh, number in MWh representing maximum amount of energy that may be charged to the Storage Facility
Minimum Stored Energy Level:	0 MWh, number in MWh representing the lowest level to which the Storage Facility may be discharged
Maximum Charging Capacity:	52 MW, number in MW representing the highest level to which the Storage Facility may be charged
Minimum Charging Capacity:	0 MW, number in MW representing the lowest level at which the Storage Facility may be charged
Maximum Discharging Capacity:	52 MW, number in MW representing the highest level at which the Storage Facility may be discharged
Minimum Discharging Capacity:	0 MW, number in MW representing the lowest level at which the Storage Facility may be discharged
Maximum State of Charge (SOC) during Charging:	100%
Minimum State of Charge (SOC) during Discharging:	0%
Ramp Rate:	52 MW/minute
Daily Dispatch Limits	Charging: 2 per day Discharging: 2 per day Partial Charging/Discharging: Maximum number of partial discharging per day defined by Sum[DoD1, DoD2,,] <= 2*full discharged capacity. Maximum Number of partial charging per day defined by "Sum[HoC1, HoC2,,] <= 2*full charged capacity." DoD = depth of discharge of a partial discharging cycle HoC = is the height of charge of a partial charging cycle. For purposes of illustration only, if Storage Facility is 100 MWh, per formula above the limitation would be

200 MWh of discharge per day, meaning Buyer could perform 10 partial discharging cycles of 20 MWh each,

EXHIBIT O METERING DIAGRAM

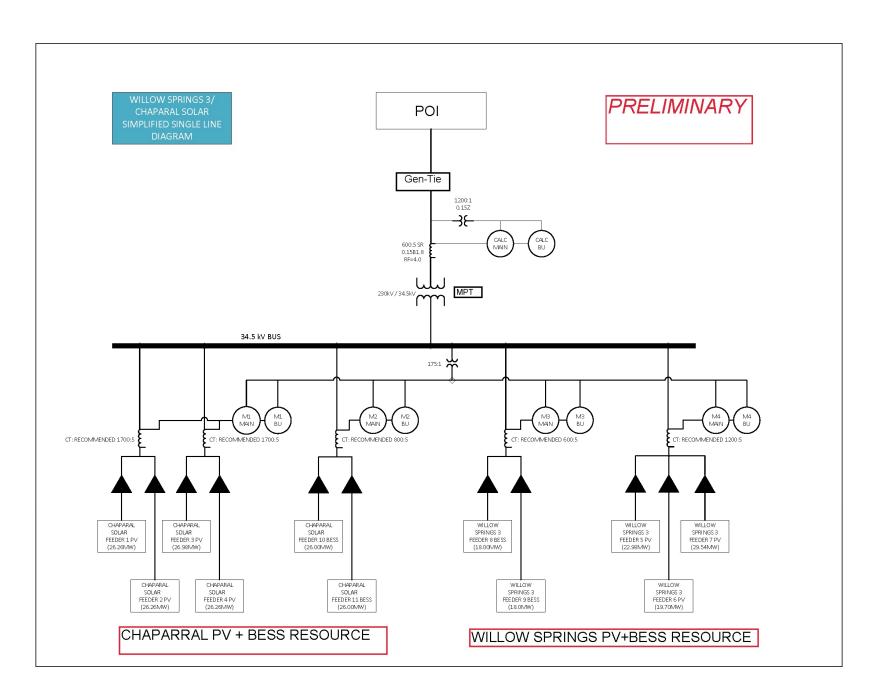


Exhibit O - 2

EXHIBIT P

ROUND TRIP EFFICIENCY

"Round Trip Efficiency" is defined as the amount of Energy discharged by the Storage Facility relative to the amount of Charging Energy, measured or calculated annually during the annual Storage Capacity Test outlined in Exhibit M at the medium voltage bus by the physical meter installed in the Storage Facility (as depicted in Exhibit O), calculated as shown below:

Uncertainties and test tolerance of 0.5% will be applied to the calculation of the Round Trip Efficiency. For purposes of testing the Round Trip Efficiency, the Charging Energy and Discharging Energy shall be measured at the medium voltage bus by the physical meter installed in the Storage Facility. For the avoidance of doubt, Station Use is netted from Discharging Energy and Charging Energy when determining Round Trip Efficiency and for all other purposes in this Agreement.

The monthly Storage Capacity Payment under <u>Section 3.3(d)</u> shall be adjusted by the Round Trip Efficiency Adjustment, expressed as a decimal, based on the Guaranteed Round Trip Efficiency, as follows:

The "Round Trip Efficiency Adjustment" or "RTEAdi" for each month is given by:

If RTE
$$\geq$$
 RTE_M, then $RTE_{Adj} = 100\%$
If RTE $<$ RTE_M and RTE \geq RTE_G, then $RTE_{Adj} = 100\%$
If RTE $<$ RTE_G, then $RTE_{Adj} = 100\%$

where:

RTE = the Round Trip Efficiency as determined by the most recently completed Storage Capacity Test.

 RTE_M = the Minimum Round Trip Efficiency

 RTE_G = the Guaranteed Round Trip Efficiency

The "Minimum Round Trip Efficiency" shall be, with respect to each Contract Year during the Delivery Term:

Contract Year	Minimum Round Trip Efficiency
1	
2	
3	
4	

5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

The "<u>Guaranteed Round Trip Efficiency</u>" shall be, with respect to each Contract Year during the Delivery Term,

EXHIBIT Q

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by Chaparral Solar, LLC, a Delaware
limited liability company ("Seller") to Peninsula Clean Energy Authority, a California joint
powers authority ("Buyer") in accordance with the terms of that certain Power Purchase and Sale
Agreement dated [] ("Agreement") by and between Seller and Buyer. All capitalized
terms used in this Notice but not otherwise defined herein shall have the respective meanings
assigned to such terms in the Agreement.

Pursuant to Section 3.9(b) of the Agreement, Seller hereby provides the below Replacement RA product information (to be repeated for each unit if more than one):

_ , ,	
Name	
Location	
CAISO Resource ID	
Unit SCID	
Resource Type	
Point of Interconnection with the CAISO	
Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in	
most recent CAISO deliverability assessment	
Run Hour Restrictions	
Deliverability Period	
Prorated Percentage of Unit Factor	
Prorated Percentage of Unit Flexible Factor	
Resource Category (MCC Bucket e.g., 1, 2, 3, or 4)	
Flexible Capacity Category (e.g., 1, 2, 3, or N/A)	

Month	Unit CAISO NQC (MW)	Unit CAISO EFC (MW)	Unit Contract Quantity (MW)	Unit EFC Contract Quantity (MW)
January	(10100)	(10100)	(ivivo)	Qualities (IVIV)
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				
December				

ISELLEK

By:				
Its:				
Date:	•	•	•	

Whereas, the following definitions apply to the terms in the above Replacement RA product information:

"CPUC RA Filing Guide" means the Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings published annually by the CPUC.

"<u>Deliverability Period</u>" means the period in which the unit has rights to deliver energy to the CAISO Grid.

"Flexible Capacity Category" means the category of Effective Flexible Capacity, as described in the CPUC RA Filing Guide, applicable to the unit.

"LCR Area (if any)" means the Local Capacity Requirement area, as used in the CPUC RA Filing Guide, applicable to the unit, if any.

"Prorated Percentage of Unit Factor" means the percentage of the Unit CAISO NQC that is designated as Unit Contract Quantity.

"Prorated Percentage of Unit Flexible Factor" means the percentage of Unit CAISO EFC that is designated as Unit EFC Contract Quantity.

"Resource Category" means the Maximum Cumulative Capacity category, as described in the CPUC RA Filing Guide, applicable to the unit.

"Resource Type" means the type of generating or storage resource.

"Run Hour Restrictions" means any restrictions on the ability of the unit to run during any hours of the day.

"<u>Unit CAISO EFC</u>" means the unit's Effective Flexible Capacity, as described in the CPUC RA Filing Guide, as determined by CPUC and CAISO.

"Unit CAISO NQC" means the NQC for the unit, as determined by CPUC and CAISO.

"<u>Unit Contract Quantity</u>" means the amount of Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"<u>Unit EFC Contract Quantity</u>" means the amount of Flexible Resource Adequacy Benefits to be provided to Buyer from the unit in the form of Replacement RA, not to exceed the Guaranteed RA Amount.

"Unit SCID" means the unit's "Scheduling Coordinator ID Code", as defined in the CAISO Tariff.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: September 22, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None

VOTE REQUIRED: Majority Present

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy Authority

SUBJECT: Resolution to Make Findings Allowing Continued Remote Meetings

Under Brown Act

RECOMMENDATION:

Adopt a resolution finding that, as a result of the continuing COVID-19 pandemic state of emergency declared by Governor Newsom, meeting in person would present imminent risks to the health or safety of attendees.

BACKGROUND:

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which rescinded his prior Executive Order N-29-20 and set a date of October 1, 2021 for public agencies to transition back to public meetings held in full compliance with the Brown Act. The original Executive Order provided that all provisions of the Brown Act that required the physical presence of members or other personnel as a condition of participation or as a quorum for a public meeting were waived for public health reasons. If these waivers fully sunset on October 1, 2021, legislative bodies subject to the Brown Act would have to contend with a sudden return to full compliance with in-person meeting requirements as they existed prior to March 2020, including the requirement for full physical public access to all teleconference locations from which board members were participating.

On September 16, 2021, the Governor signed AB 361, a bill that formalizes and modifies the teleconference procedures implemented by California public agencies in response to the Governor's Executive Orders addressing Brown Act compliance during shelter-in-place periods. AB 361 allows a local agency to continue to use teleconferencing under the same basic rules as provided in the Executive Orders when certain circumstances occur or when certain findings have been made and adopted by the local agency.

AB 361 also requires that, if the state of emergency remains active for more than 30 days, the agency must make findings by majority vote every 30 days to continue using the bill's exemption to the Brown Act teleconferencing rules. The findings are to the effect that the need for teleconferencing persists due to the nature of the ongoing public

health emergency and the social distancing recommendations of local public health officials. Effectively, this means that agencies, including PCEA, must agendize a Brown Act meeting once every thirty days to make findings regarding the circumstances of the emergency and to vote to continue relying upon the law's provision for teleconference procedures in lieu of in-person meetings.

AB 361 provides that Brown Act legislative bodies must return to in-person meetings on October 1, 2021, unless they choose to continue with fully teleconferenced meetings because a specific declaration of a state or local health emergency is appropriately made. AB 361 allows for meetings to be conducted virtually *as long as* there is a gubernatorially-proclaimed public emergency in combination with (1) local health official recommendations for social distancing or (2) adopted findings that meeting in person would present risks to health. AB 361 is effective immediately as urgency legislation and will sunset on January 1, 2024.

DISCUSSION:

Because local rates of transmission of COVID-19 are still in the "substantial" tier as measured by the Centers for Disease Control, it is recommended that the Peninsula Clean Energy Board avail itself of the provisions of AB 361 allowing continuation of online meetings by adopting findings to the effect that conducting in-person meetings would present an imminent risk to the health and safety of attendees. A resolution to that effect, and directing staff to return each 30 days with the opportunity to renew such findings, is attached hereto.

RESOLUTION NO.	
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PENINSULA CLEAN ENERGY AUTHORITY, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * * *

RESOLUTION FINDING THAT, AS A RESULT OF THE CONTINUING COVID-19
PANDEMIC STATE OF EMERGENCY DECLARED BY GOVERNOR NEWSOM,
MEETING IN PERSON FOR MEETINGS OF THE PENINSULA CLEAN ENERGY
BOARD OF DIRECTORS WOULD PRESENT IMMINENT RISKS TO THE HEALTH
OR SAFETY OF ATTENDEES

WHEREAS, on March 4, 2020, the Governor proclaimed pursuant to his authority under the California Emergency Services Act, California Government Code section 8625, that a state of emergency exists with regard to a novel coronavirus (a disease now known as COVID-19); and

WHEREAS, on June 4, 2021, the Governor clarified that the "reopening" of California on June 15, 2021 did not include any change to the proclaimed state of emergency or the powers exercised thereunder, and as of the date of this Resolution, neither the Governor nor the Legislature have exercised their respective powers pursuant to California Government Code section 8629 to lift the state of emergency either by proclamation or by concurrent resolution in the state Legislature; and

WHEREAS, on March 17, 2020, Governor Newsom issued Executive Order N-29-20 that suspended the teleconferencing rules set forth in the California Open

Meeting law, Government Code section 54950 et seq. (the "Brown Act"), provided certain requirements were met and followed; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 that provides that a legislative body subject to the Brown Act may continue to meet without fully complying with the teleconferencing rules in the Brown Act provided the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees, and further requires that certain findings be made by the legislative body every thirty (30) days; and,

WHEREAS, California Department of Public Health ("CDPH") and the federal Centers for Disease Control and Prevention ("CDC") caution that the Delta variant of COVID-19, currently the dominant strain of COVID-19 in the country, is more transmissible than prior variants of the virus, may cause more severe illness, and that even fully vaccinated individuals can spread the virus to others resulting in rapid and alarming rates of COVID-19 cases and hospitalizations (https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html); and,

WHEREAS, the CDC has established a "Community Transmission" metric with 4 tiers designed to reflect a community's COVID-19 case rate and percent positivity; and,

WHEREAS, the County of San Mateo currently has a Community Transmission metric of "substantial" which is the second most serious of the tiers; and,

WHEREAS, the Board has an important governmental interest in protecting the health, safety and welfare of those who participate in its meetings; and,

WHEREAS, in the interest of public health and safety, as affected by the emergency caused by the spread of COVID-19, the Board deems it necessary to find that meeting in person would present imminent risks to the health or safety of attendees, and thus intends to invoke the provisions of AB 361 related to teleconferencing;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that

- 1. The recitals set forth above are true and correct.
- The Board finds that meeting in person would present imminent risks to the health or safety of attendees.
- 3. Staff is directed to return no later than thirty (30) days after the adoption of this resolution with an item for the Board to consider making the findings required by AB 361 in order to continue meeting under its provisions.
- Staff is directed to take such other necessary or appropriate actions to implement the intent and purposes of this resolution.

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PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: September 10, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Peninsula Clean Energy Citizens Advisory Committee

SUBJECT: Citizens Advisory Committee Report

RECOMMENDATION

The Citizens Advisory Committee (CAC) Recommends to the Board of Directors to amend Peninsula Clean Energy's goal to contribute to PCE service territory reaching the state's goal to be 100% greenhouse gas-free by 2035 instead of the current goal of 2045.

BACKGROUND

One of Peninsula Clean Energy's organizational priorities laid out in our Strategic Plan approved by the Board in 2020 was to Contribute to Peninsula Clean Energy member jurisdictions reaching the state's goal to be 100% greenhouse gas-free by 2045. The Citizens Advisory Committee has discussed and debated this goal at times over the last year and few months, with many members urging that the goal be accelerated ahead of the current 2045 target.

The Citizens Advisory Committee received a presentation from Rafael Reyes, Director of Energy Programs, at its September 9, 2021 meeting regarding the 2045 decarbonization goal and Peninsula Clean Energy programs. Rafael covered current GHG emission sources in San Mateo County, Peninsula Clean Energy's program portfolio and outcomes, and planning for the 2045 target and the framework to get to the 2045 target. At this meeting, Committee members discussed the state possibly advancing this target to 2035 due to the urgency of the climate crisis.

DISCUSSION

At their meeting on September 9, 2021, the Citizens Advisory made the following resolution which passed unanimously:

Whereas, Peninsula Clean Energy has been a leader in innovation: Proposing and fostering Reach codes and Programs and dedicating itself to achieving targets. And Peninsula Clean Energy continues to take the lead to make the changes that are necessary; and

Whereas, Peninsula Clean Energy continues to lead in confronting the climate emergency, and one key way is to accelerate the target dates for Peninsula Clean Energy's goals; and

Whereas, this goal affects practical actions and demonstrates the commitment to do what is required by scientific realities; now therefore

Be it resolved, Peninsula Clean Energy CAC recommends to the Board of Directors to amend Peninsula Clean Energy's goal to contribute to Peninsula Clean Energy service territory reaching the state's goal to be 100% greenhouse gas-free by 2035. And take all necessary steps to meet this goal, as it is required by the climate emergency we all face.



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: September 14, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None **VOTE REQUIRED:** None

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

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: First Annual Strategic Plan Update

<u>SUMMARY:</u>
The Peninsula Clean Energy 2025 Strategic Plan was adopted by the board in April 2020. At the September 2020 board retreat, staff presented a dashboard and metrics for future reporting on strategic plan progress and the board discussed the proposed approach. A six-month strategic plan status update was presented to the Executive Committee in April 2021. The first annual strategic plan update is being made at this year's retreat to reflect the progress on the strategic plan since its adoption.

BACKGROUND:

At the April 23, 2020 Board meeting, the Board adopted the Peninsula Clean Energy 2020-2025 Strategic Plan. The strategic plan was the result of a process that included a Board retreat in January 2020 whereby the board adopted the mission, vision, and organizational priorities. This was followed by a senior staff retreat in February 2020 to review the results of the board retreat and develop strategic goals, objectives, and key tactics for each departmental area that support the mission, vision, and overall priorities.

At the 2020 PCE board retreat in September, PCE staff proposed some edits to the strategic goals, objectives and key tactics based on information gleaned as the strategic plan was implemented throughout the organization. Staff presented a one-page dashboard overview as well as annual departmental metrics.

At the April 2021 PCE Executive Committee, PCE staff presented a semi-annual update of strategic plan progress. At this year's 2021 PCE board retreat, PCE staff will present the first annual update of strategic plan progress. We also propose one change in the second strategic priority to reflect the addition of Los Banos to the Peninsula Clean Energy Authority.

The following pages describe the strategic plan organizational mission, vision, organizational priorities, strategic goals, and departmental objectives and key tactics. One change is recommended for Organizational Priority Two to reflect the expansion of Peninsula Clean Energy beyond San Mateo County.

PENINSULA CLEAN ENERGY 2020-2025 STRATEGIC PLAN

Our Mission

To reduce greenhouse gas emissions by expanding access to sustainable and affordable energy solutions

Our Vision

A sustainable world with clean energy for everyone

Organizational Priorities

Priority One:

Design a power portfolio that is sourced by 100% carbon-free* energy by 2025 that aligns supply and consumer demand on a 24 x 7 basis

(* Carbon-Free = California RPS-Eligible Renewable Energy, excluding biomass, that can be scheduled by PCE on an hourly basis)

Priority Two:

Contribute to Peninsula Clean Energy member jurisdictions San Mateo County reaching the state's goal to be 100% greenhouse gas-free by 2045

Strategic Goals 2020 - 2025

Power Resources:

Goal 1 - Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

Public Policy:

Goal 2 - Strongly advocate for public policies that support Peninsula Clean Energy's Organizational Priorities

Community Energy Programs:

Goal 3 - Implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups

Marketing, Community Outreach, and Customer Care:

Goal 4 - Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention

Financial Stewardship:

Goal 5 - Employ sound fiscal strategies to promote long-term organizational sustainability

Organizational Excellence:

Goal 6 - Ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity

Objectives and Key Tactics

Power Resources

Goal 1 - Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates

Objective A: Low-Cost and Stable Power

Develop and implement power supply strategies to procure low-cost, reliable power

Key Tactics:

- Continuously refine Peninsula Clean Energy's risk management strategy to manage power supply resources and minimize risk to financial and rate objectives
- Improve load forecasting accuracy by leveraging historical data and sophisticated analytical tools
- Secure better risk management analytical tools and staff training to meet risk management strategy objectives
- Manage portfolio to meet risk, cost, and reliability objectives

Objective B: Clean Power

Design a diverse power portfolio that is 100% carbon-free by 2021; and is 100% carbon-free by 2025 on a 24×7 basis

Key Tactics:

- Develop robust Integrated Resource Plan (IRP) identifying expected resources and costs to meet Peninsula Clean Energy's goals and secure CPUC certification
- Secure additional contracts for renewable energy procurement in alignment with strategies and portfolio identified through IRP process and in compliance with risk management strategy
- Target 50% of portfolio from newly constructed resources by 2025

Objective C: Lower Power Sources

Create a minimum of 20 MW of new power sources in San Mateo County by 2025

Key Tactics:

- Analyze total available opportunity for implementing new clean energy projects in San Mateo County
- Implement Board-approved strategy to increase community resiliency
- Work with local government partners to identify and catalog opportunities for distributed energy resources across San Mateo County

Objective D: New Power Sources

Continually explore and support innovative sources and solutions for clean energy

- Develop and support pilot programs for new technologies or business models
- Partner with third parties developing innovative solutions through external grants or PCE-initiated funding programs
- Stimulate development of new renewable generation and storage products
- Coordinate and collaborate with other CCAs on initiatives to commercialize new clean energy sources and solutions

Public Policy

Goal 2 - Strongly advocate for public policies that advance Peninsula Clean Energy's Organizational Priorities

Objective A: Regulatory

Educate and engage policymakers to develop policies that support Peninsula Clean Energy's organizational priorities

Key Tactics:

- Identify and participate in key dockets before state regulatory bodies to establish policies that support regulatory objectives directly and through collaboration with CalCCA and other CCAs
- Develop coalitions with a wide variety of stakeholders to increase successful outcomes
- Conduct outreach and engagement of key regulators and staff

Objective B: Legislative

Engage state legislators to pass legislation that advances Peninsula Clean Energy's organizational priorities

Key Tactics:

- Deploy an annual legislative plan that identifies legislative opportunities to advance organizational objectives and mitigate threats to community energy
- Cultivate and maintain relationships with key legislative committees and staff and allies to amplify opportunities for success
- Implement a grassroots outreach plan that increases in-person engagement of state lawmakers with Peninsula Clean Energy Board members, staff, supporters and allies.

Objective C: Growth of Community Energy and CCAs

Take a leadership position in supporting the growth of community energy and CCAs (Community Choice Aggregators)

- Assist in setting up CCAs in other areas of the state, including where Peninsula Clean Energy has utility scale generation
- Provide knowledge and policy development expertise to help shape the state's future energy framework through development of position papers, speaking engagements and webinars
- Be an active participant in the State's review of the grid system

Community Energy Programs

Goal 3 - Implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups

Objective A: Signature Programs

Develop market momentum for electric transportation and initiate the transition to clean energy buildings

Key Tactics:

- Drive personal electrified transportation towards majority adoption
- Bolster electrification of fleets and shared transportation
- Ensure nearly all new construction is all-electric and EV ready, and support development
 of building codes for existing building electrification
- Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders
- Support local government initiatives to advance decarbonization

Objective B: Community Benefits

Deliver tangible benefits throughout our diverse communities

Key Tactics:

- Invest in programs that benefit underserved communities
- Develop programs that support the satisfaction and retention of residential and key accounts
- Support workforce development programs in the County
- Ensure programs are broadly deployed across the County

Objective C: Innovation and Scale

Leverage leadership, innovation, and regulatory action for scaled impact

- Identify, pilot, and develop innovative solutions for decarbonization
- Identify policy priorities and funding channels to accelerate programs and support regulatory team to secure them
- Partner with others including CCAs and cultivate a leadership profile to share lessons learned and cultivate a leadership profile and to foster partnerships

Marketing, Community Outreach, and Customer Care

Goal 4 - Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention

Objective A: Brand Reputation

Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry

Key Tactics:

- Position leadership as experts on CCAs and the industry
- · Cultivate relationships with industry media and influencers
- Tell the story of Peninsula Clean Energy through diverse channels
- Engage community through participation in local events
- Identify and address gaps between perception and desired brand identity
- Translate policy issues into consumer-friendly communication

Objective B: Engagement

Educate and engage stakeholders in order to gather input, inspire action, and drive program participation

Key Tactics:

- Foster relationships with community-based, faith-based, and non-profit organizations
- Continue to support schools-based literacy programs focused on energy
- Enhance relationships with municipal and county staff and elected officials
- Support the Citizen Advisory Committee (CAC)
- Provide inspirational and informative content that spurs action to reduce emissions
- Promote programs and services, community energy programs and premium energy services
- Develop an end-of-life transition plan for ECO100

Objective C: Customer Care

Ensure high customer retention and satisfaction

- Assess needs and attitudes of all customer segments to support the development of and communication about programs and services
- Continually strive to offer competitive and affordable rates
- Monitor customer satisfaction through periodic surveys
- Educate and engage Key Account customers in order to develop relationships, assess needs, and drive program participation
- Institute a re-enrollment "Come back" program
- Ensure customer satisfaction through multiple key relationships (call center, @info, Calpine reporting and interaction, PG&E operational relationship)

Financial Stewardship

Goal 5 - Employ sound fiscal strategies to promote long-term organizational sustainability

Objective A: Fiscal Health

Strengthen and maintain Peninsula Clean Energy's fiscal health

Key Tactics:

- Maintain and improve current investment grade ratings
- Implement robust financial management of invested cash to achieve a reasonable return while ensuring safety as the first priority

Objective B: Financial Controls and Management

Implement financial controls and policies that meet or exceed best practices for leading not-for-profit organizations

Key Tactics:

- Engage external experts to review internal financial controls and conduct annual audit
- Enhance and document policies and procedures to ensure accurate, transparent financial reporting
- Improve internal budgeting process and enhance reporting for departmental expense monitoring and control

Objective C: Financial Stability

Practice strategies to ensure long-term financial sustainability

- Develop a robust financial forecasting model that continually monitors and analyzes pricing and other key indicators
- Maintain unrestricted financial reserves of at least 180 days cash to mitigate unexpected power cost fluctuations and economic downturns

Organizational Excellence

Goal 6 - Ensure organizational excellence by adhering to sustainable business practices and fostering a workplace culture of innovation, diversity, transparency, and integrity

Objective A: Culture and People

Foster a workplace culture that attracts and develops exceptional talent and values all people

Key Tactics:

- Develop an annual staffing plan that addresses resource needs and fills resource gaps
- Provide training and professional development opportunities that build new skills and abilities
- Ensure our recruitment processes are designed to attract high caliber and diverse applicants
- Maintain and assess employee benefits and incentives to ensure that the organization is competitive and attractive in the marketplace
- Foster regular team building and social opportunities
- Ensure that all policies, procedures, and practices reflect a high level of integrity
- Promote a reasonable level of transparency

Objective B: Innovation

Foster a culture of innovation to yield solutions that accelerate our mission

Key Tactics:

- Hire a dedicated person to lead innovation efforts
- Explore new financial & program models
- Assess opportunities to reinvest in innovative technologies that advance the mission
- Collaborate with other CCAs to find solutions and methods to evolve and drive innovation
- Share best practices and discoveries via tool kits, webinars, whitepapers, and case studies
- Network with regional leaders to leverage the innovation culture in Silicon Valley
- Explore innovative rate designs to advance goals

Objective C: Data and Technology

Increase capabilities and efficient use of data and technology to support organizational decision making and program execution

Key Tactics:

- Increase data analytics capability to enable energy-related analyses, program impact measures, & consumer insights for continuous improvement
- · Implement scalable systems that maximize advances in IT
- · Implement systems and procedures to ensure data accuracy, privacy and security
- Create an executive dashboard with key organizational metrics to guide strategic and operational decision-making
- Provide ongoing technology training for staff and equip them with appropriate tools

Objective D: External Vendor Partners

Implement vendor policies that embrace diversity and inclusion and that optimize engagement results

Key Tactics:

- Develop methods to ensure adherence to the organization's Inclusive and Sustainable Workforce Policy
- Develop methods to ensure adherence to the organization's *Ethical Vendor Standards*
- Cultivate and strengthen productive relationships with external partners to increase organizational efficiencies

Objective E: Governance

Follow best practices for governance and succession to engage and develop qualified, diverse Board members

- Develop a succession process for key staff executives and the Board of Directors that addresses planned and emergency transitions and optimizes the role of Board Alternates
- Create and implement a robust orientation program for new Board members and Citizens Advisory Committee (CAC) members
- Provide relevant information and analysis to allow the Board to execute data-driven decision making
- Leverage Board and CAC members to support awareness of the organization
- Periodically review Board structure

STRATEGIC PLAN DASHBOARD and DESCRIPTIONS OF DEPARTMENT METRICS

The Strategic Plan Dashboard is a one-page overview which includes the overall organizational priorities and key metrics by department. Some metrics are reported by fiscal year and some by calendar year. There are seven key sections on the dashboard:

- Organizational Priorities
- Power Resources
- Public Policy
- Community Energy Programs
- Marketing, Community Outreach, and Customer Care
- Financial Stewardship
- Organizational Excellence

Each part of the dashboard is presented here along with the description of the metrics for measuring that section.

Each metric has a baseline from which we are starting. Each metric also has a 2025 target. If the metric is being measured on a calendar year basis, the report out at this year's board retreat (September 2021) is the measure of that metric as of the end of calendar year 2020 (December 31, 2020). If the metric is being measured on a fiscal year basis, the report out at this year's board retreat (September 2021) is the measure of that metric as of the end of fiscal year 2021 (June 30, 2021).

The tables below show each component of the dashboard, including the 2019 baseline (for calendar year) or 2020 baseline (for fiscal year). Some metrics are quantitative and others are qualitative. The descriptions of each of the metrics are also included.

Organizational Priorities

BOD Dashboard			
Organizational Priorities	2019 Baseline	2020	2025 Target
2025 100% RE 24/7	47.0%	47.0%	100.0%
Overall County GHGs (MT CO2e)	4,100,000	Data available in 2022	TBD

- 2025 100% RE 24/7 (%): Average hourly renewable penetration average % of load served by renewables in each hour of the year.
- Overall County GHGs (MT CO2e): County-wide total GHG emissions for the calendar year comprising.
 - Building energy use (natural gas and electricity)
 - Vehicle use (estimate of how many vehicles and total VMT)
 - o Point source data (e.g. cement factory, etc.)

Power Resources

Power Resources	Measurement Period - Calendar Year		
	2019 Baseline	2020	2025 Target
Renewable Content (%)	52.0%	55.2%	100.0%
Emmissions Factor (lbs/MWh)	94	12	5
New Capacity Statewide (%)	0.0%	16.0%	50.0%
Local Resources (MW)	0	1.175	20

- Renewable Content (%): ECOplus renewable energy content as reported through CEC
 Power Source Disclosure reporting. Increase organically each year as additional renewable
 projects are added to the portfolio.
 - **Emissions Factor (lbs / MWh):** Greenhouse gas emissions per MWh of load (Starting in 2020, as reported through CEC Power Source Disclosure reporting).
 - There was a significant decrease in emissions factor from 2019 to 2021. There are a couple factors driving this:
 - We were targeting a higher percent of GHG-free power for 2020 we stepped up from 90% in 2019 to 95% in 2020.
 - Our load in 2020 was lower than forecast due to Covid-19. We generally aim to execute contracts for 100% of our expected need prior to the start of the year. With the lower load, the result was that we were slightly overprocured.
 - 2020 was the first year where we were required to use the CEC's methodology for calculating our emissions factor. The CEC methodology had slightly different assumptions.
- New Capacity Statewide (%): Percent of load served by newly constructed resources (i.e. Wright).
 - Interim targets increase by 10% each year to reach 50% by 2025

• 2020: 10% • 2021: 20%

2022: 30%2023: 40%

• **2024**: 45%

• **2025**: 50%

• Local Resources (MW): Megawatts of new resources built in San Mateo County. In April 2021, we initially reported 0.59 MW for 2020. The prior number represented only a subset of the total megawatts installed to serve Peninsula Clean Energy programs and the new figure is more accurate.

- Interim targets increase by ~4 MW each year to reach 20 MW by 2025
 - **2020**: 0 MW
 - **2021**: 4 MW
 - **2022:** 8 MW
 - **2023**: 12 MW
 - **2024:** 16 MW
 - **2025**: 20 MW

Public Policy

Public Policy	Measurement Period - Fiscal Year		
	2020 Baseline	2021	2025 Target
PCIA Containment	Low	Low	High
Legislative Impact	Medium	Medium	High
Regulatory Impact	High	High	High
Coalition Building	Low	Medium	High
Fostering CCA Growth	Medium	Medium	High

- **PCIA Containment:** Qualitative assessment based on participation of regulatory team in PCIA related CPUC dockets.
- **Legislative Impact:** Qualitative assessment based on participation of legislative team in legislative hearings, coalitions and other activities.
- **Regulatory Impact:** Qualitative assessment based on participation of regulatory team in advancing PCE's regulatory objectives and priorities within CalCCA and at relevant regulatory agencies.
- Coalition Building: Qualitative assessment based on regulatory and legislative teams' engagement with and formation of coalitions as a means to achieve success in all areas of our work.
- **Fostering CCA Growth:** Qualitative assessment based on participation of regulatory team in in supporting expansion CCAs and assessment of regulatory team in thought leadership.

Community Energy

Community Energy	Measurement Period - Calendar Year		
	2019 Baseline	2020	2025 Target Cumulative
Transportation: GHG Reductions (M	770	2,400	120,000
Buildings: GHG Reductions (MT)	TBD	3,800	12,100
EV Charging ports installed	0	13	6,200
Electric appliances installed	0	0	2,000
Funds for Low Income (FY)	11%	47%	20%

Transportation: GHG Reductions (MT)

- Total EVs added due to PCE incentives (estimated VMT and avoided gasoline emissions).
- Utilization of EV chargers due to PCE incentives (estimated VMT and avoided gasoline emissions).
- Utilization of EV chargers installed due to reach codes
- Projected annual average of 10-year emissions reduction benefit in year measure deployed. In metric tons.
- Assumes 0 GHG for electricity based on annualized 100% greenhouse gas free electricity to start in 2021.

Buildings: GHG Reductions (MT)

- Projected reach code impact: emissions benefit of new buildings constructed under reach codes (difference in emissions compared to buildings with natural gas)
- Expected use of appliances in existing buildings receiving incentives (compared to average gas appliance).
- Projected annual average of 10-year emissions reduction benefit in year measure deployed. In metric tons.
- Assumes 0 GHG for electricity based on annualized 100% greenhouse gas free electricity to start in 2021.
- **EV Charging ports installed:** Annual and cumulative total EV charging stations deployed in current and prior years.
- **Electric appliances installed:** Annual and cumulative total electric appliances deployed in current and prior years.
- Funds for Low Income: Percentage of budget in the fiscal year targeting low-income, and underserved communities. Since Disadvantaged Communities (DACs) on the CalEnviroScreen definition make up a relatively small portion of Peninsula Clean Energy's customer base, we expand the definition of "low-income" for the purposes of our programs to include eligibility based on income, customers on specific rates, and by using the San Mateo County Community Vulnerability Index.

Marketing and Customer Care

Marketing & Customer Care	Measurement Period - Fiscal Year		
	2020 Baseline	2021	2025 Target
Participation Rate (as of FY end)	97%	97%	97%
PCE Aided Awareness*	34%	31%	60%
PCE Favorability*	63%	60%	80%
Key Account Engagement**	Low	Med/Low	High
Residential & SMB Engagement	Med/Low	Med/Low	High

- Participation Rate (as of FY end): Percentage of eligible electricity accounts in our service territory that receive electricity generation from Peninsula Clean Energy.
- Peninsula Clean Energy Aided Awareness: Measured by annual survey, in the second half of the FY, of representative sample of residents in our service territory (including customers and non-customers). Aided awareness of Peninsula Clean Energy (respondents recognize from a list) as an electricity provider for the service territory.
- Peninsula Clean Energy Favorability: Of those respondents to the annual survey (see above) who are aware (aided) of Peninsula Clean Energy, the percentage who have a "favorable" or "somewhat favorable" opinion of Peninsula Clean Energy.
- **Key Account Engagement:** Based on scoring rubric of strategic accounts who participate in high-, medium- and low-engagement Peninsula Clean Energy activities/programs.
- Residential and Small & Medium Business (SMB) Engagement: Based on scoring rubric of residential and small business customers who participate in high-, medium- and low-engagement Peninsula Clean Energy activities/programs.
- * Note that the 2020 research sample resulted in a margin of error of +/- 2.0% at 95% confidence. The 2021 research sample was smaller with a wider margin of error of +/- 4.3%, meaning that these figures essentially remain unchanged year over year
- ** Note that direct engagement during Covid has been challenging however, a virtual Strategic Accounts Webinar was held in the Spring, with good attendance. In 2021, we were able to add two customers to our volume pricing contract program.

Financial Stewardship

Financial Stewardship	Measurement Period - Fiscal Year		
	2020 Baseline	2021	2025 Target
Days Cash On Hand (Unrestricted)	238	257	231
Credit Rating (Fitch/Moodys)	BBB+/Baa2	same	"A" Level
Change in Net Position (\$000s)	\$48,900	-\$8,216	Positive
Investment Performance	TBD	2.0%	TBD
Average Cost of Energy (\$/MWh)	\$61.92	\$62.90	\$62.73

- Days Cash on Hand (Unrestricted): Cash balance that is unencumbered by bank or loan covenants and reduced by Board-approved future fiscal year community program commitments. As measured by the number of days of cash on hand at any given point. Board policy is a minimum of 180 days.
- **Credit Rating:** Public assessment by independent rating agencies measured by maintenance of investment grade ratings.
- Change in Net Position: Annual measurement of Total Revenues minus Total expenses plus/minus the change in Non-Operating Income/Expenses.
- Investment Portfolio Performance: Metric and performance criteria not yet defined.
- Average Cost of Energy: Quantitative assessment measured by Total Cost of Energy divided by Base Load (as publicly reported).

Organizational Excellence

Organizational Excellence	Measurement Period - Fiscal Year		
	2020 Baseline	2021	Yearly Target
Governance	High	High	High
Staff Satisfaction	High	High	High
Innovation Impact	High	High	High
Organizational Policies	High	High	High
Technology and Systems	Med	Med-High	High

- Governance: Assessment of succession process for Board members and alternates, quality of orientation for new board members, and degree of Board member support of the organization.
- Staff Satisfaction: Based on yearly surveys, assessment of employee satisfaction; evaluation of professional development and training efforts; evaluation of competitive benefits.
- **Innovation Impact:** Assessment of the quality of technology, program design, and policy innovation developed by the organization and its impact towards the organization's goals and the clean energy industry.
- **Organizational Policies:** Assessment of progress toward implementation of key policies such as the Sustainable Workforce and Ethical Vendor Standards policies.
- **Technology & Systems:** Assessment of quality and completeness of systems to support the organization's work including for business processes, energy-related analysis, program impact evaluation and customer insights; evaluation of systems and practices that ensure data accuracy/privacy and security.



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: September 10, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: Peninsula Clean Energy's Strategic Priorities

The Peninsula Clean Energy Strategic Plan has two strategic priorities:

1) Design a power portfolio that is sourced by 100% carbon-free* energy by 2025 that aligns supply and consumer demand on a 24 x 7 basis

(*Carbon-Free = California RPS-Eligible Renewable Energy, excluding biomass, that can be scheduled by Peninsula Clean Energy on an hourly basis)

2) Contribute to Peninsula Clean Energy member jurisdictions reaching the state's goal to be 100% greenhouse gas-free by 2045.

The 2021 Peninsula Clean Energy board retreat is focusing on these two strategic priorities to provide an update on progress we are making toward achieving these priorities.

The most recent report from the Intergovernmental Panel on Climate Change was released in August 2021. The Summary for Policymakers includes these statements:

"It is unequivocal that human influence has warmed the atmosphere, ocean and land."

"Human-induced climate change is already affecting many weather and climate extremes in every region across the globe. Evidence of observed changes in extremes such as heatwaves, heavy precipitation, droughts, and tropical cyclones, and, in particular, their attribution to human influence, has strengthened since AR5."

"Global warming of 1.5°C and 2°C will be exceeded during the 21st century unless deep reductions in CO2 and other greenhouse gas emissions occur in the coming decades."

"From a physical science perspective, limiting human-induced global warming to a specific level requires limiting cumulative CO2 emissions, reaching at least net zero CO2 emissions, along with strong reductions in other greenhouse gas emissions. Strong, rapid and sustained reductions in CH4 emissions would also limit the warming effect resulting from declining aerosol pollution and would improve air quality."

These dire statements from this latest IPCC report highlight the importance and timeliness of these Peninsula Clean Energy strategic priorities.

As a community choice aggregation agency, our main responsibility is to deliver 100% greenhouse gas free electricity to our customers. Contracting for this power makes up 90% of our annual budget. And since our inception, not only have we been delivering this clean electricity to our customers, but we have created a financially strong organization and at the same time have offered this clean electricity to our customers at a 5% discount to PG&E.

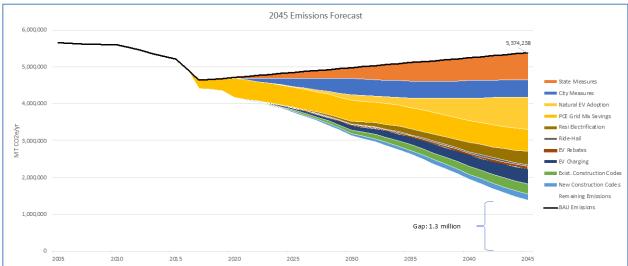
The strategic priority to achieve 100% renewable energy on a 24/7 basis is the most ambitious goal of any organization of which we are aware. By achieving this goal, we will be utilizing carbon-free renewable energy that we have contracted for to meet our customers' electrical load during every hour of every day. Currently, we purchase 100% greenhouse gas free energy to cover our customers' electrical usage over an annual basis. [We use the terms carbon free and GHG-free interchangeably.] When we use annual accounting, there are some hours where we produce more GHG-free energy than we need, and there are some hours where we produce less GHG-free energy than we need. On an annual basis, the excess we produce in certain hours equals the deficit in the other hours. In those hours where we have a deficit, we rely on generic power on the electric grid, which is often fossil resources (from natural gas power plants) to serve our customers. Thus we contribute to the GHG emissions from those resources during those hours when our GHG-free resources are in a deficit. By moving to serving our load every hour of every day with GHG-free resources, we will no longer be reliant on those fossilbased power plants, and will reduce the associated GHG emissions through those plants serving our customer load. The presentation that we will be making to the board at the retreat will get into this concept further and hopefully provide a full understanding of why this strategic priority is so important to achieve. And through Peninsula Clean Energy achieving this goal, we hope, and expect, to demonstrate that it is possible to achieve this goal in a cost-effective way. We can thus provide the model and example for others to similarly reduce GHG-emissions from fossil-based resources by moving to match carbon-free supply with customer load on an hourly basis.

The strategic priority to contribute to Peninsula Clean Energy member jurisdictions reaching the state's goal to be 100% greenhouse gas-free by 2045 is another important goal. Here we focus on other key contributors to GHG emissions, namely transportation and buildings. Burning gasoline in cars and trucks creates significant amounts of CO2. Moving this transportation to electric transportation alternatives, using the clean electricity supplied by Peninsula Clean Energy, can significantly reduce CO2 emissions. For buildings, eliminating the burning of methane in residential, commercial, and industrial buildings can also significantly reduce GHG

emissions. The presentation we will make to the board at the retreat will focus on how we can reduce the emissions from transportation and buildings to reach this 2045 goal.

The graphic shown here demonstrates how Peninsula Clean Enegy is contributing to reaching this 2045 goal and what the contributions from our clean energy supply and energy programs contribute to meeting this goal. This graph is based on the matching 100% GHG-free energy to our customer load on an annual basis. This graph will change in the future as we incorporate the hourly matching of 100% renewable energy to our customer load.

DRAFT 2045 GHG Reductions



PCE Measures based on forecast budget + 2% growth (constant dollars)

There are costs associated with both of these strategic priorities, and we hope that the discussion at the retreat initiates the thoughtful deliberation on how best to reduce GHG-emissions under the constraint of budget realities.



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: September 10, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Karen Janowski, Director of Marketing and Community Relations &

Leslie Brown, Director of Account Services

SUBJECT: Update on Marketing, Outreach Activities, and Customer Care

BACKGROUND

The Marketing, Community Relations, and Customer Care Teams are responsible for enhancing Peninsula Clean Energy's brand reputation, educating and engaging customers, driving participation in programs, and ensuring customer satisfaction and retention. Tactics include community outreach, content creation and storytelling through owned (e.g. online, social media), earned (e.g. public relations), and paid media (advertising), school engagement programs, and customer care.

DISCUSSION

The following is an update of activities that are currently underway. See "Strategic Plan" section below for how these activities support Peninsula Clean Energy's strategic plan objectives.

Heat Pump Water Heater (HPWH) Incentive Program

Marketing is supporting the program goal to install 200 heat pump water heaters in the first two years. As of September 7, 2021, we have had more than 14,600 unique visitors to the HPWH incentive page through owned media (email), earned media and paid digital advertising.

Electric Vehicle (EV) Campaign

The expanded Used EV program was launched on August 9, 2021 and will be supported via digital ads and email marketing in addition to the outreach efforts by our implementation partner, Grid Alternatives. Paid search advertising for EVs and the Used EV rebate started the week of 9/7/21.

Power On Peninsula Resilience Program

Power On Peninsula is the innovative Peninsula Clean Energy program that is helping residents maintain power during grid outages. Through our relationship with Sunrun, this program offers grid storage that helps reduce greenhouse gas emissions and move Peninsula Clean Energy toward its goal of 100% renewable energy. We continue comarketing efforts with Sunrun, including an upcoming postal mail and email campaign to homeowners.

CalCCA Annual Meeting (December 1, 2021)

The CalCCA Annual Meeting has been significantly reduced in scope and will now be held on only one day (December 1, 2021) and will take place entirely virtually. Peninsula Clean Energy, along with San Jose Clean Energy and Silicon Valley Clean Energy, is a co-host of the CalCCA meeting. CalCCA is hoping to have a more extensive event in San Jose in the spring of 2022.

Schools Engagement Programs

Peninsula Clean Energy has entered into a contract with San Mateo County Community College District (SMCCD) for the 2021-2022 Energize College Fellows and internship program. This is the second year of Peninsula Clean Energy's sponsorship. Recruitment is underway by SMCCCD for a Climate Corps Fellow to coordinate the program.

We are finalizing a contract, authorized by the Peninsula Clean Energy Board of Directors in August, with San Mateo County Office of Education (SMCOE) to sponsor an expanded pilot of the Energy and Sustainability Dashboard for school districts in the County. Recruiting is underway by SMCOE for a Climate Corps Fellow to coordinate the program.

News & Media

Peninsula Clean Energy issued one news release since our last monthly report to the Board of Directors:

<u>Peninsula Clean Energy to Receive Power From World's Largest Geothermal</u>
 Complex

Full coverage of Peninsula Clean Energy in the news can be found on our News & Media webpage. Also included in this month's board packet is a Media Relations Report summarizing activities and coverage during the second quarter of 2021.

Hiring

Marketing is currently recruiting for a Community Outreach Specialist/Manager for Los Banos.

There is currently a recruitment underway for an Account Services Specialist/Analyst to replace Michael Totah on the Account Services team.

ENROLLMENT UPDATE

ECO100 Statistics (since August report)

Total ECO100 accounts at end of August: 6,182 ECO100 accounts added in August: 57 ECO100 accounts dropped in August: 50 Total ECO100 accounts at the end of July: 6,175

Enrollment Statistics

Opt-outs during the month of August were 37, one less than the previous month of July (38). Total participation rate across all of San Mateo County at the end of August was 97.09%.

In addition to the County of San Mateo, there are a total of 15 ECO100 cities. The ECO100 towns and cities as of August 31st, 2021, include: Atherton, Belmont, Brisbane, Burlingame, Colma, Foster City, Half Moon Bay, Hillsborough, Menlo Park, Millbrae, Portola Valley, Redwood City, San Carlos, San Mateo, and Woodside.

The opt-up rates below include municipal accounts, which may noticeably increase the rate in smaller jurisdictions.



Table reflects data as of September 13th, 2021

E-TOU-C Transition

Peninsula Clean Energy residential customers currently on the flat-rate E-1 rate schedule are currently transitioning to the Time-of-use E-TOU-C rate schedule throughout September 2021. The E-TOU-C rate schedule has higher rates from 4-9 PM every day and this transition will impact nearly 200,000 PCE customers. As a reminder impacted customers have started to receive their first 90-day notifications regarding the upcoming transition. The 90-day notices include information about projected costs or savings customers can expect on the new E-TOU-C rate based on their historical household energy usage and information about how customers can proactively choose a different rate if they don't want to transition to E-TOU-C. Additional reminder notices will go out 30 days prior to transition to customers who have not yet made an affirmative choice. PG&E and Peninsula Clean Energy will be providing bill protection for customers participating in the E-TOU-C transition for the first 12-months of the program.

STRATEGIC PLAN

This section describes how the above Marketing and Community Care activities and enrollment statistics relate to the overall goal and objectives laid out in the strategic plan. The table indicates which objectives and particular Key Tactics are supported by each of the Items/Projects discussed in this memo. The strategic goal for Marketing and Customer Care is: Develop a strong brand reputation that drives participation in Peninsula Clean Energy's programs and ensures customer satisfaction and retention.

Item/Project HPWH Incentive	Objective A: Elevate Peninsula Clean Energy's brand reputation as a trusted leader in the community and the industry	Objective B: Educate and engage stakeholders in order to gather input, inspire action and drive program participation KT6 Promote programs and services, including community energy programs and premium energy services	Objective C: Ensure high customer satisfaction and retention
EV Awareness Campaign		KT6 (see above)	
Power on Peninsula Resilience Program		KT6 (see above)	

Schools Engagement Programs News and Media Announcements	KT1: Position leadership as experts on CCAs and the industry KT2: Cultivate relationships with industry media and influencers KT3 (see above)	KT2: Continue to support schools- based literacy programs focused on energy	
ECO100 and Enrollment Statistics			Reports on main objective C

^{* &}quot;KT" refers to Key Tactic



PENINSULA CLEAN ENERGY AUTHORITY JPA Board Correspondence

DATE: September 13, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

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

FROM: Jeremy Waen, Director of Regulatory Policy

Doug Karpa, Senior Regulatory Analyst

Matthew Rutherford, Senior Regulatory Analyst

SUBJECT: Update on August Regulatory Policy Activities

SUMMARY

Over the last month the Regulatory Policy team continues to be busy. Jeremy has focused his time on the numerous PG&E ERRA proceedings, a Petition to Modify the Joint Rate Mailer requirements, and ongoing PG&E General Rate Case matters. Doug has continued his work in supporting PCE's procurement efforts through continuing his engagement in the Commission's resource planning, grid reliability, as well as a new Distributed Energy Resources proceeding and new Energy Commission modeling of a possible need for fossil gas resources. Matthew has continued his work in supporting PCE's programmatic efforts through Transportation Electrification, Resiliency, Supplier Diversity, and DAC-Green Tariff matters.

GENERAL POLICY MATTERS

Proposal to Modify the Joint Rate Mailer Requirements

PCE staff has been working alongside peers at several other CCAs to draft a Petition to Modify the Joint Rate Mailer requirements imposed upon CCAs and IOUs. Presently, CCAs and IOUs are required by a Commission Decision from 2012 to jointly prepare and distribute to all customers within the CCA's service area a written comparison on an annual basis ("Joint Rate Mailer"). The same Decision also requires CCAs and IOUs to prepare a comparison of tariffs, sample bills and generation portfolio contents for posting on their respective websites ("Joint Rate Comparison"). In practice, the continued requirement to prepare and distribute the Joint Rate Mailer has become

costly, burdensome, and seemingly unnecessary in communities where CCAs have already been operational for multiple years. As such, a group of CCAs, in consultation with the three large IOUs, have prepared a Petition to Modify the Joint Rate Mailer requirement within this 2012 Commission Decision to propose to only require the issuance of the Joint Rate Mailer for the first two years of which a CCA is offering its service to the community. The Joint Rate Comparison requirements would remain in effect as they are presently. This Petition to Modify was formally submitted on August 6, 2021, to the Commission and now we await the Commission's actions.

DEEPER DIVE

Power Charge Indifference Adjustment (PCIA)

Presently, there are three active cases relating to PG&E's ongoing Energy Resource Recovery Account ("ERRA") accounting processes: (i) the 2019 ERRA Compliance case, (ii) the 2020 ERRA Compliance case, and (iii) the 2022 ERRA Forecast case. ERRA Forecast proceedings establish PG&E's generation and PCIA rates for the upcoming year, while ERRA Compliance proceedings look to the previous year to evaluate whether PG&E appropriately dispatched its generation portfolio to serve load in a least-cost manner in accordance with Commission guidelines. Among other considerations, both the 2019 and 2020 ERRA Compliance proceedings are attempting to reconcile the impacts on PG&E's rate setting practices due to Public Safety Power Shutoffs ("PSPS") that took place during those years. While there have been few key events in the last month, Jeremy will continue to engage on the issue of the vintaging PG&E's PCIA-eligible as it spans proceedings.

The 2020 ERRA Compliance and 2022 ERRA Forecast proceedings are both more recent. Jeremy continues to represent PCE's interests by helping to guide the Joint CCA efforts in both cases. A more in-depth report will be provided on the 2022 ERRA Forecast and its potential implications for next year's rates once PG&E issues its revised testimony in early November.

Lastly, since the Commission adopted its Decision addressing Working Group 3 proposals within the PCIA Rulemaking case on May 20, 2021, the IOUs have commenced the design of the voluntary allocation methodology of RPS from the IOU portfolios based on load shares within each vintage, although this process has not been finalized. Doug continues to track these developments on PCE's behalf.

In addition to the vintaging assignment matter detailed above, the PCIA Rulemaking remains open to consider matters such as the GHG-free benchmark and refinements to the IOUs' Energy Resource Recovery Account (ERRA) Forecast and Compliance proceedings. Jeremy remains closely engaged in this proceeding and the related ERRA cases to represent PCE's interests.

(Public Policy Objective A, Key Tactic 1)

DAC-GT/CSGT Programs

On July 9, 2021, the CPUC approved PCE's Advice Letter containing solicitation documents for the procurement of permanent resources to serve the DAC-GT and CSGT programs. On July 14, 2021, the CPUC approved PCE's Advice Letter containing updates to the 2021 and 2022 budgets according to certain programmatic costs that the CPUC required of the CCAs that are offering these programs.

PCE, through its coordination with PG&E to set up back-end billing and cost recovery procedures to support the programs, and through coordination with PG&E on the launching of PCE service in Los Banos in 2022, has identified that there are around 400 customers in Los Banos that are currently enrolled in PG&E's DAC-GT program. As PCE's current program capacity was allocated by the CPUC in 2019, it did not consider the capacity PCE will need to serve these customers in Los Banos. PCE met with CPUC Commissioner Martha Guzman Aceves and her staff to discuss how to resolve this issue and suggested the simplest path forward would be to transfer a corresponding portion of PG&E's DAC-GT program capacity to PCE. PCE, the CPUC, and PG&E all met to discuss this proposal. PG&E agreed to PCE's suggestion.

On August 25, 2021, PCE filed a letter to the CPUC executive director requesting an extension on the September 7, 2021 deadline to issue PCE's RFO for permanent solar projects to serve these programs. PCE filed the request to allow the request for additional capacity to serve Los Banos customers to be approved and then included within a singular RFO. Then on August 31, 2021, PCE and PG&E filed a Joint Advice Letter to transfer the approximate 2.5 MW of program capacity that is needed to serve the Los Banos customers from PG&E to PCE. According to our regulatory counsel, it may be the first time that a CCA and an IOU have filed a joint advice letter. We requested that the request become effective by September 30, 2021 to allow us to quickly launch the RFO for the permanent projects that will serve both the DAC-GT and CSGT programs.

PCE marketing, procurement, program, regulatory, finance, and customer care staff continue to meet to develop and prepare internal processes to launch the program once our updated budget is approved. PCE and the Joint CCAs have also been meeting with their billing providers and PG&E to establish the billing system programming and processes necessary to run these programs.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2 and Key Tactic 3)

Transportation and Electrification

Matthew continues to lead PCE's policy advocacy to support PCE's programmatic objectives to enable electrification. Activity in the Commission's Transportation Electrification Framework (TEF) proceeding has most recently been centered around a recent Proposed Decision on June 1, 2021, that was designed to create pathways for IOUs to make near-term investments in priority areas to address California's transportation electrification goals while the TEF is finalized in a parallel track which would then allow PAs to design their own Transportation Electrification Plans for CPUC

review. These near-term priority investment areas include: 1) TE resiliency, 2) customers without access to home charging, 3) medium- and heavy-duty vehicle electrification, 4) charging access in new building construction, and 5) Level 2 EVSE and panel upgrades for low-income customers in underserved communities. The Proposed Decision also creates streamlined pathways for IOUs to seek approval of programs that are designed to address these priority areas.

The Joint CCAs filed comments on June 21, 2021, on the Proposed Decision that advocated for CCAs to be permitted to serve as Program Administrators under these near-term programmatic areas, similar to our advocacy to be permitted to serve as Program Administrators under the TEF once it is completed. The CCAs also raised other concerns with the Decision and the way it directed the IOUs to design their programs to meet these near-term TE needs. The CCAs pushed the Commission to reject certain requirements for programs that are designed to support charging access in new building construction that would ensure PAs only offer incentives for electric vehicle supply equipment (EVSE) installed in new buildings if the EVSE exceeds the requirements of the local building codes as this could provide an unfortunate incentive for local jurisdictions to not pursue the more aggressive reach codes and could be a signal to builders that they would receive larger incentives if their projects were in local jurisdictions that have not adopted Reach Codes. It would also effectively mean that ratepayers may be unable to benefit because they are in one of the roughly 30 local governments that have already adopted Reach Codes. The CCAs instead advocated that the incentives should be provided if the new construction project is exceeding statewide codes, in order to create a level playing field, simplify administration of the IOU program, and not create a disincentive for more jurisdictions to adopt Reach Codes.

The Commission adopted the decision on July 21, 2021. During the voting meeting they acknowledged the current restrictions on new-building construction incentives could lead to unintended consequences and will be issuing a revised decision that would make incentives dependent on exceeding statewide building codes, rather than the local jurisdiction's Reach Codes. We continue to await further action to remedy this matter.

On August 4, 2021, Commission issued a draft resolution for new IOU Rules that were required by AB 841 and would allow the costs of utility-side service upgrades to serve new EVSE to be socialized among ratepayers, rather than borne exclusively by the customer installing the new EVSE. This is also referred to as "common cost treatment."

In prior rounds of comments on the implementation of AB 841, PCE and the Joint CCAs have previously argued that MUDs should be guaranteed access to this same common cost treatment to help encourage broader EV charging access for residents, and that the IOU rules should require customers who make use of this rule to utilize load management technologies that would help reduce the cost of the installation and therefore the costs that would be borne by electric ratepayers. We have also argued that common cost treatment justifies that that IOUs be subject to more robust and granular cost tracking and reporting requirements to ensure that the Commission and stakeholders are able to easily evaluate how these dollars are allocated by the IOUs.

The draft resolution does require detailed cost tracking and reporting of the IOUs, it allows MUDs to take advantage of common cost treatment in most cases, and also rejects many of the IOUs proposals for unnecessary restrictions and oversight over EVSE projects that apply for service under these rules. PCE and Sonoma Clean Power filed Joint Comments on the draft resolution to thank the Commission for establishing robust cost tracking and reporting requirements that go beyond what the IOUs are currently providing. The Joint CCAs also requested that these reports break down costs on a per port basis to provide better context that would allow stakeholders and regulators to estimate the total cost of meeting the State's EV charging goals through the IOUs' programs. The Joint CCAs also advocated that Automated Load Management should be required for certain projects that take advantage of these new Service Upgrade Rules in order to limit the cost borne by ratepayers, or, failing that, that the Commission should establish a stakeholder process to evaluate when ALM should be required to allow the Rules to be updated in the future and provide better cost containment on these projects.

(Public Policy Objective A, Key Tactic 1, Key Tactic 2 and Key Tactic 3)

Integrated Resource Planning & Resource Adequacy

Doug Karpa continues to lead PCE's engagement in the California Public Utilities Commission's Integrated Resource Plan (IRP) and Resource Adequacy (RA) efforts on several fronts. Doug has been and will continue to be quite busy over the next month in these subject areas as the Commission just issued three relating Proposed Decisions:

- 1) On August 17, 2021, the Commission issued a ruling outlining the analysis of the aggregated Integrated Resources Plans submitted by all eligible Load Serving Entities on September 1, 2020. While the Commission noted that CCAs collectively are planning to build more new resources than either the Investor Owned Utilities (IOUs) or the Energy Service Providers (ESPs), the aggregated Integrated Resources Plans would not result in a reliable grid, mostly because ESPs are planning to contract only with existing resources. The Commission also analyzed a portfolio that includes both the planned amounts plus the procurement ordered in D.21-06-035 (the 11,500 MW Mid-Term Reliability Decision), which does result in a reliable grid. The Commission also analyzed a series of different portfolios with varying load assumptions and carbon targets for 2030 of 46 MMT, 38 MMT, and 30 MMT. Although the costs of each were projected to be guite similar, the Commission has proposed to adopt a 38 MMT target. (Peninsula Clean Energy's Integrated Resources Plan portfolio would be equivalent to a 26MMT statewide target by 2030 currently). The Commission also seeks comment on the structure of future procurement order methodologies to achieve these targets, including a focus on out of state wind and offshore wind.
- 2) The High DER Future Docket (R.21-06-017) has commenced with the prehearing conference and workshops on the scope of issues to be addressed, including proposals for improved data access to support local resources from CCAs and discussion of the structure of a possible distribution system operator.

3) On September 1, 2021, in the Summer 2022-23 Emergency Reliability Docket (R.20-05-003) Peninsula Clean Energy submitted several proposals for rapid deployment programs, including a statewide program to use behind-the-meter storage to shift loads away from critical net peak hours.

(Public Policy Objective A, Key Tactic 1 and Key Tactic 3 & Public Policy Objective C, Key Tactic 3)

Stakeholder Outreach

Doug continues to host the regular bi-weekly call with staff from CCAs and environmental and environmental justice stakeholders, including a call on August 18, 2021 and September 15, 2021 focusing on statewide planning efforts both at the California Energy Commission and the California Public Utilities Commission's recent Integrated Resources Planning docket.

(Public Policy Objective A, Key Tactic 2)

FISCAL IMPACT

Not applicable.



PENINSULA CLEAN ENERGY AUTHORITY Board Correspondence

DATE: September 10, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

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

FROM: Marc Hershman, Director of Government Affairs

SUBJECT: Update on PCE's August and September Legislative Activities

SACRAMENTO SUMMARY:

The 2021 session of the California Legislature ended on September 10. The Legislature is now adjourned until January 3, 2022, unless called back for a Special Session.

Much of the drama associated with the end-of-session in past years did not occur in 2021. One important factor that made for a relatively uneventful week was the requirement that all legislation must be in print at least 72 hours before it can be voted upon. There were other factors that made this session unusual. It was a year defined in many ways by an enormous budget surplus, the reduced number of bills that could be introduced by each legislator (the result of limited hearing room facilities due to COVID distancing measure) and the restricted in-person access to legislators and their staff.

The gubernatorial recall election also weighed heavily on activities in Sacramento. The last day to vote in the recall election is set for September 14. The last day on which the governor can sign, or veto bills passed by the Legislature, is October 10.

Of great significance to Peninsula Clean Energy and the future of clean energy was the announcement during the last week of the legislative session that the Senate has formed a Subcommittee on the Clean Energy Future. This subcommittee of the Senate Energy, Utilities and Communications will be chaired by the Peninsula's Senator Josh Becker.

LEGISLATIVE ADVOCACY AND OUTREACH:

Peninsula Clean Energy Legislative Initiative in 2022

Peninsula Clean Energy is weighing the possibility of our taking a leadership role in championing a legislative initiative in 2022. We are working with other CCAs and clean energy organizations to identify legislative needs and priorities.

Staff has been be reaching out to our local state legislators to arrange for meetings, in the local legislative offices if conditions permit, or virtually. These meetings will present an opportunity to thank our local legislators for their strong support of SB 612 and other 2021 legislation of importance to Peninsula Clean Energy. We will also begin discussing 2022 legislation and other opportunities to work with our legislators in the year ahead.

CalCCA Legislative Committee and Board Activity

SB 612 (Portantino) PCIA Reform, was CalCCA's priority bill for this legislative session. It provides fair and equal access to the benefits of legacy resource products for IOU, CCA and Direct Access customers. Most Peninsula Clean Energy jurisdictions had weighed in with letters of strong support for **SB 612**.

SB 612 was passed off the floor of the Senate on June 1 by an overwhelming and bipartisan vote of 33-6. However, the bill never received a hearing in the Assembly Committee on Utilities and Energy. **SB 612** can move ahead next year as a 2-year bill, in which case it could be heard as early as January 2022. Because it was passed out of the Senate in 2021, **SB 612** can be heard and passed by the Assembly Committee on Utilities and Energy as late as next summer.

SB 68, authored by Sen. Josh Becker, passed the Senate this summer by a vote of 35-1. The bill requires the CEC to develop guidelines for electrification of buildings and report on electrification barriers including adding energy storage or EV charging equipment to existing buildings.

SB 68 was heard in the Assembly Committee on Utilities and Energy on June 30. At the request of Senator Becker, Peninsula Clean Energy CEO Jan Pepper testified in support of the bill at the hearing. **SB 68** was unanimously passed by the committee. This week, after some back-and-forth between the Senate and the Assembly, **SB 68** successfully cleared the Legislature and is before the governor.

AB 843 (Aguiar-Curry) would enable CCAs to access existing state programs that provide funding for renewable bioenergy electricity projects, including biomass and biogas. Under current law the Investor-Owned Utilities can access these funds, but the CCAs were not included when the program was established back in 2012. PCE and CalCCA are supporters of this bill, which passed the Assembly on a 78-0 vote.

AB 843 was heard on July 12 in the state Senate Committee on Energy, Utilities and Communications where it was voted out 13-0. It reached the floor of the Senate, where

it passed with a vote of 37-0. The Assembly concurred in amendments made by the Senate. That vote was 56-0. The bill is headed to the governor's desk.

(Public Policy Objective B, Key Tactic 1)

Legislation PCE has been tracking:

AB 525 (Chiu) establishes aggressive offshore wind planning goals and makes other changes to accelerate the development of offshore wind. **AB 525** passed the floor of the Assembly with a vote of 71-1. Upon arrival in the state Senate, it was jointly referred to the Committee on Utilities, Energy and Communications and the Committee on Natural Resources and Water. It was heard and passed in both committees. On September 9 the bill was voted upon on the floor of the Senate where it passed 38-0. It is now on its way to the governor for his consideration.

SB 771 (Becker) would provide a state-only (not local) sales tax exemption for incomequalified participants who replace an older vehicle through the Clean Cars 4 All program with a low- or zero-emission vehicle. SB 771 was voted off the floor of the Senate 34-4 and has not been referred to an Assembly committee for consideration. It could become a 2-year bill.

(Public Policy Objective B, Key Tactic 1)



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: September 8, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer, Peninsula Clean Energy

Rafael Reyes, Director of Energy Programs

SUBJECT: Community Programs Report

SUMMARY

The following programs are in progress, and detailed information is provided below:

- 1. Building and EV Reach Codes
- 2. Existing Buildings
 - 2.1. Appliance Rebates
 - 2.2. Low-Income Home Upgrades & Electrification
 - 2.3. Building Pilots
- 3. Distributed Resources
 - 3.1. Local Government DER Project Development
 - 3.2. Power On Peninsula Homeowner
- 4. Transportation
 - 4.1. "EV Ready" Charging Incentive Program
 - 4.2. Used EV Rebate Program
 - 4.3. EV Ride & Drives/Virtual Engagement
 - 4.4. E-Bikes for Everyone Rebate Program
 - 4.5. Municipal Fleets Program
 - 4.6. Transportation Pilots

DETAIL

1. Building and EV Reach Codes

Background: In 2018 the Board approved a building "reach code" initiative to support local governments in adopting enhancements to the building code for low-carbon and EV ready buildings. The initiative is a joint project with Silicon Valley Clean Energy (SVCE). The program includes small grants to municipalities, technical assistance, and tools, including model codes developed with significant community input. The tools and model code language are available on the project website (www.PeninsulaReachCodes.org).

In addition, in January 2020 the Board approved an extension of the reach code technical assistance plus additional elements – Education and training for developers and contractors, and consumer education program on the benefits of all-electric buildings. This technical assistance is now publicly available at www.AllElectricDesign.org. Lastly in December 2020, the Board approved the draft contract amendment with TRC Engineers to extend the scope to include technical assistance for developing policy language for existing buildings.

Status:

- Reach Codes: In PCE territory, Burlingame, Brisbane, Colma, Daly City, E. Palo Alto, Menlo Park, Millbrae, Pacifica, Redwood City, San Carlos, San Mateo, San Mateo County, and South San Francisco have adopted reach codes. A number of additional agencies are in progress including Atherton, Belmont, Half Moon Bay and Portola Valley. South San Francisco is now considering a commercial building code. Its initial code was solely for the residential sector. Across San Mateo and Santa Clara Counties, 26 agencies have adopted some kind of all-electric reach code. PCE is providing some support to Half Moon Bay and South San Francisco commercial stakeholder engagement. Project attention is now turning to the 2022 code cycle. Draft new model codes are expected to become available at the beginning of next year.
- Training and Technical Assistance: Training and technical assistance efforts are being deemphasized to focus on the 2022 model code development, though developer technical assistance is still available.
- Existing Building policy development: A policy and financing literature review and analysis of existing building electrification and multifamily EV charging was completed. The technical consultant, TRC, is currently developing cost-effectiveness studies for multiple building prototypes. Options were presented to the Menlo Park City Council on August 31and the Council directed staff to explore pilot programs for low income, public education, and a possible increase of the utility users tax to fund programs.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 3: Ensure nearly all new construction is all-electric and EV ready
- Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2. Buildings Programs

2.1. Appliance Rebates

Background: In May 2020, the Board approved a 4-year, \$6.1 million for electrifying existing buildings. This included \$2.8 million for implementing an appliance rebate program. PCE successfully launched the heat pump water heater rebates on January 01, 2021 for San Mateo residents. PCE rebates are offered in partnership with BayREN's Home+ program. BayREN offers a rebate of \$1,000 and PCE offers an additional rebate of \$1,500 for methane gas to HPWH or \$500 for electric resistance to HPWH. PCE's rebates for methane gas to HPWH switches reduces to \$1,000 after September 30, 2021. PCE also offers a bonus rebate for low-income customers (CARE/FERA participants) of \$1,000 and \$1,500 for electrical panel updates of up to 100 Amp and \$750 for up to 200 Amp that might be needed to accommodate the HPWH.

Status: The heat pump water heater (HPWH) rebate program was launched on January 01, 2021 and to date we have received 56 applications and 43 have been paid or approved. Currently five San Mateo County contractors and 18 contractors outside the county are enrolled in the program. PCE has been promoting the incentive through digital ads, email outreach and other channels.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 4: Establish preference for all-electric building design and appliance replacement among consumers and building stakeholders

2.2. (Low-Income) Home Upgrade Program

Background: In May 2020, The Board approved \$2 million for implementing a turn-key low-income home upgrade program. The measures implemented through the program will vary depending on each home's needs but will include at least one electrification measure such as installing a heat pump water heater (HPWH) or replacing a gas furnace with electric.

Status: The contract with the administration and implementation firm, Richard Heath & Associates (RHA), was executed after being approved by the Board in the March 2021 meeting. The program design phase is nearly complete, and a public launch is anticipated for the last week of September 2021 with a press release.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective B:

- Key Tactic 1: Invest in programs that benefit underserved communities
- Key Tactic 3: Support workforce development programs in the County

2.3. Building Pilots

Background: In May 2020, The Board approved \$300,000 for piloting a new innovative technology from Harvest Thermal Inc., a Bay Area-based startup, that combines residential space and water heating into a unified heat pump electric system with a single water storage tank. Through this project, this technology will be installed in 5 homes within the San Mateo County to assess its performance and demonstrate its effectiveness for emission reductions.

Status: The home recruitment process began in late April and the project received 290 applications. Homes are being selected based on technical criteria (home characteristics, energy usage patterns, and technical feasible of the upgrade within budget). The top eight homes have been identified and contractor bids are taking place through the end of September. The final five "participation homes" will be selected based on project costs based on bids. Installation of the systems are expected to take place in Q4 2021. Additionally, staff has contracted with a competitively selected third-party firm, TRC Inc., to provide measurement & verification services for the project. Lastly, staff is forming a Technical Advisory Committee (TAC) for this pilot to educate stakeholders on the technology and gather feedback on the project. TAC members will include former building officials, former contractors, city commissioners, peer CCA program managers, CPUC staff, CAC members, and Board member Jeff Aalfs.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective C:

• Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

3. Distributed Energy Programs

Peninsula Clean Energy has Board-approved strategies for the promotion of 20 MW of new distributed energy resources in San Mateo County and a three-year, \$10 million strategy to deploy local electricity resiliency programs in San Mateo County. The projects described below are efforts towards meeting both of these goals.

3.1. Local Government DER Project Development

Background: In October 2020, the Board approved a DER Site Evaluation Services contract with McCalmont Engineering for DER site evaluation and designs for County and municipal facilities identified as candidates for solar-only non-resilience or solar + storage resilience projects.

Status: We have completed site visits and DER designs for the following sites:

Fair Oaks Community Center, Redwood City

- San Carlos Youth Center, San Carlos
- Mission Blue Center, Brisbane
- Public Works Yard, Hillsborough
- Chetcuti Building and Surrounding Complex, Millbrae
- Colma Community Center, Colma
- City Hall and Police Station, Belmont
- Police Station, Mateo
- Half Moon Bay Library
- Pacifica Community Center
- San Mateo County Events Center
- San Mateo County Youth Services/Camp Kemp/Fire Station
- San Mateo Election Building
- San Mateo County Health Services Administration Building

We have begun active exploration of an aggregate procurement and novel contracting mechanism as part of our overall strategic initiatives with DERs through which customers could receive DER benefits and savings with no up-front costs and where Peninsula Clean Energy would manage procurement, operations, performance, and maintenance. We have begun discussing projects with the County and municipal decision makers and are asking for commitments to engage in the procurement and move forward if pricing that we receive can support a PPA price for customers that results in net electric bill savings. We are including PCE Board Members on these calls and asking for their support to help move their jurisdictions forward. The total portfolio size would be up to 2.1 MW of new solar, assuming all facility owners participate. Time is of the essence, as we expect that revisions to the NEM tariff currently under a rulemaking process at the CPUC will negatively impact project financials and may reduce or eliminate our ability to provide customers with net savings.

3.2. Power On Peninsula – Homeowner

Background: Power on Peninsula – Homeowner is a solar+storage energy resiliency program run by Peninsula Clean Energy in partnership with Sunrun and TerraVerde Energy. This program provides energy storage systems paired with solar power to single family and multifamily Peninsula Clean Energy customers. Customers who sign up for this program receive an incentive up to \$1,250. At Peninsula Clean Energy's direction, Sunrun will dispatch the stored energy during evening hours when renewable generation on the California grid is low. This will also help Peninsula Clean Energy to reduce its peak load and thereby reduce our resource adequacy requirements.

Status: In August, Sunrun and Peninsula Clean Energy planned the rollout of a direct mail to homeowners in our service territory, utilizing a new mail house that will incorporate data from both Sunrun and Peninsula Clean Energy. Utilizing a new mail house partner, and managing the integration of two data sources, resulted in a delayed rollout of the direct mail. Staff is now planning to launch that direct mail effort in September. Staff is also planning a customer satisfaction survey for program participants in the coming

months. Additionally, staff signed a contract with a firm to provide labor compliance assistance in connection to the program and kicked off conversations to evaluate Sunrun's labor commitments in the program.

Strategic Plan: The activities and programs described in the DER and Energy Resilience activities support the following objectives and key tactics in Peninsula Clean Energy's strategic plan:

- Power Resources Goal 1: Secure sufficient, low-cost, clean sources of electricity that achieve Peninsula Clean Energy's priorities while ensuring reliability and meeting regulatory mandates
 - Objective C Local Power Sources: Create a minimum of 20 MW of new power sources in San Mateo County by 2025
 - Key tactic 2: Implement Board-approved strategy to increase community resilience.
 - Key tactic 3: Work with local government partners to identify and catalog opportunities for distributed energy resources across San Mateo County.

4. Transportation Programs

4.1. Used EV Rebate Program

Background: Launched in March 2019, the Used EV Rebate Program (formerly referred to as "DriveForward Electric") provides an incentive up to \$4,000 for the purchase of used plug-in hybrid electric vehicles (PHEVs) and full battery electric vehicles (BEVs) to income-qualified San Mateo County residents (those making 400% of the Federal Poverty Level or less). The incentives may be combined with other state-funded income-qualified EV incentive programs. The 'old' program incentivized 103 rebates since the launch in March 2019. In October 2020, the Board approved expanding the program to offer used EV incentives to all San Mateo County residents, while maintaining the increased incentives for income-qualified residents. In February 2021, the Board a contract with GRID Alternatives ("GRID") to administer the expanded program.

Status: The revamped program launched August 10, 2021 with a <u>press release</u>. Major changes to the program include:

- Base rebates now available to all residents. Increased rebates for income-qualified residents are still available.
- Customers are required to apply and be approved prior to purchase to be eligible for the rebate.
- Additional vehicle eligibility criteria was added, including a \$25,000 price cap on eligible vehicles.
- A dealership network was set up for customers to claim the rebate instantly at point of sale. Thus far, 8 San Mateo County dealerships have joined the network.

Since the relaunch, the program has issued 6 rebates (5 of which are income-qualified). Additionally, there are 22 customers in the pipeline that been approved for the program and 45 others who have expressed interest but have not yet submitted an application.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation towards majority adoption

Goal 3 – Community Energy Programs, Objective B:

Key Tactic 1: Invest in programs that benefit underserved communities

4.2. "EV Ready" Charging Incentive Program

Background: In December 2018 the Board approved \$16 million over four years for EV charging infrastructure incentives (\$12 million), technical assistance (\$2 million), workforce development (\$1 million), and administrative costs (\$1 million). Subsequent to authorization of funding, PCE successfully applied to the California Energy Commission (CEC) for the CEC to invest an additional \$12 million in San Mateo County for EV charging infrastructure. Of PCE's \$12 million in incentives, \$8 million will be administered under the CEC's California Electric Vehicle Incentive Project (CALeVIP) and \$4 million under a dedicated, complementary PCE incentive fund. The dedicated PCE incentives will address Level 1 charging, assigned parking in multi-family dwellings, affordable housing new construction, public agency new construction, and charging for resiliency purposes.

Status: PCE's technical assistance and outreach is ongoing. In total 101 different locations are in the technical assistance process requesting over 722 charging ports. PCE's dedicated incentive program of \$4 million has received 17 applications for funding for a total of 337 ports. This includes a major affordable housing project with 88 ports.

CALeVIP is processing Year-1 applications and PCE staff anticipate 798 L2 ports and 310 DCFC ports to be funded for a total of \$16M (\$12M in DCFC funds and \$3.7M in L2 funds). Year 2 and Year 3 funding application review has not started. PCE contacted all CALeVIP applicants in San Mateo to offer technical assistance and facilitate project success.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective B:

Key Tactic 3: Support workforce development programs in the County

4.3. EV Engagement – Rental Rebate & Ride & Drives

Background: In February 2019, the Board approved continuation of the EV Ride & Drive program over three years (2019-2021) following a 2018 pilot. It provides for community and corporate events in which community members can test drive a range of EVs. The program generated 19 events and 3,033 experiences since inception in 2018. Event

surveys indicate that the ride and drive was the first EV experience for 64% of participants and 87% report an improved opinion of EVs. Trailing surveys 6 months or more after events have yielded a 33% response rate and 17% of respondents indicate they acquired an EV after the event. Due to the COVID-19 pandemic, ride & drive events have been paused. As a result, staff developed a suite of virtual EV engagement pilot programs that replaced the in-person ride & drive events. Staff evaluated these pilots in January 2021 and phased out some due to low uptake and to prioritize limited funding for the most successful programs – Virtual EV Forums & EV Rental Rebate.

Status: The Virtual EV Forums in partnership with large San Mateo County employers continued through the end of FY20-21. Four EV Forums have been held. The EV Rental Rebate, which offers a rebate up to \$200 on the rental of an EV and as of September 10, 2021 has issued 119 rebates since October 2020, has seen good uptake and shown positive impact in participant's opinions of EVs and likeliness to get an EV as their next vehicle. Most of the FY21-22 EV Ride & Drive/Engagement budget will be dedicated to the EV Rental Rebate. Staff will consider re-starting ride & drive events again sometime next calendar year.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation towards majority adoption

4.4. E-Bikes for Everyone Rebate Program

Background: The Board approved the E-Bikes Rebate program in July 2020. This program has a total budget of \$300,000, originally intended for three years, to provide approximately 300 rebates of up to \$800 to residents with low to moderate incomes over the course of the program. Silicon Valley Bicycle Coalition is under contract to PCE as an outreach and promotional partner and local bike shops are under contract to provide the rebate as a point-of-sale discount to customers. Enrolled bike shops include Summit Bicycles, Mike's Bikes, Sports Basement, and RidePanda (as an online retail partner).

Status: The program launched in May and sold out within a week. Over 275 e-bikes have been purchased so far. Staff are preparing to return to the Board to report on program outcomes and propose additional funding.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

• Key Tactic 1: Drive personal electrified transportation to majority adoption

Goal 3 – Community Energy Programs, Objective B:

• Key Tactic 1: Invest in programs that benefit underserved communities

4.5. Municipal Fleet Program

Background: The Board approved the Municipal Fleet Program in November 2020. This program will run for three years with a total budget of \$900,000 and is comprised of three components to help local agencies begin their fleet electrification efforts: hands-on technical assistance and resources, gap funding, and a vehicle to building resiliency demonstration that will assess the costs and benefits of utilizing fleet EVs as backup power resources for agencies in grid failures and other emergencies.

Status: The program is under development. An RFP is under development will be released in Q4 to hire a consulting team to work with PCE on providing detailed technical assistance to agencies, including project cost estimations and EV infrastructure designs.

Strategic Plan:

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective C:

• Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization

4.6. Transportation Pilots

Ride-Hail Electrification Pilot

Background: This pilot, approved by the Board in March 2020, is PCE's first program for the electrification of new mobility options. The project partners with Lyft and FlexDrive, its rental-car partner, to test strategies that encourage the adoption of all-electric vehicles in ride-hailing applications. This is a major emissions reduction opportunity as ride-hailing drivers frequently drive 250 miles or more per day.

Status: The pilot formally kicked off in December 2020 and PCE staff are coordinating with Lyft on development. Vehicles are anticipated to start becoming available in Q4 2021. Supply chain issues are currently slowing new vehicle orders.

MUD Low-Power EV Charging Pilot

Background: This project was initially approved by the Board in 2018. This pilot program has completed a needs assessment among various multi-unit dwelling (MUD) ownership types as well as a review of various low-power charging technology solutions. 13 Plugzio devices (smart outlets) have been installed at 3 MUDs in Millbrae and Foster City. A cost-efficiency analysis found that the project saved nearly \$180,000 in costs at one MUD alone, compared to the cost of traditional Level 2 charging (40 amps of power to each station), which would have triggered the need for significant upgrades. Installing L2 instead of L1 would have been over 4X more expensive in these cases. Lessons learned from this pilot are already informing inclusion of low-power charging solutions in PCE's EV Ready Program.

Status: A final report is being developed now.

EV Managed Charging Pilot

Background: PCE contracted with startup FlexCharging to test managed charging through vehicle-based telematics. The system utilizes existing Connected Car Apps and allows PCE to manage EV charging via algorithms as a non-hardware-based approach to shift more charging to occur during off-peak hours. The proof-of-concept test ran during the first half of 2020 and was a successful demonstration.

Status: Staff have released an RFP for an expanded pilot in Phase 2 (bids are due 9/27). PCE is collaborating with an academic team from the University of California, Davis' Davis Energy Economics Program (DEEP) to develop an incentive structure experiment that will be used to inform PCE's Managed Charging Program design.

Curbside Charging Pilot

Background: Curbside charging has the potential benefit of bringing new charging solutions to drivers that lack residential charging (e.g. MUDs, renters, etc.). This pilot is assessing the cost effectiveness of curbside charging in various scenarios, including streetlight-mounted stations, scaling potential, and potential technical and policy barriers that need to be addressed prior to installation. If the assessment phase shows curbside charging to be viable, PCE will facilitate pilot installations in 1-2 cities in the second phase.

Status: PCE is reviewing the final technical and policy analyses now and is collaborating with PG&E on policy considerations.

Strategic Plan:

Goal 3 – Community Energy Programs

• Implement robust energy programs that reduce greenhouse gas emissions, align energy supply and demand, and provide benefits to community stakeholder groups

Goal 3 – Community Energy Programs, Objective A:

- Key Tactic 1: Drive personal electrified transportation to majority adoption
- Key Tactic 2: Bolster electrification of fleets and shared transportation
- Key Tactic 5: Support local government initiatives to advance decarbonization

Goal 3 – Community Energy Programs, Objective B:

Key Tactic 1: Invest in programs that benefit underserved communities

Goal 3 – Community Energy Programs, Objective C:

• Key Tactic 1: Identify, pilot, and develop innovative solutions for decarbonization



PENINSULA CLEAN ENERGY JPA Board Correspondence

DATE: September 12, 2021

BOARD MEETING DATE: September 25, 2021

SPECIAL NOTICE/HEARING: None VOTE REQUIRED: None

TO: Honorable Peninsula Clean Energy Authority Board of Directors

FROM: Jan Pepper, Chief Executive Officer

SUBJECT: September Energy Supply Procurement Report

BACKGROUND

This memo summarizes energy procurement agreements entered into by the Chief Executive Officer since the last regular Board meeting in August. This summary is provided to the Board for information purposes only.

DISCUSSION

Execution Month	Purpose	Counterparty	Term
August	Energy Hedge	Morgan Stanley Capital Group Inc.	6 months
August	Energy Hedge	Exelon Generation Company, LLC	6 months
August	Energy Hedge	Calpine Energy Services, L.P.	3 months

In January 2020, the Board approved the following Policy Number 15 – Energy Supply Procurement Authority.

Policy: "Energy Procurement" shall mean all contracting for energy and energy-related products for PCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage. In Energy Procurement, Peninsula Clean Energy Authority will procure according to the following guidelines:

1) Short-Term Agreements:

a. Chief Executive Officer has authority to approve Energy Procurement contracts with terms of twelve (12) months or less, in addition to contracts

- for Resource Adequacy that meet the specifications in section (b) and in Table 1 below.
- b. Chief Executive Officer has authority to approve Energy Procurement contracts for Resource Adequacy that meet PCE's three (3) year forward capacity obligations measured in MW, which are set annually by the California Public Utilities Commission and the California Independent System Operator for compliance requirements.

Table 1:

Product	Year-Ahead Compliance Obligation	Term Limit
Local Resource Adequacy	In years 1 & 2, must demonstrate capacity to meet 100% of monthly local obligation for years 1 and 2 and 50% of monthly local obligation for year 3 by October 31st of the prior year	Up to 36 months
System Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of system obligation for summer months (May – September) by October 31st of the prior year	Up to 12 months
Flexible Resource Adequacy	In year 1, must demonstrate capacity to meet 90% of monthly flexible obligation by October 31 st of the prior year	Up to 12 months

- c. Chief Financial Officer has authority to approve any contract for Resource Adequacy with a term of twelve (12) months or less if the CEO is unavailable and with prior written approval from the CEO.
- d. The CEO shall report all such agreements to the PCE board monthly.
- 2) **Medium-Term Agreements:** Chief Executive Officer, in consultation with the General Counsel, the Board Chair, and other members of the Board as CEO deems necessary, has the authority to approve Energy Procurement contracts with terms greater than twelve (12) months but not more than five (5) years, in addition to Resource Adequacy contracts as specified in Table 1 above. The CEO shall report all such agreements to the PCE board monthly.
- Intermediate and Long-Term Agreements: Approval by the PCE Board is required before the CEO enters into Energy Procurement contracts with terms greater than five (5) years.
- 4) **Amendments to Agreements**: Chief Executive Officer, in consultation with the General Counsel and the Board Chair, or Board Vice Chair in the event that the Board Chair is unavailable, has authority to execute amendments to Energy Procurement contracts that were previously approved by the Board.

STRATEGIC PLAN

The contracts executed in October support the Power Resources Objective A for Low Cost and Stable Power: Develop and implement power supply strategies to procure low-cost, reliable power.

California Community Power

70 Garden Court, Suite 300, Monterey, CA 93940 | cacommunitypower.org

TO: CC Power Board of Directors **DATE:** 9/15/21

FROM: Tim Haines - Interim General Manager

SUBJECT: Report on CC Power Board of Directors Meeting – 9/15/21

The CC Power Board of Directors held its normally scheduled meeting on Wednesday, 9/15/21, via Zoom. Details on the Board packet, presentation materials, and public comment letters can be found under the Meetings tab at the CC Power website: https://cacommunitypower.org

Highlights of the meeting included the following:

- Matters subsequent to posting the Agenda. Chair Balachandran announced that subsequent to the posting of the Board package, CC Power had received a letter seeking a delay in consideration of power procurement policy that was Item 6B on the agenda. Without agreement on the item, the Chair sought a motion to remove the item from the agenda. The Board voted to remove the agenda item and asked the Board policy ad hoc committee to take the matter up. Board Member Hale asked that the item be heard no later than the October 20 Board meeting for CPSF to maintain support for the Long Duration Storage project.
- **Public Comment.** Ten members of the public spoke during the comment period. Alex Landsberg, Research and Advocacy Director for Fan Francisco Construction Industry stated that his association will support the Long Duration Storage project without the need of CC Power adopting a broader policy. The other members of the public supported the delay of the policy vote. Reasons given included transparency, equity, public involvement, inclusion Unbundled Renewable Energy Credits, support of labor, and general support of the public comment letter submitted on behalf of IBEW Locals 6, 413, 595 and 617. The Chairman thanked the public for their comments.
- **Consent Calendar** The Board unanimously approved the following items:
 - o Minutes of the 8/18/18/21 Regular Board Meeting
- **Board Chair's and General Manager's Report.** Report and Information Update on LDS Project Approval Process Board Chair Balachandran informed the Board that CC Power is developing material and a process to facilitate the review and approval process CC Power Board and Project Participating Board. LDS ad hoc committee members Lori Mitchell and Mitch Sears had met with the Chair, GM and GC and provided input to the presentation material. The Chair further informed the Board that two projects are entering the final phase on contracting. The two projects are located in California and require project labor agreements. The review and approval

process will commence in early October. The Chair invited General Counsel Braun to speak.

Mr. Braun presented the "Outline of Notice and Approval Process CC Power LDS Project" slides. He described the process to be a living document that will evolve. It will incorporate Board feedback as well as that of the LDS project oversight committee and member agency general counsel. The review and approval process will be conducted in compliance with the CC Power Joint Powers Agreement which requires a 60-day review and approval process. The General Counsel explained the package of contracts is between CC Power and Sellers, guarantees between participating members and sellers, and agreements between CC Power and participating members. The presentation material also describes the process utilized for the RFO solicitation, evaluation and negotiations; the information that will be provided to the CC Power and Participating Member Boards; and the projected schedule. Mr. Braun estimates that the process will begin at the October 5, 2021 special Board meeting. There is likely no Board action at the meeting as this will initiate the 60-day review and approval process. Mr. Braun confirmed that the contracts are expected to be final in early October.

In response to Board Member Syphers' question, the General Counsel stated that the current expectation is all Board members will be given the right to vote on approving the contracts. However, the CC Power contract with the Seller will not be effective until each participating member executes their contracts with CC Power. Mr. Braun also explained this process contemplates the contracts going forward even if a member elects to not participate.

In response to Board Member Pepper, Mr. Braun explained that it is expected that individual Participating Member approval processes will differ and that is important to continue engagement with the POC and Member general counsel early.

Board member Hale pointed out that the process differences may also include information that is made public. Mr. Braun confirmed it is the intend to withhold information that is 'commercially sensitive,' but we also need to understand what that means for all Members.

- Consider and Possibly Approve resolution 21-09-09 Approval of Competitive Rates, Labor, Environmental and Environmental Justice Policy – Pulled from Agenda.
- Consider and Possibly Approve Resolution 21-09-10: Approval of California
 Community Power 2021 Request for Offers for Firm Clean Energy Resources –
 Jeanne Sole, Deputy Director of Power Resources, San Jose Clean Energy, presented
 the Member staff recommendation that the Board delegate authority to the General
 Manager to issue a CC Power 2021 Request for Offers for Firm Clean Energy
 Resources. The request further delegates authority to short-list respondents and the

creation of a Project Oversight Committee consistent with CC Power's project approval process.

Ms. Sole explained that the CPUC mandates that all CC Power members acquire about 200 MW of firm clean resources. Member staff has requested that CC Power issue the RFO to procure this resource. Pursuant to the Project Development Process, Member staff have developed the RFO and are prepared to issue, evaluate responses, and short-list respondents relying on 'sweat equity' and contributing consulting time and expertise.

Ms. Sole provided the timeline which projects the RFO will be issued in Mid-October and contracts entered in July. The presentations described the 'lessons learned' from the LDS contracting effort. This is expected to save time and money.

Board Member Pepper confirmed with General Counsel and General Manager that the LDS Enhanced Conditions policy will apply to this RFP. The General Manager stated that the Board will be asked to approve the budget for the project as part of the 2022 CC Power budget process which will begin in October.

• **Discussion of Any Individual Member Items** – not recorded in these notes.



COMMONLY USED ACRONYMS AND KEY TERMS

AB xx - Assembly Bill xx

ALJ - Administrative Law Judge

AMP- Arrears Management Plans

AQM - Air Quality Management

BAAQMD - Bay Area Air Quality Management District

CAC – Citizens Advisory Committee

CAISO - California Independent System Operator

CalCCA - California Community Choice Association

CAM - Cost Allocation Mechanism

CARB - California Air Resources Board, or California ARB

CARE- California Alternative Rates for Energy Program

CBA - California Balancing Authority

3CE- Central Coast Community Energy (Formerly Monterey Bay Community Power-MBCP)

CCA - Community Choice Aggregation (aka Community Choice Programs (CCP) or

CCE – Community Choice Energy (CCE)

CCP - Community Choice Programs

CEC - California Energy Commission

CPP- Critical Peak Pricing

CPSF - Clean Power San Francisco

CPUC – California Public Utility Commission (Regulator for state utilities)

CSGT - Community Solar Green Tariff

DA - Direct Access

DAC-GT - Disadvantaged Communities Green Tariff

DER – Distributed Energy Resources

DG - Distributed Generation

DR – Demand Response

DRP - Demand Response Provider

DRP/IDER - Distribution Resources Planning / Integrated Distributed Energy Resources

EBCE – East Bay Community Energy

ECOplus – PCE's default electricity product, 50% renewable and 90% GHG-free (in 2019)

ECO100 – PCE's 100% renewable energy product

EDR – Economic Development Rate

EE – Energy Efficiency

EEI - Edison Electric Institute; Standard contract to procure energy & RA

EIR – Environmental Impact Report

ELCC - Effective Load Carrying Capability

ESP – Electric Service Provider

ESS – Energy Storage Systems

ERRA - Energy Resource Recovery Account

EV – Electric Vehicle

EVSE – Electric Vehicle Supply Equipment (Charging Station)

FERA- Family Electric Rate Assistance Program

FERC – Federal Energy Regulatory Commission

FFS – Franchise Fee Surcharge

GHG – Greenhouse gas

GHG-Free – Greenhouse gas free

GTSR - Green Tariff Shared Renewables

IDER - Integrated Distributed Energy Resources

IOU – Investor Owned Utility (e.g PG&E, SCE, SDG&E)

IRP - Integrated Resource Plan

ITC - Investment Tax Credit (it's a solar tax credit)

JCC – Joint Cost Comparison

JPA - Joint Powers Authority

kW - kilowatt (Power)

kWh – Kilowatt-hour (Energy)

LIHEAP- Low Income Home Energy Assistance Program

Load Shaping - changing when grid energy is used

LSE - Load Serving Entity

MCE - Marin Clean Energy

Methane Gas-formerly known as 'natural gas'

Microgrid – building or community energy system

MW - Megawatt (Power) = 1000 kW

MWh - Megawatt-hour (Energy) = 1000 kWh

MUD - Multi-unit Dwelling

NBCs – non-bypassable charges

NEM - Net Energy Metering

NERC - North American Electric Reliability Corporation

NDA - Non-Disclosure Agreement

NG - Natural Gas

OES – Office of Emergency Services

OIR - Order Instituting Rulemaking

PCC - Portfolio Content Category (aka "buckets") - categories for RPS compliance

PCC1 – Portfolio Content Category 1 REC (also called bucket 1 REC)

PCC2 – Portfolio Content Category 2 REC (also called bucket 2 REC)

PCC3 – Portfolio Content Category 3 REC (also called bucket 3 REC or unbundled REC)

PCE – Peninsula Clean Energy Authority

PCIA – Power Charge Indifference Adjustment

PCL - Power Content Label

POU – Publicly Owned Utility

PPA - Power Purchase Agreement

PSPS – Public Safety Power Shutoff

PV – Photovoltaics (solar panels)

RA – Resource Adequacy

RE – Renewable Energy

REC – Renewable Energy Credit/Certificate

RICAPS - Regionally Integrated Climate Action Planning Suite

RPS - California Renewable Portfolio Standard

SB xx - Senate Bill xx

SCP – Sonoma Clean Power

SJCE - San Jose Clean Energy

SMD – Share My Data, interval meter data

SQMD – Settlement Quality Meter Data

SVCE – Silicon Valley Clean Energy

TNCs – Transportation Network Companies (ridesharing companies)

TOU RATES – Time of Use Rates

VGI – Vehicle-Grid Integration

V2G – Vehicle-to-Grid

VPP – Virtual Power Plant

WECC – Western Energy Coordinating Council

WREGIS – Western Renewable Energy Generation Information System

WSPP – Western Systems Power Pool; standard contract to procure energy and RA